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PAPERS ON PARLIAMENT



A Symposium

by

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FOREWORD

The five papers in this volume all deal with some aspect of the British parliamentary system. They were originally published by the Hansard Society in pamphlet form in 1946 and 1947, but have long been out of print. They have been revised and are here brought together in convenient form to help to meet the ever-increasing demand for information about parliamentary affairs.

Each paper is concerned with an important element in the British democratic form of government. Miss Briers traces the development of the ancient office of Speaker of the House of Commons. Sir Herbert Williams describes Question Time in the House of Commons. The Independent Member of Parliament and his functions are surveyed by Mr. Harold Nicolson. Lord Samuel discusses the advantages and disadvantages of the Party System. Finally, Mr. Molson examines in detail the history of Delegated Legislation.

It is often said that the spirit of our parliamentary institutions is more important than the machinery. This is no doubt true, but the spirit cannot be understood apart from the machinery. This book describes five of the vital cogs which make the machine function.

The Council of the Hansard Society cannot accept responsibility for any opinions expressed in this book but believe that the information in it will assist in furthering the Society's object, which is "to promote knowledge of and interest in Parliament". All who wish to support the Society in this important work are urged to write for further particulars to the Hansard Society, 162 Buckingham Palace Road, London, S.W.1.

STEPHEN KING HALL,
Chairman of the Council and Hon. Director.

THE SPEAKER
OF THE
HOUSE OF COMMONS

by

P. M. BRIERS, B.A., B.LITT., F.R.HIST.SOC.

THE SPEAKER OF THE HOUSE OF COMMONS

At the hour appointed for the House of Commons to meet, Mr. Speaker enters the Chamber with time-honoured ceremonial. He is preceded by an usher and by the Serjeant-at-Arms, bearing the great silver-gilt mace; and followed by the Speaker's Chaplain and Secretary. The Speaker himself wears a long, black silk gown over court dress. On his head is a full-bottomed wig, and he carries a tri-cornered hat.

The *Oxford English Dictionary* defines the Speaker as "the member of the House of Commons who is chosen by the House itself to act as its representative and to preside over its debates". This is a fair definition, and, in its brevity, brings out three important points: that the Speaker is himself an M.P. who has been elected like all the others; that he is made Speaker by the House itself; and that he is the House's accredited deputy as well as the Chairman of its debates. The dictionary definition gives, however, no idea of the Speaker's indispensability. Without a Speaker the House cannot meet. On the death of Speaker FitzRoy, for instance, the House rose at once and could not function until the election of his successor, although the country was in the midst of the second world war.

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The first act of the Commons in every new Parliament is the election of their Speaker. On the day fixed by Proclamation for the first meeting of Parliament, the official called Black Rod summons the newly-assembled members of the Commons' House to the House of Lords, where the Lords Commissioners (the Lord Chancellor and four other peers)

representing the King, declare "It is His Majesty's pleasure that you, gentlemen of the House of Commons, repair to the place where you are to sit and there proceed to the choice of some proper person to be your Speaker". The Commons withdraw to their own Chamber, where the Clerk of the House rises and points silently to a member who proposes of some other member that he "do take the Chair of this House as Speaker". Another member seconds the motion and the Leader of the House generally speaks in support.

The M.P. who thus becomes Speaker Designate is sitting among the back-benchers of his Party. He stands up, and, conveying his appreciation of the honour conferred upon him, "submits himself humbly to the will of the House". Formerly, from 1381 to 1801, it was the custom for the chosen to "disable" himself, protesting his inability in extravagant language, while the House cried "To the Chair! To the Chair!" To-day, the intended Speaker, with a mere gesture of respectful reluctance, gives his hands to his sponsors, who lead him from his seat, past the Table of the House, to the dais. There he turns and again thanks the House before taking his seat in the Chair. Not until the Speaker Elect is in the Chair does the Serjeant-at-Arms take the Mace, which has been resting underneath the Table of the House, and place it on top of the Table—its usual position during sittings of the House with the Speaker in the Chair. The Leader of the House and the Leader of the Opposition make speeches of congratulation and the House then rises, the Speaker Elect putting the motion for the Adjournment.

The next day Black Rod again fetches the Commons before the waiting Lords. The Commons appear in procession, the general body of M.P.s following behind him whom they offer as Speaker; and he is preceded by the Serjeant carrying the

Mace in a special way in the crook of his left elbow. Standing at the Bar of the House of Lords, the Speaker Elect informs the Lords Commissioners that the Commons' choice of a Speaker has fallen upon himself. The Lord Chancellor ratifies the choice in the name of the King. In historic terms the Speaker then, submitting himself to the royal will, lays claim to the ancient privileges of the House of Commons, specifying the more important by name—freedom from arrest, liberty of speech and access to the King. He also asks that a favourable construction may be put on its proceedings. These privileges and rights confirmed, the Speaker leads the Commons back to their own Chamber, the Mace now borne shoulder-high, and St. Margaret's bell a-ringing.

During these proceedings, the Speaker has worn court dress and a small bob-wig of unknown significance and origin. He now retires for a moment, coming back in the long wig and apparel which he will always wear. He makes formal announcement to the Commons of what has just happened in the Lords and then administers the oath to members of the House, first taking it himself.

The Speaker's first official duty is thus to claim what it always will be his primary duty to defend—the dearly-bought and hardly-won privileges of his House. Any breaches of privilege by outsiders are brought to the notice of Mr. Speaker; he is judge of any alleged breaches that occur inside the House during debate, and he has a special duty to examine, from the point of view of infringements of privilege, amendments made by the Lords to bills sent up to them by the Commons.

The rest of the picturesque election ceremonial has also constitutional significance. It shows the choice of the Speaker as the exclusive right of the Commons, but exercised only by the King's leave, and needing his approval. This is now only a formality, but it

commemorates a prolonged political struggle. Only in exceptional circumstances has the Speaker been chosen without reference to the Crown; once or twice during the seventeenth-century Civil War and the Protectorate that followed; at the constitutional crises of 1660 and 1688; and once, in 1789, because the King was incapacitated.

As the choice of the Speaker rests with the whole House, no Minister acts as proposer or seconder, nor has done so since 1789, when Pitt accepted advice that it would be unwise for him, as Prime Minister, to try to honour Henry Addington by himself proposing him for the Speakership. Nowadays the proposer and seconder are selected in some way likely to give pleasure to the Speaker Designate. They are usually one county and one borough member, taken when possible from different sides of the House to signify the unanimity of its choice. The Government does take an active interest in the election, seeking a candidate acceptable to all parties in the House, but it is by the whole House that the Speaker must be elected.

A contest for the Speakership is possible. One of the great Speakers of the nineteenth-century, Mr. Shaw Lefevre, was elected the first time (in 1839) in a contest; and so was Speaker Gully in 1895.

The dumb-show by which, during the election, the Clerk of the House indicates proposer and seconder by gesture only signifies that the House is without a voice until it has a Speaker. If there is a contest for the Speakership this principle cannot be thoroughly maintained; so, after a debate on the respective merits of the candidates, the Clerk puts the question "by order of the House". In such a case the candidates voted for each other in 1839. In 1895 they did not vote at all.

The Speaker thus elected continues in office for the whole of that Parliament. By and for the purposes of Acts of 1832 and 1846, he remains Speaker after the dissolution until the next Speaker has been elected: but they are only specialized, financial purposes. He does not, after the dissolution, execute duties such as issuing writs, etc., as he does during a parliamentary recess.

Once elected, he can, in practice, usually remain in office for so long as he wishes and feels able to serve, whether or not the party which first named him for the Speakership continues in office. During the nineteenth century, for instance, only three Speakers were elected from the Conservative Party. The party took office in 1841, 1874, 1886 and 1895, but in each case the Speaker already in office was reappointed, although he had been elected to parliament as a Liberal and to the Chair under a Liberal Government.

When he decides to retire, the Speaker announces his decision to the House personally. The next day, complimentary speeches are made to him from all quarters of the House, before he puts the question for the last time. To hear or even to read these speeches, very different in style and content, but deeply moving in their obvious sincerity, is to glimpse something of the successful working of the British House of Commons and to see how intimately the Speaker is connected with it.

When the Chair is vacant through the death or resignation of the Speaker, the King's leave to elect another is sought at once. The election ceremony which ensues is essentially the same as at the beginning of a Parliament, but shorn of a little of its ceremonial impressiveness. (One difference is that the new Speaker does not claim the Commons' privileges, which have already been ratified at the beginning of the Parliament.) Only three Speakers

have, so far, died in office. The last was, of course, Captain FitzRoy in 1943; the one before that, Speaker Cornwall, in 1789.

The Speaker's facility to continue in office, independent of party and government, has been a decisive factor in shaping the character of his office. Originally the idea of "one Speaker, one Parliament" was operative, although never rigidly enforced. Sir Spencer Compton's re-election in 1722 was the first assertion of the modern principle. He then had been in office since 1715, and he served on throughout the whole of George I's reign. His successor served all through that of George II. The principle involved was put successfully to the test at the election of Speaker Gully in 1895. He was proposed as Speaker by a dying Liberal Government not likely to survive the forthcoming election. There was a contest for the Chair and Gully's majority was the narrow one of eleven votes. The Opposition made it clear that they felt free to propose another Speaker, if, as they anticipated, they were in office in the next Parliament. They were. But the tradition of the Speaker continuing in office proved so strong that Gully was re-elected, unanimously, without a contest.

.

The first Speaker officially recorded as such—Sir Thomas Hungerford, in 1377—in the words of the Rolls of Parliament, "*avoit les paroles pur les Communes*". He spoke for them—on their behalf. Here is the original concept underlying the office. To-day, in all his work, both in and out of the Chair, the Speaker is interpreting the will of the House, speaking for it as well as to it. For nearly six hundred years the office has developed, but not essentially changed.

Hungerford addressed the Throne to explain the Commons' grievances and presented bills on their behalf. In a previous Parliament Peter de la Mare

had played a similar part. He had collected and summarized the Commons' views, as they debated in the Chapter House of Westminster, and was unanimously called on to speak for all ("commune parlour") before the Lords, who had been conferring elsewhere.

There certainly were earlier occasions on which one spoke for all. In 1327 and again in 1343 one "Procurator" had dealt with the King, but it was on behalf of the whole Parliament (not only of the Commons) and was in each case for a specific purpose. The early so-called Rolls of Parliament do not set out to be journals recording debate, and many aspects of the early history of the institution are not clear. Medieval use of terms was also erratic for these were not yet technical terms. Hungerford was called Speaker; de la Mare was not, but the argument cannot be pressed further. It is typical of the constitutional history of England, and of its parliamentary institution in particular, that the office of Speaker of the House of Commons developed gradually rather than began. The office seems to appear as soon as the Commons were definitely something more than a mere assenting body.

With the turn of the century, it is clear that the people are accepting the idea of a Speaker as a necessary part of the Parliament by which a good deal of the nation's work gets done. In Henry V's reign one of the many petitions sent in to Parliament is addressed to the Speaker and the county representatives.

But fifteenth-century Kings were not slow to see in the Speaker's office an opportunity for useful influence. What better than that the Commons' official representative should, in fact, be the court representative in Parliament and the King's agent there! This development was almost inevitable. Lancastrians fought Yorkists and governments rose

and fell quickly and bewilderingly. But legislation remained valid all the time unless specifically repealed by a new government. The King must have perceived the growing significance of the Lords and Commons in Parliament as the fount of legislation, and he was already dependent on the Commons for money grants. The obvious focal point for his influence was the Speakership.

The result was that the Speaker became for a time the Crown nominee. The office was filled by men like Thomas Thorpe (1453), who had been brought up from childhood in the royal service. Speakers received pay from the Crown and held high offices of state concurrently with the Speakership. The reign of Edward IV has some significance in this respect. The relationship of King and Commons altered, for he had bourgeois leanings and an interest in trade. Mr. Speaker was taken affably under the wing of the court. Speaker Alington, for instance, accompanied the King on a royal progress and was given a place on important councils.

One contemporary writer describes the Speaker as an officer who is a member of the Commons' House "tho' nominated by the King's Majesty". But it is only one writer; most still hold the theory that the Commons freely elect their Speaker with the King's permission and approval. The Commons meanwhile had not been unperturbed, nor inactive. As early as 1413 they had rebuked Speaker Stourton for a betrayal of their confidence to the King, and an illness which subsequently overtook him may well have covered an enforced resignation. Opinions differ as to the date at which the Commons' dislike of their Speaker's position became effective enough to influence the course of events. It was hardly earlier than 1597, nor later than 1629.

The outcome of the great struggle between Charles I and the Commons was to establish the principle

that the Speaker's whole duty is to the House. His election by fellow commoners became definitely of greater importance than its confirmation by the King. This was put to the test in 1679, when Charles II, while successfully objecting to the Commons' choice of Speaker, could not, nevertheless, persuade them to accept his choice, and had to compromise on a third choice acceptable to both sides.

Two dramatic scenes in the House of Commons illustrate the progress made at this period. In 1629, Speaker Finch, prevented by an angry House from carrying out a royal command, could still cry: "I am not less the King's servant for being yours". Whereas Speaker Lenthall's rejoinder to Charles I, who came armed to the House to arrest five of its Members in 1642, was: "Sire, I have neither eyes to see nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here."

These two scenes are not in themselves conclusive evidence. Lenthall's attitude and position were hardly as clear-cut as his words would infer. But they indicate the direction of progress. That is shown, too, in the new rules of procedure which the House had established for itself by 1640. Precise definition of the Speaker's powers in controlling debate and in arranging public business, and other rules, such as the fixing of a quorum, prevented his manipulation of parliamentary affairs in the King's interest. Until they were sure of him, the Commons had to devise restrictive rules which treated their Speaker as a possible enemy.

Attempts by the Court to influence the Speakership did not entirely cease until the reign of George III. In the meantime, the eighteenth century had brought in the age of party politics. It is not surprising that the parties—Whigs and Tories—now aimed to control the choice of Speaker, especially since the real and final legislative power now vested

in the Commons' House must have added dignity and importance to its Chair.

From the seventeen-twenties onward the Speakership can be seen emerging in its modern form. This was very gradual, and there were intermittent backslidings; but there were definite stages of growth. The first began with Sir Spencer Compton's re-election as Speaker in 1722, which, as has been shown, invested the office with the important feature of continuity. The Speakership of his successor, Arthur Onslow (1727-61), took the office so big a step forward that the high level was not immediately maintained. He introduced a new standard of efficiency, and he also resigned the office of Treasurer of the Navy (which had come to be regarded as a perquisite of the Speakership), supporting himself on the fees from Private Bills. This went a long way towards dissociating the Speakership from the government in power. Afterwards, various M.P.s who had previously held government office became Speaker; Cornwall (1780-89) drew a government pension while in the Chair, and Mitford (1801-02) left the Chair to become Chancellor of Ireland. But the period of government control was really broken earlier, during Onslow's period of office.

By the beginning of the nineteenth century, the necessity for the Speaker to be absolutely impartial (see also *infra*, p. 18) had also been accepted, and the office began to show its present character. The events of 1839 and 1841 illustrate this. For, in 1839, the Melbourne administration deliberately refrained from putting forward Thomas Spring Rice (first Lord Mounteagle) for the office because he was not acceptable to the Opposition; choosing instead Charles Shaw Lefevre, thus acknowledging unanimity of choice as desirable. Two years later the Tories came into power; but their Prime Minister (having first taken the opinions of his supporters)

declared: "I do not think it necessary that the person elected to the Chair, who has conscientiously and ably performed his duties, should be displaced because his political opinions are not consonant to those of the majority of the House."

.

That is roughly how the Speaker's office, which has been called "the non-political embodiment of the House of Commons as a whole" has been forged out of the political strife and experience of centuries. It is a unique and immensely precious achievement, whose full significance can best be measured in the light of the Speaker's duties to-day.

These are performed both in the Chair and out of the Chair; depending, some on age-old practice, some on statutory authority, and some on the Standing Orders of the House. His activities fall into three main categories.

(1) On occasions he acts as spokesman or "mouth" of the House, as, for instance, when he claims the Commons' privileges (see p. 4). Sometimes he bears their loyal address to the Throne. The Commons have access to the King only in the person of their Speaker, or, in a body, with the Speaker at the head.

In the name of the Commons the Speaker conveys thanks and censures. He presents Money Bills at the bar of the House of Lords.

(2) In certain other ways, the Speaker acts as the House's representative and executive. He is its active and only constitutionally recognized deputy.

As representative of the House, he receives documents addressed to it, for instance from foreign countries. He communicates them to the assembled House at his discretion. When he does so his words are entered in the records of the House.

He issues a number of warrants in its name for various purposes. For example, when a seat becomes

vacant during a session the House orders Mr. Speaker to cause a writ to be issued for a new election. Should a vacancy occur during recess, the Speaker likewise issues a warrant by Statutory Instrument unless lunacy or acceptance of the Chiltern Hundreds is the cause of the vacancy. By an Act of 1784 the Speaker must nominate a number of M.P.s to execute his duties in issuing writs in the event of his death or absence abroad during recess.

Other warrants which the Speaker is empowered to issue, but does less frequently, are for the commitment of offenders and for the attendance of witnesses in custody.

On 30 October, 1680, the House resolved that its "votes and proceedings" be printed and the matter put in Mr. Speaker's care. Nowadays, a variety of documents coming under the term "parliamentary papers" are printed, and a department called the Vote Office is responsible for delivery to Members. Since 1909 the debates of the House of Commons have been reported by an official staff. A Select Committee on Publications and Debates Reports is appointed each session to assist Mr. Speaker in the arrangements for the Official Reports of Debates.

There are now offices specifically called the "Speaker's Department" of the House of Commons. To it belong the Speaker's Secretary; his Chaplain; a Librarian and staff; an Examiner of Petitions for Private Bills; officers of the Vote Office; and various Accounting Officers.

It may fall to the lot of the Speaker to perform the special task of presiding over a Conference of both Houses on Electoral Reform. One such Conference reported, during the present Speakership, in June, 1944. The most famous was that in which Speaker Lowther managed successfully to negotiate the delicate task of expanding the suffrage to admit votes for women.

(3) Gladstone once said that the Speaker's chief

function now was to defend the House against itself. He does this when he presides in the Chair of the House during debate.

He is not in the Chair when the House is in Committee, which happens at one stage of a Bill and when Money Resolutions are under consideration. This practice dates back to the time when the Speaker was liable to represent the interests of the Crown, and when debate was therefore freer in his absence. The present procedure was, however, established gradually. In March, 1610, during Committee, the Speaker sat in the Clerk's place and the Committee "Moderator" sat on a stool beside him: but in May that year the Speaker left the Chamber, and that has come to be the practice during a Committee of the whole House. Debate in Committee is more informal and the Speaker himself used to take part in it until comparatively recent date. Hatsell, writing in the second half of the eighteenth century, thought this normal. But no Speaker has spoken in Committee since 1870, and not on a political subject since 1825.

Arrangements now exist whereby a Deputy Speaker may occupy the Chair when the House meets properly constituted (see p. 22). But ordinarily, when the daily sitting of the House opens with Prayers, the Speaker makes the responses while his Chaplain reads the prayers. The prayer of a sixteenth-century Speaker (Yelverton) "to expel darkness and vanity from our minds and partiality from our speeches" is still used. Should the Chaplain be absent, the Speaker may take Prayers himself.

He then starts the day's debate by proposing and putting the question. He used actually to frame the question, but now has no part in initiating business, nor, since the beginning of the eighteenth century, in arranging it.

Members contributing to the debate speak always

directly to the Chair and are called on by Mr. Speaker. Would-be contributors spring to their feet in a competition to catch the Speaker's eye—in the words of Lord Baldwin: "that most elusive organ that Nature has ever yet created." An earlier custom was to decide between several members wishing to speak by a Motion that one of them "be now heard". But this practice would hardly do in present times of increased parliamentary business and did not, in fact, outlast the early years of the nineteenth century.

Captain de Chair says of the present practice that there is nothing haphazard in it, yet nothing certain. Actually, rules based on custom and precedent and on common sense guide the Speaker's choice. Speaker Coke (1593-97) evolved some of the rules. Ministers and front-bench Opposition leaders are given special opportunity for speaking, and the House allows priority, by courtesy, to an M.P. wishing to make his maiden speech, providing he exercises it in the Parliament to which he was first elected. In the general run of the debate, the Speaker calls on a Member who is likely to oppose the previous speaker's views. That is to say, he looks alternately to the different sides of the House and calls on representatives of the various groups, seeking also to select those most qualified to speak on the subject in hand. The Party Whips can hand in a list of those desirous of speaking. This is useful to Mr. Speaker, but in no way decides whom he will "see".

In the British Parliament, interruptions in debate are not an offence. The Speaker has therefore the difficult task of controlling the debate in the interests of relevancy without hampering free discussion. He is able to do this because he is doing what the House as a body wants. In the words of the sixteenth-century writer and M.P., Sir Thomas Smith: "No reviling or nipping words must be used, for then all

the House will cry, 'it is against the order' . . . so that in such multitude and in such diversity of minds and opinions there is the greatest modesty and temperance of speech that can be used. Nevertheless, with much doulce and gentle terms they make their reasons as violent and vehement one against the other as they may".

In keeping order, the Speaker deals with minor violations as they occur, requesting the withdrawal of "unparliamentary language" firmly, but usually with infinite patience. If he is not obeyed this is "grossly disorderly conduct", and he directs the member in question to withdraw from the House for the remainder of the sitting. No more serious penalty than this can be incurred without the intervention of the House itself which is the ultimate authority in matters of order. If necessary the Speaker "names" an M.P. for disregard of the authority of the Chair, and a motion is brought that he be suspended from the service of the House.

Should disorder spread to such an extent as to warrant it, the Speaker has power to suspend the sitting. A Standing Order to this effect was brought in after certain Irish members had forced Speaker Gully into a very difficult position, and was applied in May, 1905, by the Deputy Speaker, who happened to be in the Chair when, for a whole hour, the House refused a hearing to the Colonial Secretary. But it must be emphasized how very rare are such scenes in so free a debating chamber. Nor does this Standing Order reflect the spirit in which the Speaker carries out his duties. More typical of that are the words of Speaker Peel, called in by the Chairman of Committees to quell something in the nature of a brawl during debate on the Home Rule Bill in July, 1893. He asked that "in the interest of debate and in the higher interests of the character of the House" members would drop and forget the

incident and would proceed with business "in a manner which would do honour to the traditions of the House and would not allow any enemy of our constitution to rejoice". The appeal was completely successful.

When the Speaker intervenes, all must remain seated and hear him in silence. He need give no reason for his decisions. His words and conduct can only be challenged by a tabled motion of censure. Such are very rare. Argument with the Chair during debate is therefore entirely out of order.

The Speaker ends as well as initiates debate, by acquainting the House formally of the decision it has reached.

He has no vote as a member, but, should the numbers in a division on any occasion be absolutely equal, he has, and must exercise the casting vote. There were eleven such occasions during the nineteenth century. The Speaker then usually explains his reasons for voting as he does. The principles governing his vote are always the same. Whenever possible, he votes so as to allow the question to be debated again by the House on some future occasion, avoiding a change in the law of the land on the strength of his vote alone. Often this is a more or less simple matter, as when Speaker Denison by his vote, in 1861, merely postponed the settlement of the Church Rates question. But sometimes it imposes an awful responsibility on the Speaker, as on the memorable and oft-quoted occasion in 1805, when Speaker Abbot cast a determining vote in favour of the impeachment of Lord Melville.

His duties in the Chair are the most difficult and important of the Speaker's functions, and his success in performing them is the measure of his success in office. It is not only a question of keeping order in the Chamber. There are constant direct appeals to him for his ruling on points of procedure. In making

these he is a judge interpreting the law of Parliament: the accumulated rulings of his predecessors in the office constitute a body of case law, which, with the aid of learned counsel provided for the purpose, he searches as a basis for his own rulings. Occasionally, however, an entirely new situation arises in which he cannot point to a precedent. Within the last few years, for instance, the Speaker has been called upon to decide whether the words of Lord Chief Justice Lawrence in the Nuremberg Court for the trial of War Criminals were covered by the same ruling as protects the words of judges in British courts from criticism in haphazard debate. The situation was obviously quite a new one.

All his duties in the Chair—selecting speakers; keeping order; examining Notices, particularly of Questions to Ministers (the rules governing which are based on precedents formed by the accumulation of Speakers' Rulings); and, most obviously, the exercise of his casting vote—demand of the Speaker the highest degree of impartiality. This is, in a way, now legally guaranteed. A surer guarantee is the Speaker's personal integrity. This high level of impartiality has been attained only gradually. In 1604, it had to be "agreed for a rule that if any doubt arise upon the bill the Speaker is to explain but not to sway the House with argument or dispute".

Nowadays, of course, in the heat and fervour of debate, members of the House often feel wronged by the Speaker's decisions. In 1911 one member was rash enough to write, in a letter which subsequently reached the public eye, that the Speaker had been "not a bit impartial". But his frank withdrawal and apology to the Speaker at a later sitting of the House, and the magnanimity with which it was received, are typical of the way in which the

House of Commons manages, unruffled, to take this kind of incident in its stride.

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The present tendency is, and has been for some time, to add to the Speaker's discretionary powers and responsibilities. This has been done in recent years by Statute. Before that his functions were enlarged through changes in parliamentary procedure. These came about mainly as the result of an attempt by Parnell and the Irish Nationalist members to break the parliamentary institution and destroy its effectiveness by a skilful use of obstruction—defined by the Speaker as “abuse of the privileges of debate for the purpose of defeating the will of Parliament”. By this means the Irish members were enabled, round about 1877 to 1882, to prolong sittings, hold up parliamentary business, and generally, as *The Times* admitted, to place Parliament in a state of siege. A critical situation developed and looked like lingering on indefinitely and dangerously because the government was unwilling to be forced by a handful of Members to introduce regulations restrictive to debate, which would thus tend towards the rebels' own ends—the destroying of the free parliamentary institution.

On the morning of Wednesday, the 2nd of February, 1881, Speaker Brand stopped debate, which had continued since the previous Monday, by applying the closure; that is, by putting the question of his own initiative and although there were members desirous of continuing the debate. He said: “The usual rules have proved powerless to ensure orderly and effective debate. . . . The dignity, the credit and the authority of this House is seriously threatened, and it is necessary they should be vindicated.” This procedure was authorized by an urgency rule of 3rd February, 1881. A Select

Committee for the Reform of the Rules was afterwards appointed and the Speaker's discretionary powers were greatly enlarged. He may take the vote of the House on a dilatory motion for the adjournment during debate, or if, in his opinion, a division is unnecessarily claimed. The object of all is to see that the Speaker is enabled and properly authorized to carry out his task, which is to see that the will of the House as a whole is carried out, and cannot be vitiated by a group of Members acting from unworthy motives.

Some of the statutes which have, more recently, added to the Speaker's duties are the Parliament Act of 1911, which vested in him the responsibility for deciding what is a Money Bill; the Church of England Assembly (Powers) Act of 1919, under which the Speaker nominates the House of Commons members of the Ecclesiastical Committee; and the Ministers of the Crown Act of 1937, which declares that the Speaker shall be the judge of what party in the House constitutes the official opposition.

A Standing Order of 1919 is also important as it includes among the permanent powers of the Speaker the selection of amendments to bills and motions. Before deciding whether it shall be moved, the Speaker may call upon a Member to explain the object of his amendment. This arrangement was made so that the House might have the maximum of time for debating the amendments selected for consideration.

It is only possible to entrust so much to one man because the Speaker in his person and his office is completely responsible to and identified with the highest interests of Parliament; and this is indeed one of the brightest achievements of the British constitution.

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Of Speaker Brand's intervention in the crisis of 1881 (see *supra*, p. 19) the Prime Minister wrote: "The Speaker's firmness of mind, suavity in manner, unwearied patience, incomparable temper under a thousand provocations, have rendered possible a really important result." This is the only real testimonial to a Speaker—that he has done that for which he exists, and has enabled the House to function at its best. At practically every election there is a fresh attempt to assess the list of personal qualities necessary in Mr. Speaker, but they are really summarized in Mr. Gladstone's sentence quoted above.

In the Chair, the Speaker is assisted by a commanding presence, but not every one has been so endowed. One had such a squint that M.P.s in different parts of the House rose to speak at the same time, under the impression that they had caught the Speaker's eye.

A close acquaintance with parliamentary procedure is obviously relevant in a candidate for the Speakership. On Mr. Whitley's nomination there was much gratified comment on his long years of apprenticeship in the service of the House. In the Middle Ages, on the other hand, Speakers were elected who had not sat in the House before. Even as late as 1895 Mr. Gully was elected, in spite of the fact that he was not known by sight to most M.P.s, having spent his time doing private work in the House of Commons Library except when summoned by the Party Whip to vote.

Mr. Gully was a lawyer. From the end of the fourteenth century for several hundred years a lawyer was usually chosen. Sometimes a country gentleman held the office, but it was well on in the sixteenth century before a borough member sat in the Chair. One Scotsman and several Welshmen have at different times held office as Speaker.

The Speaker is always accessible to M.P.s as adviser and almost always becomes their friend. On Speaker Whitley's retirement, the Communist M.P., Mr. Saklatvala, said: "Your informative advice to me was even of greater value than opportunities of speaking."

The primary prerequisite in a prospective Speaker is an enthusiasm for and interest in the institution of Parliament. He is, at any rate in this respect, less appointed than "called" to duties so onerous and a life devoted to so specialized a purpose that it is necessarily restricted. Once he is in the Chair, in the interests of impartiality, he makes no friends, socially, in the House, and never again visits a political club.

Mr. Speaker Lowther remarked, in 1919, that he had already sat through 35,840 speeches in the House! Until 1855, the House literally could not sit, not only if the Speaker's office was not filled, but unless he personally was in the Chair. It seems remarkable that there were only twenty-nine absences between 1547 and 1853 (and these include one or two enforced absences at court in the early period). The first absence through illness was in 1593. In 1606 again Speaker Phelps had "a great pain in his neck and head" which held up Parliament for seven days. On these occasions the House had to adjourn or to elect another Speaker, who conveniently retired when the first Speaker recovered. Even the Speaker's dinner held up the nation's business. The necessary intermission while he ate it was called "The Speaker's Chop". Now, according to arrangements made in 1855 and 1902, the Chairman of Ways and Means and the Deputy Chairman may on occasions take the Chair as Deputy Speaker. The Speaker can arrange this himself, informally, or the Clerk of the House may make the formal announcement which is necessary to confer certain powers on a

Deputy Speaker—notably power to accept the moving of the closure.

Recent research has shown that John Say (1449) was in the Chair by the time he was twenty-seven, and so was John Mordaunt (1487). Nowadays a man of mature judgment is preferred, but young enough to be likely to give ten to fifteen years' service in the Chair.

It is difficult to single out individual Speakers for special note. Before the eighteenth century, however courageous the Speaker might be in defence of the liberties of his House, he was not a Speaker as the office is now known. From the middle of the eighteenth to the mid-nineteenth century, there were one or two outstanding men who, by their conduct, influenced the growth and shape of the office. Notable among these was Arthur Onslow (1727–61), whose contribution to the office was not only his renunciation of government emoluments, but also the care and interest he put into it. He saw the constitutional importance of parliamentary business and procedure and brought about the printing of the Journals of the House. Since Onslow's time, the Speaker has been a Trustee of the British Museum.

Soon after Onslow came a Speaker whose over-indulgence in porter during sittings "produced inconvenience", and discipline in the House became very slack again. Speaker Shaw Lefevre (1839–57) pulled up the standard. He was another Speaker with a proper conception of what his office should be, who took a tremendous interest in the general work of the House. After his Speakership, the office becomes the significant thing, not the man, although naturally every Speaker has his own special characteristics—Peel's voice of thunder, Whitley's "wide humanity", Lowther's gift of humour. Every modern Speaker, however, comes

into the Chair with the full knowledge that his office must not be discredited or the House would suffer. The full force of this is more apparent abroad, where the Speaker of the British House of Commons is regarded with something of the same awe and reverence as the President of the United States of America.

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The burdens of the Speakership carry compensations in social status and material well-being.

Traditionally, the Speaker ranked as the first commoner in the realm. An Order-in-Council of 30 May, 1919, declares that he shall take precedence immediately after the Lord President of the Council (i.e. as the seventh subject in the land). He is, moreover, the only subject who holds levees at which court dress must be worn, and to which invitations are in the nature of commands.

He lives within the Palace of Westminster at the Westminster Bridge end of the building. The entrance to his house is in a courtyard off New Palace Yard. Its fine public rooms overlook the terrace by the river.

The house is lent to the Speaker, freely, by the King. The Speaker's salary, charged to the Consolidated Fund, is £5,000 p.a. This was fixed by an Act of 1834, the last of a series of adjustments dating from 1790. Previously the office had been entirely dependent on a system of fees and emoluments.

A relic of past days is the annual offer to Mr. Speaker of a buck and doe from Windsor Forest. Anciently, he was allowed to take away his official Chair at the end of each Parliament. These stray, or Clandon Park would be well furnished with the chairs of Speakers belonging to the Onslow family. One old Chair, now in the possession of All Souls' College, Oxford, was offered back to the House, on

loan, to replace the Chair destroyed by enemy action, during the recent war.

On state occasions, Mr. Speaker turns out, with an escort of one lifeguardsman, in his State Coach. Only well-trained cart-horses can pull its enormous weight—two tons fifteen hundredweight, with never a brake nor a spring. Built in Holland, in 1698, for William III, it was overhauled for George V's Jubilee.

On his retirement the Speaker is normally voted a pension of £4,000 p.a. (taxable), and the House begs for him, from the King, some mark of royal favour, which is usually a viscountcy. In earlier days this device conveniently removed the ex-Speaker from the House of Commons. Speaker Whitley (1921–28) was the first to refuse the peerage, but he did not, of course, return to the House of Commons as an M.P. On his retirement Labour members opposed the grant of this pension. They thought the Speaker's pension too much, but his salary too little.

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The columns of leading newspapers in the present century reflect the political and constitutional importance attached in Great Britain to the office of Speaker and to the exact procedure of his election. There was, for instance, an outcry when, on Speaker Lowther's resignation, the Government attempted to nominate his successor with less than the usual formalities of consultation with the House in general; and appeared to attempt to trade on, and make an unwritten rule out of the recent tendency often to take the Chairman of Committees for Speaker.

Much public interest has also attached lately to the Speaker's position at a General Election. It became customary not to oppose the Speaker in his constituency, and Speaker Whitley expressed his

confidence, in 1924, that this tradition would always be carried on. Events have proved him wrong. The constituency is honoured by the selection of its member as Speaker. On the other hand, ordinary political activity in the district is thwarted. This was so galling to Labour Party adherents at Daventry that they opposed Speaker FitzRoy in 1935. The result was to increase his previous majority of 200 (in 1921) to 8,000. In 1938, with what *The Times* called the bravado of "detected and unsuccessful naughtiness", they decided to oppose him again at the next election. In December of that year, a Select Committee was appointed to consider what steps might be taken to ensure that, having due regard to the constitutional rights of electors, the Speaker, during his continuance in office, might not be required to take part in a contested parliamentary election. He is, on such occasions, at a definite disadvantage, and so are his supporters, for, in the interests of impartiality, he cannot take part in a political campaign. He stands usually as "the Speaker seeking re-election" (not as the candidate of any political group) supported by leading British statesmen and politicians but offering no political programme to his electorate. The Select Committee of 1938 considered various alternatives. Chief among these were proposals to prevent such a contest by statute; to make the Speaker's a two-membered constituency; to transfer him to a safe or two-membered constituency immediately after election as Speaker; and to create a special new constituency which the Speaker should always represent. All these suggestions were found in one way or another not to be in the spirit of the British constitution, and the Committee recommended that no change should be made in the Speaker's position. Captain FitzRoy, speaking to his electorate in 1935, prophesied it as "the greatest blow to democratic govern-

ment ever perpetrated" should the Speaker be defeated at the polls. He was not defeated; nor was the present Speaker, when he was opposed at the 1945 election.

There are odd features of the Speaker's office which bear comparison with that of presidents of parliamentary and representative bodies in other countries (e.g., in Sweden and New Zealand), but such a comparison is not profitable. The British Speakership is unique. It is hardly too much to say that its creation represents the flowering of the political genius of the British nation.

In preventing in the House a disorderly spirit (described by Lord Henry Cavendish Bentinck in 1924 as "a sin as red as scarlet against democratic progress") and in watching over ancient privileges, the Speaker becomes, in fact, the protector of minorities. He sees that rules of procedure are faithfully carried out. Speaker Arthur Onslow used to say that nothing tended more to throw power into the hands of the administration than neglect of, or departure from rules of procedure. The private member relies on the Speaker's fair interpretation of the rules of debate to obtain a hearing. Should the Speaker fail in his duties, it is conceivable that the administration in Great Britain might still become a dictatorship.

The Speaker's conduct reflects the spirit, which is ultimately more important than the forms of government. In some measure he is responsible for the continued existence of the House of Commons, for it will survive only so long as its procedure and facilities are adequate for the functions it has to perform; and the adjustment of established procedure to novel conditions is the Speaker's task.

A QUESTION IN PARLIAMENT

by

Sir HERBERT WILLIAMS, M.SC., M.ENG., A.M.I.C.E.

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I desire to tender my most grateful thanks to Mr. E. A. Fellowes, C.B., M.C., Clerk-Assistant of the House of Commons, for his many helpful suggestions, and for his kindness in perusing the manuscript, as a result of which I hope it will be both comprehensive and free from error.

A QUESTION IN PARLIAMENT

“I’ll have a question asked in the House” is a phrase that has been used tens of thousands of times by aggrieved subjects of His Majesty, and it indicates a very legitimate faith in what is perhaps one of the most powerful implements of democracy in our country, namely a Question in the House of Commons. The purpose of this paper is to explain the procedure about Questions, the nature of Questions and their influence.

I suppose that one of the reasons which influenced the Council of the Hansard Society in asking me to write this paper is the fact that in the period of nearly twenty years that I sat in the House of Commons I was one of the most frequent questioners, except during the short period of eighteen months when I was in the other role, as Junior Minister, of having the duty of answering other people’s Questions. As a rough estimate, I suppose I must have asked in my time about 4,000 Questions, apart from what are known as Supplementary Questions, the meaning of which will appear later on.

After I had been in Parliament for about three years and was addressing a meeting of my then constituents in Reading, I made some reference to the number of Questions I had asked, and was somewhat shattered by a hostile interrupter who said that I must have been an exceptionally ignorant fellow at the beginning if it were necessary for me to ask so many questions in order to find out about things. It was a good heckling point, but as I hope to succeed in showing you, one not really of any material significance.

First of all with regard to the procedure in

respect to Parliamentary Questions: quite obviously it would be grossly unfair to expect a Minister to answer any one of many thousands of potential questions affecting his Department unless he has notice of it. In a large Department of State employing, it may be, hundreds, or possibly thousands of staff, many things are done and many decisions are taken which never come under the notice of the Minister, and there is no reason why they should, because officials are appointed to do their respective jobs: most of their tasks are normally routine tasks involving decisions of greater or lesser magnitude, but unless they involve new issues of policy, naturally they do not come under the notice of the Minister. Nevertheless, he is responsible for all the acts of his subordinates. In order, therefore, that a Minister should be in a position to answer Questions he must have notice, and the procedure of the House of Commons provided, in the ordinary way, that he was to have a clear twenty-four hours' notice. On the 22nd March, 1946, however, a change of procedure occurred on the Motion of the Rt. Hon. Herbert Morrison, M.P., Lord President of the Council, who is at the present time Leader of the House of Commons. The terms of his Motion read:

"That for the remainder of the present Session the following paragraph shall have effect in substitution for paragraph (4) of Standing Order No. 7: (4) Any Member who desires an oral answer to his Question may distinguish it by an asterisk, but notice of any such question must appear at latest on the Notice Paper circulated two days (excluding Sundays) before that on which an answer is desired. Provided that Questions received at the Table Office on Mondays and Tuesdays before 2.30 p.m. and on Fridays before 11 a.m. if so desired by

the Member, may be put down for oral answer on the following Wednesday, Thursday and Monday respectively. ”

In moving the Motion, Mr. Morrison said the object of the Order was to give effect to a recommendation in the Second Report from the Select Committee of Procedure, namely, that the period of notice for Questions should be increased from one to two days, not counting Sundays, and he pointed out that the consequence of the reference to 2.30 p.m. in the Motion was that Questions received at the Table Office before the hour of sitting were deemed to be tabled the day before.

Mr. Morrison pointed out in the course of his speech that there had been an enormous number of Questions asked in that Session of Parliament and that the previous practice of only twenty-four hours' clear notice was really inadequate to give the Departments sufficient time to prepare Answers to Questions. He also pointed out that at the present time a great many Questions involved enquiries outside the Headquarters of the Departments. For example—Service Units in all parts of the world as well as the numerous Out-Stations which Government Departments now have, and in the circumstances I am not surprised that the House was willing to accept the proposed change without challenge. As an example of the difficulties of preparing Answers to Questions I quote the following extract from his speech:

“A number of examples of Questions of these kinds were given in the Memorandum which my hon. Friend the Financial Secretary to the Treasury submitted to the Select Committee, and which is published with their proceedings. I will not go through all these examples, but it may help the House if I quote two of them,

to illustrate what I have in mind. As an example of a Question involving extensive inter-Departmental consultations, my hon. Friend the Financial Secretary mentioned one addressed to the Prime Minister, which appeared on the Paper on a Tuesday for answer on the Wednesday, about the number of wives of Service personnel and of Crown servants respectively, who had been provided with passages to join their husbands. It was necessary to consult the Treasury, the Admiralty, the War Office, the Air Ministry, the Foreign Office, the Colonial Office, the India Office, and the Ministry of War Transport. One can imagine that No. 10 Downing Street had a rather busy and anxious twenty-four-hour period, with everybody most anxiously striving to see that the Question was properly answered on the following day. I can assure the House that the greatest care is taken about Parliamentary Answers. In any case, if the greatest care is not taken, the Minister runs great risks. Great care is taken, and the Departments have a healthy respect for this Parliamentary institution, and it is good that that should be so. As an example of a Question requiring inquiries abroad, my hon. Friend the Financial Secretary instanced one which involved inquiries into the alleged lack of mosquito nets for certain airmen in Singapore."

The short debate in the House of Commons on March 22, 1946, following the Motion proposed by the Rt. Hon. Herbert Morrison, M.P., contains so much of value that those who wish to study Question Procedure should obtain a copy of *Hansard* of that date.

In order to give notice of a Question the M.P. has to write out the terms of the Question: he has

to put his own name and he has to state the name of the Minister to whom the Question is addressed. If he wants an answer by word of mouth he puts an asterisk in front of his name; if he is content to have a printed answer (which appears in *Hansard*) he omits the asterisk. Each Government Department has a Parliamentary Section whose duty it is, amongst other things, to examine these notices, and to take the necessary steps to collect the desired information. In the case of many of the Questions, of course, much more than twenty-four hours' notice is given, but if we will content ourselves with pursuing the example I have given, naturally the matter has to be dealt with urgently, so it is the duty of the head of the Parliamentary Section to refer it with all speed to the appropriate Department of the Ministry concerned, and they with all due speed—which is more rapid than the normal speed of a Government Department—collect the necessary files, prepare what they believe to be a suitable answer, and send a copy of the Question with the suggested Answer and all the files to the Minister. If the Minister happens to be one whose Department is the subject of a great deal of interrogation, he may find himself with twenty or thirty, or even more, Answers that he has to approve, and in addition, he has got to study the pertinent facts in the files, first of all to satisfy himself that the Answer is the proper one, and secondly to furnish his mind with enough information on the subject to enable him to deal with Supplementary Questions, that is, Questions which may be put, without notice, following his Answer in the House of Commons, either by the original questioner or by any other Member of Parliament whose interest happens to be excited. Accordingly it will be seen that a Minister may have a very heavy task in conjunction with his Question answering.

The functions of some Government Departments overlap, and to discover the proper Minister to whom Questions on some aspects of these functions should be addressed is not easy. If a Question is addressed to one Minister which should properly be answered by another, the proper Department takes over the Question, informs the Member it has done so and instructs the Clerks at the Table to make the necessary change. Such transfers are within the discretion of the Departments concerned, and the Speaker has ruled that he cannot interfere to stop them.

Many Questions, of course, imply a criticism of the Department concerned, and this in effect is a criticism of the official who will prepare the answer. Strange as it may appear officials are, in fact, human beings, and accordingly if they are the subject of criticism by a Parliamentary Question they want to put their actions in the most favourable light, and it may well happen that the Answer to a Question tends to gloss over the fault which may have been committed. The Minister therefore has to make himself certain that the Answer when read out by him in the House is not going to land him in difficulties, because it well may be the case that the questioner is very well informed on the subject matter. On the other hand, the Minister, just like his subordinates, is probably anxious that the Department shall suffer as little as possible in prestige as the result of the Question, and though he may modify the draft Answer so as to remove a little of the gloss, he is rarely bold enough to say that a blunder has been committed and to promise to do better in the future.

This is rather strange because it is the safest course to pursue; nothing is more disarming to a critic than a frank confession by the accused.

So far as a Written Answer is concerned, the

matter is much simpler because there are no Supplementaries, only the Question and the Answer in cold print.

Up to now I have only referred to the Question of which notice has to be given: but there is another class of exceptional Questions, viz, those given by "Private Notice". In the event of a matter of urgency a Member may apply to Mr. Speaker to ask a Question by "Private Notice". Mr. Speaker only gives permission for such a Question if the matter is both of urgency and of obvious importance. If Mr. Speaker gives permission, then, of course the Member has to send a copy of the Question to the Minister who, in general, will only have an hour or so of notice, and it will sometimes occur that in replying the Minister is compelled to say that he has not had time to complete his enquiries, and request the Hon. Member to repeat the Question in the ordinary form. As a general proposition, however, every Minister tries to avoid taking this course, and the House of Commons as a rule resents a Minister doing so unless it is quite obvious that it really was impossible for him to obtain the information. The "Private Notice" Questions only constitute about half of one per cent. of the total number of Questions asked, but their unexpectedness and their importance leads them frequently to attract far more attention than the Question of which notice has been given in the usual way.

I well remember one "Private Notice" Question which created a major sensation. A well-known public man and a lady had been arrested in Hyde Park and were being interrogated with a view to a serious charge. The well-known public man in question communicated with the Rt. Hon. Thomas Johnston, M.P., who in the last Parliament was Secretary of State for Scotland, to the effect that

the lady had been subjected at the Police Station to what Americans call the "Third Degree". The late Sir William Joynson-Hicks, who was then Home Secretary, had to reply to the Question. He had not been able to obtain the fullest possible information: the sequel was that Mr. Johnston asked the leave of Mr. Speaker to move the Adjournment of the House of Commons on a matter of urgent definite public importance, namely, the alleged improper treatment of the lady in question by the Police. The Speaker accepted the proposal, and as forty Members rose in support, a debate took place that evening at 7.30, opened by Mr. Johnston. The sequel was an enquiry into Police methods of interrogation, the result of which was that drastic new instructions for the purpose of protecting the liberty of the subject were issued, even though incidentally they represented a measure of increased protection of the criminal classes. The instance I have just quoted is a clear and open example of the extraordinary results that may be produced by a Question in the House of Commons, but of course it is only rarely that a Question is followed by a debate in this way. Nevertheless, the unseen influence of Questions is enormous, and very often the mere threat of one is sufficient to produce the desired result. I remember, on one occasion, corresponding with a busy Minister on a matter where it seemed clear to me that his Department was making a muddle of a certain matter. I received from the Minister a letter which indicated to me that he had not really been into the matter himself, but had just signed the letter which had been prepared and put before him by one of his subordinates. I wrote back and said I did not think this letter was quite up to his standard, and perhaps the time had come to ask a Question; so I tabled one and sent him a copy. Within twenty-four

hours he had telephoned me to say he thought the matter required further investigation, and would I oblige him by taking the Question off the Order Paper; and the result I desired was effected two or three days later.

When I was on the other side of the table, that is to say, answering Questions, I have on an occasion seen a dozen people in a room considering what Answer ought to be given to a certain important and critical Question. It is frequently the case that the Answer to a Question pretends that everything in the garden is lovely, but one discovers that, though the past action is defended, future action becomes quite different. Nothing would weaken more the control of Parliament over the Executive than the abolition or curtailment of the right of an M.P. to ask a Question in the House.

But it must be realized that the right of Questioning does not exist in all countries which can reasonably be regarded as democratic countries. The Congress of the United States differs fundamentally from the Parliament of Britain in that Members of the Cabinet are not permitted to be Members of either the Senate or the House of Representatives, and accordingly there is in the American Congress no one who could answer Questions.

I now come to the important question as to the scope and range of Parliamentary Questions. I must make it clear that there are, quite properly, strict rules as to what may be asked and also to the form in which it is asked. All Questions have to be handed in at the Table of the House of Commons, and the official acting on behalf of the Speaker who normally deals with the Question is known as the Second Clerk-Assistant, who, as I have sometimes discovered to my regret, knows all the rules better than anyone else, and it frequently happens that he rejects a Question for one of the many

reasons which justify such a course. If a Member, however, does not agree with his decision, he can ask for it to be submitted to Mr. Speaker, and in some cases the Second Clerk-Assistant does that on his own responsibility, because he is undecided in respect of the particular Question.

The rules with regard to Questions are not comprehensively set out in any Standing Order. They consist of a great number of precedents built up over the years by the decisions of successive Speakers. At one time apparently a Member could put down as many Questions as he wished for an Oral Answer, but with the growth of the number of these Questions there is now a rule that no one can have Oral Answers to more than three Questions a day. The number was unlimited until 1909 when it was fixed at eight, reduced to four in 1918 and to three in 1920.

If by inadvertence a Member has more than three Questions down for Oral Answer, he is only called upon by the Speaker to ask three of them and to any Question in excess of three a printed Answer is given, which appears the next day in *Hansard*. Care is necessary in drafting a Question that it should be of reasonable length, and it is important to bear in mind that the brevity of a Question frequently adds to its clarity. There is one class of Question of which no written or public notice is permissible, and that is a Question addressed to the Speaker. Such Questions relate to points of procedure or of privilege, or to some matter connected with the House over which the Speaker exercises jurisdiction. Questions addressed to Ministers must relate to public affairs with which they are officially connected, or to proceedings pending in Parliament, or to a matter of administration for which a Minister is responsible. For example, if the Police were called in to suppress a

riot on a London football ground, it would be proper to ask the Home Secretary about the riot and the action of the Police: but if the riot happened because the crowd had differed with the decision of the referee as to whether the right-wing forward had been off-side when he scored a goal, it would not be possible to ask any Minister about the decision of the referee, because the rules of football are not made by Parliament. The referee is not responsible to any Minister, and accordingly such a Question would not be accepted at the Table in the House of Commons. A departmental Minister is the mouthpiece of Government policy in so far as it affects his Department. Questions to the Prime Minister should therefore be limited to matters affecting more than one Department. The Chancellor of the Exchequer and the Secretary to the Treasury also have certain general responsibilities affecting several Departments.

The object of Questions is to obtain information and not to obtain expressions of opinion from a Minister, but it is proper to put a Question to a Minister about the intentions of his Department either legislatively or administratively. It is, of course, the duty of Ministers to give Answers to Questions, but if the Minister specifically refuses to give an Answer on ground of public interest, the Minister alone is the judge of the rightness of his decision and it is not possible to insist upon an Answer, nor can such a Question be put upon an Order Paper on a future occasion. It is very seldom in peace-time that a Minister refuses on the ground of public interest, but in war-time it was naturally a very frequent thing for obvious reasons of security.

Private Members of Parliament are independent of the Monarch, and it would be regarded as constitutionally improper for the Monarch to

influence a Private Member of Parliament as to the way in which he should speak or vote. The obvious converse is that no Question may be asked which brings the name of the Sovereign or the influence of the Crown directly before Parliament, or which casts any reflection upon the Sovereign. The relationships between Parliament and the Sovereign are effected by means of an address to His Majesty, which, after being passed in either House, is taken to His Majesty either by a Privy Councillor or one of the three M.Ps. who hold office in His Majesty's Household, and His Majesty's reply is brought back in ceremonial form by the Member who had taken the address to His Majesty.

It is the case also that Questions may not be asked which in any way reflect upon the Head of a friendly Foreign State, but where the Head of the State is also Chief of the Executive, that is to say, in the case where a Foreign Monarch or President is also his own Prime Minister, a Question may refer to any action of the Head of the State which affects British interests.

There are certain persons other than Ministers who may be called upon to answer Questions; they are the Members representing the Charity Commissioners or the Ecclesiastical Commissioners, and also the Member of Parliament who is Chairman of the Kitchen Committee. Such Questions, of course, can only be addressed to those M.P.s in respect of their official duties in the above-mentioned capacities.

It is regarded as a form of wit to address a Question to the Chairman of the Kitchen Committee and whoever holds that important gastronomical office endeavours to retort in kind.

The obvious purpose of a Question is to obtain information and not to supply it and, for that reason, statements of fact in a Question are limited

to what is necessary to make the Question intelligible. It should be noted that the formula of asking a Minister "if he is aware that" is the recognized way of conveying information, and unless concluding with a request for action, does not constitute a proper Question. In drafting a Question it is necessary to avoid arguments, inferences, imputations, epithets or controversial or ironical expressions.

It is right that there should be these limitations, because no slander or libel action can arise out of what is said in Parliament, and accordingly Members have a much greater freedom of expression in the House of Commons than they have on the public platform; but it is obvious that Members should not abuse this important privilege, and accordingly the restrictions mentioned above are imposed so far as Questions are concerned so that all Members should, so far as possible, in their speeches, avoid imputations and epithets in regard to people who are not able to defend themselves.

No Question may refer to debates or Answers to Questions in the current Session. The reason is that Question Time is not meant to be used for continuing debates or arguing past Answers, both of which could be done but for this rule. When any matter has been referred by the House to a Committee, Questions may not be asked in the House with regard to the proceedings in such a Committee until it has reported to the House on the matter referred to. It is not proper to use the Order Paper of the House of Commons for giving an advertisement, and accordingly an advertising Question containing names or statements beyond what is necessary to render a Question intelligible may not be asked. For example, it would be proper to ask a Question in the following form: To ask the Minister of Food whether he is aware of the shortage of Stout and will he accord-

ingly release more of the necessary raw materials to the Brewers; but it would not be in order to ask the following question: To ask the Minister of Food whether he is aware that "Guinness is Good for You", and will he accordingly supply Messrs. Guinness with a little more raw material.

Many Questions, of course, are prompted by what Members read in the newspapers, but nevertheless a Question may not be used to find out whether statements in a newspaper are true. But for the purpose of a Question attention may be drawn to such a statement if a Member makes himself and not the newspaper responsible for the accuracy of the statement.

I have never understood what is meant by a Member making himself responsible for the accuracy of any statement in a Question, because if it turns out that the statement is incorrect, nothing happens, in other words there is no penalty for irresponsibility. It is difficult to visualize what penalty there can be, except the possibility of conferring upon the Speaker the right to refuse any more Questions from the offending Member for a prescribed period. But, of course, a Member who habitually bases his Questions on canards soon loses the respect and attention of the House.

No Questions may be asked with regard to the character or conduct of those persons whose conduct could only be dealt with on a substantive motion. The persons in question include the Sovereign, the Heir to the Throne, the Speaker, the Chairman of Ways and Means, Members of either House of Parliament, Judges of the Superior Court or of County Courts.

Questions are not permitted which make or imply charges of a personal character, and Questions may not be asked about the character or conduct of a Servant of the Crown, except in relation to the

character and conduct of such a person in his official capacity. For example, if a Civil Servant were to assault a member of the public when that person was seeing the Civil Servant in his official capacity, it would be proper to ask a Question on the matter, but, if the same Civil Servant assaulted a private individual in his home, a Question could not be asked.

It is contempt of court for a member of the public to make statements which might prejudice any Judicial proceedings which were pending or which were taking place. On account of the privilege of Parliament an M.P. could not be committed by a Judge for contempt of court for anything that he does or says in the House of Commons and for this reason, therefore, no Question may be asked in the House of Commons which might prejudice Judicial proceedings, and equally well, Mr. Speaker would call to order any Member, who in the course of his speech, made a statement, which, if made outside the House, would be contempt of court.

It is not in order to ask a Minister (even a Law Officer) to interpret an Act of Parliament because that is the job of the Courts, but it is in order to ask a Minister to interpret Regulations made by his Department because he knows what his intentions were in making the Regulations and is as a rule the proper authority for interpreting them.

A Question which has been fully answered must not be asked again in the same Session unless new facts (not new arguments) have arisen which make the previous Answer possibly out of date. For instance the Answer "No" having been given to a Question asking Mr. Chancellor of the Exchequer if, in view of the high price of tea, he will consider raising the basic rate of Old Age Pensions, it would not be in order to ask him "If, in view of the high

cost of tobacco, he will consider raising the basic rate of Old Age Pensions" (the price of tobacco not having risen since the previous answer). But when later the official cost of living rose it would become in order to ask the Chancellor: "If in view of the recent rise in the cost of living he will consider raising the basic rate of Old Age Pensions."

The following questions were picked at random from a weekly issue of *Hansard* and illustrate the wide variety of subjects covered.

ORAL QUESTIONS

Mr. Osborne asked the Minister of Supply whether he is aware that at the recent sale of surplus Government vehicles at Ruddington, Nottinghamshire, 25 amphibious ducks were taken out of the public auction and sold privately for about 5 per cent. of their original cost; and on whose authority and on what grounds was this action taken.

The Minister of Supply: It was decided to sell a number of amphibious vehicles at Ruddington by competitive tender before the auction was arranged, and they were never, in fact, included among the vehicles to be sold by auction. I have given instructions for some amphibians to be included in future auctions.

Mr. Osborne: Is it not a fact that these ducks, which cost £4,000 each, were sold for £150 by private treaty? It is believed in the locality that it is a grave scandal. These ducks are at the present time earning, on the South Coast, something like £50 a day profit, and it is a scandal which ought to be investigated.

The Minister of Supply: I have said that they will in future be put in the public auction. These vehicles were sent to Ruddington for breaking down

before the auction was decided on. An offer was received for them and they were taken away from the breaking-down place. In future they will be offered for auction.

Sir Patrick Hannon: If the allegations contained in my hon. friend's question are borne out by the facts, surely it is a matter for further investigation? Are the taxpayers of this country to be treated in this scandalous way?

The Minister of Supply: I have just said that in future these vehicles will be offered for public sale before they are broken down.

Sir William Darling: Is it the best business method of which this Government can think, to sell vehicles which cost £4,000 for £150? If not, would they not set up a working party of business men to advise them in this matter?

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Mr. Keeling asked the President of the Board of Trade what action he is taking on the recommendation of the County Councils Association that standard measures should be used for selling gin and whisky in public houses, etc.

President of the Board of Trade: When a general inquiry into the scope of the Weights and Measures legislation is possible, I will include consideration of the use of standard measures for selling gin and whisky in public houses, etc.

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Mr. D. Marshall asked the Minister of Agriculture if he is aware of the damage being caused by basking sharks in St. Austell and adjoining bays, to fishermen's boats and equipment; and if he will consult with the Admiralty with a view to the use of their fishery protection vessels to destroy these sharks, which are entering the bays in increasing numbers.

The Minister of Agriculture: Yes, Sir. Arrangements have been made with the local naval authorities for naval vessels in this area to assist in destroying any basking sharks which they may encounter.

* * *

Mr. Murray asked the Minister of Works the cost of the hostel at Crook, County Durham; how many boys have been trained in it for the mines; how long has it been empty; and what use is proposed for this set of buildings.

The Minister of Works: The cost of the miners' hostel at Crook was £71,000; no boys have been trained there, but an average of 74 working miners and industrial workers per week have been accommodated. The hostel was declared redundant on March 30, 1946, but the Ministry of Fuel and Power are using the kitchen and dining-room to prepare packed meals for miners who work in small parties in areas too remote for them to use existing canteens. The question of the future use of the whole hostel is under consideration.

Mr. Murray: Will the Minister treat this as a matter of great urgency? I was in the district a fortnight ago and the place is an absolute wilderness. It is a disgraceful business, and I ask the Minister to look into it.

The Minister of Works: I will.

* * *

Mr. Stokes asked the Secretary of State for War whether he can yet make any statement on the results of his investigation into the allegation of starvation in prisoner-of-war camps in Belgium, which resulted in numbers of men being shipped to this country unfit for work, due to malnutrition;

and what action has been taken against those responsible.

The Financial Secretary to the War Office: I would refer my hon. Friend to the reply given to the hon. Member for Eastern Surrey on July 2.

Mr. Stokes: Yes, but that reply does not answer this Question at all; I have made the closest study of it, and must ask my hon. Friend whether he is aware that that reply is wrong? Is he aware that quite recently I was at a camp at which several hundred prisoners of war arrived from Belgian camps in a dire state of starvation, yet that report given to the House states that all is well? Can he explain how it is that people arrive starving if they were all right on the other side?

The Financial Secretary to the War Office: As my hon. Friend is to raise the matter on the Adjournment, perhaps we might continue the discussion then.

WRITTEN QUESTIONS

Col. J. R. H. Hutchison asked the Minister of Agriculture how many established cases of the presence of the Colorado beetle have been found in this country; and where.

The Minister of Agriculture: The Colorado beetle has appeared in this country on several occasions since the outbreak of war. Full details are given in the Ministry's Journal for August, 1945, and June, 1946, copies of which are available in the Library.

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Mr. Wilkes asked the Under-Secretary of State for Burma what arrangements exist for young Burmese technicians and students to receive university

training and instruction in this country; and whether, in view of the great need for native administrators and technicians for the reconstruction of Burma, he will make more comprehensive arrangements for the training of young Burmese in this country.

The Parliamentary Under-Secretary of State for India: Arrangements for the placing of students in this country are made on behalf of the Government of Burma by the High Commissioner for India. There are 27 State scholars from Burma here at present receiving university training. There are besides a certain number of private students. Last year a comprehensive survey of the facilities available was made by three officers of the Government of Burma and as a result a seven-year programme of State scholarships was drawn up as part of the reconstruction programme. Progress in selecting and placing scholars has been less rapid than I could wish, but my hon. Friend is no doubt aware of the very great difficulty of placing students in this country at present. The Government of Burma have under consideration a scheme for the award of some 150 scholarships for the study of a wide range of subjects in universities in the United Kingdom and elsewhere. I am consulting the Government of Burma on the needs of the country for training other than university training.

* * *

Mr. J. McKay asked the Secretary of State for Foreign Affairs if he has considered soon bringing the question of free elections in Poland before U.N.O., and of informing the Polish Provisional Government that unless they honour the agreement within a definite time he will treat this as an urgent question to be placed on the agenda for U.N.O.

The Parliamentary Under-Secretary of State for Foreign

Affairs: The Polish Provisional Government have officially assured the United States Government of their intention to hold elections this year in accordance with the Yalta Declaration on Poland in conformity with the pledge given as a condition of recognition by His Majesty's Government and the United States Government. While His Majesty's Government are concerned at the Polish Provisional Government's delay in carrying out their international obligations in this matter, they see no reason why elections should not be held as now planned. I do not think, therefore, that the action proposed by my hon. Friend would be appropriate at the present time.

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Flt.-Lt. Crawley asked the Chancellor of the Exchequer the amount the Treasury would gain if husbands and wives were assessed separately for income tax.

The Chancellor of the Exchequer: About £50 million in a full year.

* * *

Mr. Dye asked the Minister of Food the total tonnage of home-grown wheat delivered to the mills from the 1944 harvest; and what was the average cost per ton to his Department.

The Minister of Food: 2,277,000 tons of home-grown wheat was delivered to the mills from the 1944 harvest. The final accounts from millers for the year in question are not yet available and the cost cannot therefore be exactly computed. On the basis of the ex-farm prices of wheat and other approved charges exclusive of the wheat acreage payments, the average cost per ton, is estimated at £15 10s. 10d.

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Mr. C. Smith asked the Minister of Food how

many British Restaurants were open, at the most recent convenient date, in England and Wales; how many were open in Scotland; and what was the weekly average number of main meals served in them.

The Minister of Food: On April 27, 1946, there were 1,243 British Restaurants of all types operating in England and Wales and 80 British Restaurants of all types operating in Scotland. The average numbers of main meals served during a six-day week were 2,286,000 in England and Wales, and 150,000 in Scotland.

PRIVILEGE AND MINISTERIAL STATEMENTS

Questions of "Privilege" and Ministerial statements are also made at Question Time, and the following examples, taken from the same weekly *Hansard* as the previous Questions, are typical.

Following on a Ministerial statement:—

Mr. Scollan: I would like to ask the Chancellor what proportion do you think that you will lose of this Loan due to the removal of controls of prices in the United States? Do you know that it is estimated that you are likely to lose £150 million?

Mr. Speaker: I do not know anything about it.

Mr. Scollan: I want an answer to my Question.

Mr. Speaker: The Hon. Member addressed his question to me.

Mr. Scollan: No, Mr. Speaker, I addressed my Question to the Chancellor.

The Chancellor of the Exchequer: Calculations on the subject vary according to the calculator and according to the day of the week. Prices move about very

rapidly, and I would prefer not to give an exact answer.

Mr. De la Bere: The right hon. Gentleman does not know anything about any of these things. . . .

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On a question of "Privilege".

Captain Crookshank: With your permission, Mr. Speaker, I should like to ask for your guidance on what may or may not be a matter of Privilege, but which at any rate has troubled some hon. Members, including myself. I have received a letter, and I think many other, if not all, hon. Members, and possibly you, Mr. Speaker, have received similar letters, from an organisation which I must admit I had never heard of, called Service Equity. It is a printed document, and it is not signed, although the name of the secretary is shown at the bottom as F. R. Muddle—there is nothing to show whether it is a Mr., Mrs., or Miss. The letter, with which I need not trouble you, Mr. Speaker, deals with some service organisation. It is the last sentence which, in this connection, is of importance, and I will read it to the House:

"In the event of no reply, we shall be forced to assume that the Member of Parliament concerned is against us."

I do not know what would be the effect of the assumption that a Member of Parliament was or was not against this organisation, but it does seem to me to imply some sort of threat in the case of no reply being given. I do not think that any Member, except as a matter of courtesy, is under any obligation to answer any letter unless he or she so desires. I wonder, therefore, Mr. Speaker, if you would be good enough to give us a Ruling on a matter of this kind in protection of hon. Members of this honourable House?

The Lord President of the Council: Like the right hon. and gallant Gentleman the Member for Gainsborough (Captain Crookshank) I would not dogmatise on whether any point of Privilege arises, but I do sympathize and I am sure my Hon. Friends sympathize, with what he has said. If Members of Parliament get communications from organisations of any character, it seems to me that they are free to agree or disagree with the organisation, or send a reply which is not clearly "yes," or "no"—from time to time it is quite right that they should send no reply at all. The implied threat in this letter of a sort of blackballing arrangement if a Member does not reply, does seem to me to be an effort to coerce the free judgment of Members of this House. Therefore, although I am not sure that any question of Privilege arises, I sympathise with what the right hon. and gallant Gentleman has said, and would affirm that so far as the Government are concerned, Members of this House must be absolutely free to answer communications as they like, or not to answer them at all.

Mr. Walkden: Is there not a famous Mr. Muddle of music-hall fame; and might not this be a fictitious Muddle such as we know on the B.B.C.?

Sir Ian Fraser: Are we not bringing up rather big guns in invoking Privilege over so trivial a matter; and in any event is there not good warrant for the view that "he who is not with us is against us?"

Mr. Speaker: I will read out one line from Erskine May:

"To attempt to influence Members in free debate by threats is also a breach of Privilege."

I think that is perfectly clear. I cannot say that this letter appears to contain a *prima facie* breach of Privilege. It is quite true that it is worded in such a

way as to insinuate what I might call a veiled threat. In tone it is disrespectful to Parliament. I think that a repetition of such a letter might justifiably incur the serious displeasure of the House. As it contains no very definite threat, I suggest that we had better treat it as undeserving of consideration.

Mr. W. J. Brown: In view of the fact that Erskine May lays it down that it is improper to influence by threats Members of Parliament in their conduct, may we assume that the doings of Party Whips in this House are equally out of Order?

Mr. Speaker: The hon. Member speaks as an Independent, and I do not know what his Party Whips try to do.

THE INDEPENDENT
MEMBER
OF PARLIAMENT

by

The HON. HAROLD NICOLSON, C.M.G., F.R.S.L.

THE INDEPENDENT MEMBER OF PARLIAMENT

*Based on an address to the Hansard Society
on 14th March, 1946*

I am glad indeed to have a chance of speaking on behalf of the Hansard Society and to so large an audience. It always astonishes me that people can listen to addresses, and can come to meetings, sitting patiently while others talk. When I go abroad, and I have been abroad a good deal during and since the war, I am surprised to find that the institutions and organizations of this country which the British public take more or less for granted, are abroad matters of passionate inquiry and interest. I used, for instance, to find that when I was introduced to English audiences—not Scottish—as a Governor of the B.B.C., there was certain to be some titter arising somewhere. But when I went abroad in that capacity, I was greeted as a prophet and treated with the utmost esteem. They were passionately interested to learn how during the war we had managed to keep up that extremely high standard of information services represented by the Foreign Section of the B.B.C. This interest and appreciation were even more marked in regard to Parliament. Wherever I went, in Greece, Sweden, France, Belgium or Italy, always the same question was asked: "How did you manage to run your Parliament during the war? What is it in your institutions, in the English character or temperament, which enabled you to contrive the utmost concentration and direction in the hands of the Government, with the preservation throughout those years of continuous criticism, of completely undiluted free speech?" And they would add: "all

that could not have happened here". Of course I replied: "It has become a habit with us: we have had representative institutions for so many years; they are in our blood and in our bones." But I sometimes wonder whether my answer was a really true answer; when I realize, sometimes with apprehension, the very little interest that many people in this country, particularly the younger people, take, not in politics, but in the actual functions of Parliament, I have my doubts. I admit that public interest is on the increase. We, as some of you probably are aware, have started in the B.B.C. a daily Parliamentary Report at 10.45; it is unfortunately rather a late hour, but we have to wait until as many speeches have been made as possible, and the listening figure for that period is surprisingly high. I am quite sure that the Hansard Society, in helping not only to familiarize, but interest, the public in Parliamentary life is doing a really valuable national service. There is always a danger with our people of their feeling that politicians are "they" and not "us"; the public must realize that Parliament belongs to them; they ought to regard it as part of their own personal life.

I admit that, of all political animals, the Independent Member is the one which is perhaps most difficult to define. He escapes definition. But if you consider it I think you will agree with me that there are five main varieties of the species. I propose before we go further to indicate the five varieties of the species "Independent Members".

I begin with the best variety, that of the true Independent. By that I mean a man or woman who fights an election independently of any Party, not tied to any label, and what is much more important, unassisted by any Central Office, either for his information, his documentation, or his funds. Those are the people whom I really admire, because

although it is possible for one's friends, if one cannot afford it oneself, to help one with money in fighting an election, it is the documentation which the Independent misses so much. There is a little book which we all have during an election called "Notes for speakers". You just look up under "H" "Housing", and you learn exactly how many houses have been built, how many have been promised to be built, and how quite incapable either the Socialist Party or the Conservative Party is of building those houses. You look up "Old Age Pensions", and you see what Mr. Attlee said on the subject in 1927, and most valuable it is. The true Independent is the person who fights his own battle on his own money; who has no knowledge or sources of information, other than his own knowledge and sources; and who thus unaided fights again and again.

As true Independents I should instance Mr. Vernon Bartlett who has twice won Bridgwater, and W. J. Brown in Rugby. They are the pure article, the museum pieces which ought to be kept in glass cases.

The second variety of the species "Independent Member" is what I should call the "fortuitously independent". As you know, in times of great national stress, of danger or emergency, it is customary to create a Coalition Government; and when members of one Party die or are dismissed for gross immorality or lying, then there is a by-election. During a Coalition there is a horrible thing called a Party Truce, and when there is a Party Truce, each Party to the Coalition agrees not to oppose at a by-election the member selected by the Party who held the seat previously. If, therefore, you want to contest the election, if you want to give the electorate an opportunity of expressing their discontent with the Government or with existing

conditions, you stand as an "Independent". You probably are not an Independent at all, and in the last Parliament we had quite a crop of Independents who were all really elected owing to the fact that it was the only way the electorate could vote for anything except the Coalition Candidate. They were fortuitous, but they were also temporary. It is curious to note that practically all of them were swept away, they were like "Snow upon the desert's dusty space, lighting a little hour or so, is gone." They are a type, a variety, of the Independent: but not a very permanent one.

Then there is what I might call the "academic independent". I refer to the University seats. It has become a custom, and a good one, I think, for people to fight elections for University seats as Independents. Some of them are real Independents, but some of them are not really distinguishable, either from Liberals or Conservatives, or even Socialists. There are, of course, some true and splendid Independents holding University seats. Sir Arthur Salter, for one, is a magnificent type of Independent, a man who has immense knowledge and wide experience which he has managed to filter and digest and accumulate and sift like very few men I know. He is able to bring to the discussions of the many matters on which he is an expert a really independent mind, a mind which is completely uninfluenced by any Party theories or ideologies, and which bears entirely, and with extraordinary illumination, upon the actual merits of the case under discussion.

I could not mention University candidates without referring to that splendid woman who has died recently, Eleanor Rathbone. She in truth was a magnificent Independent. I used to hear her year in and year out, session after session, on the subject of Family Allowances; luckily before she died she

obtained what she had fought for. She was, moreover, amazingly courageous and persistent in seeking to melt the rather stony hearts of the Home Office in regard to refugees, displaced persons, and those unhappy Stateless creatures who wander about without a home and without a protector. She was the protector of all the unhappy people of Europe, and she fought for them in season and out of season—very often out of season—with a courage and persistence and capacity that was really unequalled. She gave the impression in the House, to those who did not know her, of being fanatical; but one had only to sit on a Committee with her, watching how carefully and shrewdly she examined everything, to realize that under that very violent surface there flowed a cool river of common sense; she was a very fine Independent. She once astonished the House by an unexpected intervention. She was always nagging the Government, and we came to assume that she was always in opposition; but when Mr. Aneurin Bevan had one of his outbursts against Churchill, Eleanor Rathbone rose, purple with rage, and told him he was an insolent puppy and he ought not to be there. It was a most terrific outburst, and it was also the only time I have seen Aneurin Bevan a little disconcerted. If all Independent Members were like Eleanor Rathbone, the title of "Independent" would be a title of great honour.

Apart from the true Independent, the academic Independent, the fortuitous Independent, there is, of course, the temperamental Independent; those people who belong to parties, but cannot stay put. There is Mr. Winston Churchill, for instance. I am not so sure that Mr. Bevin, too, is not a temperamental Independent. I am quite sure Mr. Stokes is, and I am not sure that Mr. Pritt is not, although I see he is seeking to be affiliated to his old Party. I am not certain about Mr. Pritt, but I am quite

certain Sir Stafford Cripps is a temperamental Independent. These temperamental Independents always exist, and they fulfil a useful function, but it is not a function which is recognized either in *Hansard* or in Nature. It bears no label.

Finally, among those types or varieties of the species "Independent Member", there is what I would call the forlorn Independent, the person who has no Party, and therefore becomes an Independent because his Party has died. When I speak of such instances I am reminded of a passage in one of Byron's letters about his doctor, Polidori; he wrote to the Consul at Venice and asked him to find some customers for Polidori: "Poor Polidori", he wrote, "has got no more patients, since his patients are no more". Well, that is how the forlorn Independent arises.

You will agree that some people are born Independents, some people achieve independence, but some have independence thrust upon them. I belong to that last category, the category of the forlornly independent. The National Labour Party to which I belonged did have a policy of its own; it maintained the theory that in times of national danger there should be a Coalition Government. But when a Coalition Government was actually created the National Labour Party lost all possible function and even its status. This gallant band of travellers who set out in 1931 as the National Labour Party, headed by Mr. Ramsay Macdonald, became fewer and fewer as the years passed. Some turned back and went home; others just sat down and refused to go any further; some fell ill or died; others merely disappeared. In the end there were only two people left, Major Markham and myself. There we were alone, left in the desert, clasping what remained of the money bags, and deciding that the Party had better be dissolved. Thereafter we became forlorn Independents.

Such therefore are the five main varieties or categories of the species "Independent". I now want to suggest three questions: (1) What function does the Independent Member perform? (2) What are the merits or demerits, and what the advantages or disadvantages of his existence? and (3) Is the Independent valuable or useless? I propose to answer under two main headings; first, the practical point of view, namely, the advantages or disadvantages experienced by the Independent Member himself in the day to day working of the House of Commons; secondly, the theory of the thing and the value of Independent Members to the House of Commons, to the country, or to the electorate.

Let me begin with the advantages and disadvantages experienced by an Independent Member in so far as the ordinary working of the House of Commons is concerned.

The advantages are few. The first advantage is, of course, that being independent, and not subject to Whips, not obliged to attend every Division, he can if he is ignorant of a subject, or bored by a subject, absent himself from the Chamber, and even from the precincts of Westminster. He has more time, and that is undeniably a great advantage.

The second advantage is that the Independent Member, if he speaks fairly unprovocatively, and is not a really crashing bore, is listened to in the Chamber with greater courtesy than a member of one of the main parties, because the Opposition do not feel it necessary to hoot with laughter, or to cover him with self-protective derision. That is possibly an advantage.

The third advantage—I call it an advantage, but it is really a danger—is self-righteousness. The Independent has a conscience; he puts conscience above Party; he puts country above Party; he is disinterested; he is a man so righteous that no dream

of self-interest ever crosses his mind, and compared with the rough and tumble of the market place of politics, he stands up there on his tower, clean, eagle-eyed, superb, gazing out upon a distracted world.

I said that this was a danger, not merely because complacency or self-satisfaction is always a danger, but because the concept of the Independent Member as in some way superior to the Party hack is a concept which is inaccurate. It is a curious but undoubted fact that one of the misfortunes which assail small groups or parties of Independents is that they attract to them people who are either rather vain or rather silly, or rather wrong in the head; all cranks and discontented people love little groups and small parties. The temptation to spiritual pride which may sometimes affect the Independent Member is a dangerous temptation; it may, of course, provide certain compensations for all the disadvantages which I will enumerate later; it may sometimes be a solace to his other disappointments, but it is a very dangerous ethical menace which he ought to avoid always, and sometimes does.

I now pass to the disadvantages of being an Independent Member of the House of Commons. The first disadvantage is difficult to define and easy to exaggerate; it is that the Independent is a bit of an outsider; he is out of the real stream of Party warfare; and therefore out of the real current of House of Commons life. The extreme Party politicians, and there are such people—those who believe with a burning and almost religious faith in the tenets of their own Party—are apt to regard the Independent as something esoteric, epicene, rather questionable, not quite right. It is true, of course, that the attitude of the neutral is never a very popular attitude; it may be sometimes that people on both sides regard the Independent as a traitor to their own cause;

that is a grave disadvantage. In the immense amity of the House of Commons, in that extreme courtesy which exists there which makes it such a delightful life, this is no personal antipathy; it is merely that one is sometimes conscious of the feeling that one is neither flesh, fowl nor good red herring—one feels rather out of it. That feeling is much increased by the second disadvantage, a very grave one, which Independents have to suffer; they do not have the chance of attending Party meetings or committees.

When first I got into the House I was allowed to attend, and even to speak at, the Foreign Affairs Committee of the Conservative Party. In fact I was at one time made its Vice-Chairman. But the effect of my independence was that they asked me to resign, and thereafter they refused to have any Independents attending their meetings. This exclusion is a very grave disadvantage. These meetings upstairs, these private meetings, are most important for the determination of policy; it is at these meetings that things can be said and discussed which could never be said in public, because they would cause offence to other countries or other interests. Until one is in Parliament one does not realize how much of the valuable preparatory work of the House is done in these unofficial committees, like the Foreign Affairs or the Dominions Committees, where people really can discuss things as between themselves; at such Committees you can influence opinion if you really know your subject, and you can say anything there without fear of publicity. To be deprived of that is really an appalling disadvantage.

The third disadvantage, a lesser one, is to be deprived of the Whip, by which I mean the actual notices of the meetings which you get every morning. I do not know what happens to the true Independent, but by the courtesy of the Government Whip

I myself received every day by messenger a statement of the hours of attendance and of the committees, and all that sort of thing. I suppose an absolutely pure Independent would not get such information from any Whips' Office; that would be a frightful inconvenience. It would be like never being able to consult a time-table when you want to travel; you would have to go to the station and ask about the trains. It would be a constant, galling inconvenience; and I deeply pity the pure Independent who gets no Whip, who therefore does not know what is going on; and who has to go down to the House and find out, instead of getting the time-table every day in an envelope upon his breakfast-table.

There are two more difficulties or disadvantages of being an Independent Member which will have occurred to all of you; the first is the difficulty of getting adopted at an election. That is a very grave disadvantage, because if you want to be a politician and enter the House of Commons, you must be adopted and elected. That for an Independent is very difficult in normal times; although easy in periods of Party truces. It would be difficult for any Independent today to have his candidature accepted; when the good old Party fight is on people like to know what party they are voting for. That is obviously a great disadvantage.

Finally, there is one other disadvantage which ought to make us respect the self-sacrifice of the Independents: it is this—they do not qualify for jobs. If you are an Independent there is no chance of getting on to the Front Bench. Only a European war will ever do that for you, and even then you do not stop there very long. In 1940 the collapse of France pushed me for a few hectic months on to the Front Bench, but I was off very soon. Arthur Salter, who was also on, did not stay for very long. You

cannot make a political career out of independence. The fact that people who are independent know that in advance does certainly redound to their credit; they feel they can do more good as Independents, and they sacrifice the hope of political advancement, actual office, and that, of course, is a very noble and disinterested thing to do.

So much for the effect of being an Independent upon the actual Member, now how does it affect the electorate, the country, and Parliament? In other words, is it a good thing that there should be Independents? What good do they do? What advantage are they?

In the first place, I think you will agree that they are of great value by throwing emphasis, not upon the Party label, but upon the qualities of the man. It is one of the misfortunes of Party politics, and indeed of all representative Government, that so vast a majority of the electorate when they vote at the General Election—literally sixty or seventy per cent. I should say—have no idea at all of the respective merits of the people who are standing, “He is Conservative”, “He is Liberal”, or “He is Labour”, they say. They look on the label and ignore the man.

This impersonality of our system tends to keep good people out. One of the values of the Independents is that it obliges the electorate to think: “What is he like? Is he likely to be of value? Is he a person whose experience or abilities will be useful to the country?” They elect him, not on his Party label, but on his personal merits; and that is a very valuable thing.

The second advantage of the Independent Member is obvious to all: a man who has devoted a large part of his life to public service, who has been a Civil Servant, or lived in the Dominions or the Colonies all his life, very often does not want to take a Party label. He does not actually know whether

he is a Conservative or a Socialist, and he prefers to go into Parliament as an Independent. It is very important that the country should have the services of these people. I do not see why our elder statesmen, men of long experience and service, but still vigorous, should be confined to the House of Lords. I think the House of Commons ought deliberately to encourage and invite the services of these great administrators, people who have real knowledge of the world, since it is becoming increasingly necessary in the House of Commons to have people with knowledge of the world. You are getting more and more a "specialist" House, composed of people who know all about the printing trade, or the electrical and engineering trade, or education, or some particular aspect of life; their knowledge and advice and counsel when these matters are concerned is of the utmost value; but you do want also what I should call men of general experience, men who have travelled a lot, who have been to parts of the Empire, who have lived in the Dominions, and who can come back and take a broader view of this Commonwealth of ours than is possible for people who have devoted all their lives to one particular occupation or trade. Therefore, I believe that these men of general experience, sitting as Independents, are of the greatest value to the community as a whole.

Finally, apart from the practical advantages and merits of Independent Members, there is that quality which is so difficult to define but so important to possess, namely, an independent point of view. It is important that we should realize what exactly this vague expression signifies.

The independent point of view is of great value in the consideration of internal problems; it is of even greater value in the consideration of external problems. It is not, I suggest, fully realized to what

extent the responsibility for British foreign policy has shifted during the last fifty years. In 1896, let us say, the ordinary British citizen was on the whole content to hand over the direction of foreign policy to the Cabinet and the diplomatic experts. He assumed that these men would do their best to safeguard what was vaguely called "British rights and interests". If he had been asked how he defined that expression, he would probably have replied that it meant the preservation of peace, the maintenance of our political and commercial interests, and the defence of this island, of the Empire and Commonwealth, and of the long lines of communication which connected us with our essential sources of supply. He would have imagined, in 1896, that there existed something which was called "The Concert of Europe", and he would, had he given thought to the matter, have described that concert as a comparatively stable equilibrium, or balance of power, such as would enable this country, by the almost effortless exercise of her maritime supremacy, to deter aggressor countries from obtaining a dominant position, either upon the Continent of Europe, or upon those water-ways which we then considered necessary to our safety. He would have felt instinctively that our position as an island, at once invulnerable and highly vulnerable, rendered us the natural enemies of any country or group of countries which threatened to enslave Europe and the natural friends of all smaller countries who desired to resist that dominance. And the Government, rightly assuming that in executing such a policy they were carrying out the wishes of the majority of the British people, would not feel it necessary constantly to consult either Parliament or the country as a whole. They could feel free to carry out their task quietly, calmly and without explanations, which might suggest weakness, or

accusations, which might cause extreme offence abroad.

Today this pleasant situation has been radically changed. The public as a whole have been taught by bitter experience that a modern war means an operation in which every man, woman and child becomes directly involved; they have learnt that our position of insularity is no longer a complete protection and may in certain circumstances become a cause of added danger; and they have therefore and rightly come to believe that peace or "security" is an aim of policy which transcends every other aim. Thus, while the electorate as a whole have become far more alive to the consequences of foreign policy, they are not as yet fully alive to its conditions. They are apt to assume that there can be such a thing as an ideal British foreign policy and that this ideal can be furthered by the adoption of a single set of formulas applicable to any combination of circumstances which may arise. What is perhaps more important is that the mass of the electorate have little true conception of the nature of British rights and interests. They do not understand, for instance, that our whole national wealth, and therefore our whole standard of living, is closely concerned with the economic balance between the mother country and our colonies, dependencies and dominions overseas. They do not, in the mass, understand even the meaning of the words "national wealth", believing in some confused way that it is a possession which most unfairly remains for the most part in the hands of the rich. If one suggests to them that without national wealth, which means work and trade, it will be impossible to maintain the standard of living and the social services which they so ardently desire, they hoot aloud, believing that one is seeking to practise some deception on them on behalf of some fictional vested interests.

Now if it were possible for their representatives in Parliament wisely to disabuse them of these illusions and to point out to them that the expression "British rights and interests" is not some imperialistic phrase but a definition of hard facts and binding necessities, then perhaps they would gradually come to view all such matters in a more accurate proportion. Unfortunately, however, Party affections, prejudices and passions have intruded of late to blur an already misty situation. A tendency is most regrettably developing to approach problems of foreign policy, not in terms of British rights and interests, but in terms of some dogma or ideology which cuts right across those rights and interests. There are many million men and women in this country whose approach to any given crisis in foreign affairs is not the simple approach of British interests but the complicated approach of party prejudice. This unfortunate attitude inevitably reacts upon the House of Commons. In the debates upon foreign affairs which so frequently take place these days it is rare indeed to find men who speak entirely from the non-party point of view, or whose approach to the problems under discussion is one which views only the effect of any given policy upon British rights and interests. There are moments even when one derives the impression that the speakers are less interested in the interests and defence of their own country or its Empire than in the furtherance of some particular Party doctrine. And what is worse is that those men who on either side of the House seek to remind the Commons of the actual British interests involved are assumed to be speaking, not from the national, but from the Conservative or Labour point of view.

It is in such circumstances that the true Independent can be of such great value. He can intervene to point out that we are not discussing the interests

of some foreign country, or some foreign political party, but the interests and indeed the safety of these islands. He can point out that some of the arguments used on either side are demonstrably exaggerated or fictional and have little relation to the exact issues involved. And he can remind the House that foreign affairs are *foreign* affairs, and that we cannot risk our safety or our money upon sympathies and antipathies which, as good Party men, we may feel for one foreign side or the other.

I think I can illustrate what I mean by that by giving you a typical instance, or instances.

Take Greece. The present situation in Greece is a most unpleasant, difficult and unfortunate situation, which has put us into a false position. If you approach that question with all its complexity, in all its difficulty, in the terms of Right or Left, or from a Party point of view, you are quite sure to get it wrong. The Greek situation, as is the case with nearly all these situations, is nobody's fault. It is a chain of circumstance, one thing leading to another, not necessarily anybody's fault, not necessarily inevitable, not necessarily remedial. The Independent is the person who, looking at these series of events from an unbiased point of view, is the man who will be listened to by the House when he says such things. There should be somebody there who can say "You are both wrong, the real truth is somewhere in between."

Take another instance: a simpler one, nationalization. If you are an authentic and convinced member of the Conservative Party or the Socialist Party, you are supposed to believe that nationalization is either wicked or good. Naturally I do not believe that. I believe that nationalization in some cases is necessary and wise and valuable, and in other cases rather bad. I do not think you can judge questions of that nature in terms of Party dogmas; they should

be judged always and entirely on their merits. To me it seems just as foolish for the traditional Conservative to think nationalization is always wrong as it is for the traditional Socialist to think that it is always right.

These are the sort of things an Independent can say, and which Party people cannot say. An Independent can get up and say: "I think you are all muddling this; the truth lies somewhere between your two views, and we want the truth." That is what I mean by the independent point of view, and if the man is a good speaker who commands respect, who commands the attention of the House, his intervention on such occasions is of the utmost value.

I hope I have left in your minds the impression that the Independent Member fulfils a very useful function, and that he is valuable to the community as well as to the House of Commons. You may therefore exclaim: "let us have as many Independents as possible."

That would be logical and fair; but the House of Commons, although the fairest place in the world, is most illogical, and rightly so. After all, our whole electoral system is the most illogical thing there ever was. The logical system, perhaps even the fair system, is proportional representation, or the alternative vote; but in practice it does not work. I have watched its functioning in France, in Sweden, and above all, in Germany. When I was in Berlin I used to go to the Reichstag day after day; I found it chaos; and the reason was simple. Under the proportional system they had about 17 different parties, and the whole thing was in a constant state of flux, there was no continuity and no certainty, it was one long nightmare of incertitude. Although our system is illogical, yet it does provide two immensely valuable things—one, His Majesty's Government, and the other, His Majesty's Opposition, a responsible Opposition, an organized Opposition.

After some experience, both abroad and at home, I have come in my older age to the conviction that the two-Party system, indefensible though it is, illogical though it is, is the best system by which to run representative institutions. I am glad to see that the public, the electorate, in their wisdom last July came to the same conclusion; and realized that they must have a strong Government backed and fortified by as many votes as possible, and without these awful, what the Germans used to call "splinter-parties", which in reality just clog and interrupt the working of the Parliamentary machine. Therefore, I say what Gulliver said when he visited one of his strange countries: "They have priests of exceeding virtue, and therefore very few." I say: "We must have Independent Members of exceeding virtue, and therefore very few."

THE PARTY SYSTEM AND
NATIONAL INTERESTS

by

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THE PARTY SYSTEM AND NATIONAL INTERESTS

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I remember that a few years ago a version of the Bible was published in modern colloquial language, and a review of it in *The New Statesman* began rather flippantly with this sentence: "The Bible is a book that deserves to be better known." Perhaps we might say the same with regard to Parliament. Hence there comes into existence the Hansard Society; for in spite of all methods of publicity, there is still a wide measure of ignorance as to what Parliament actually *is* and how it works. It is essential that a fuller knowledge of democracy, its methods and its activities, should be gained, by the younger generation in particular.

In the nineteenth century it used to be thought that the principle of democracy—self-government through representative institutions—was acclaimed and accepted almost all over the world; even in those few semi-civilized countries which had not yet got their elected Parliaments the time would not be long before they, too, would become democratic. Suddenly, within our own lifetime, in the present century, there was an astounding change. The basic principle of democracy has been attacked in many countries of the world and its institutions overthrown.

It must be admitted, reviewing the causes of this sudden change, that the fall of democracies was very largely the fault of the democracies themselves. You had only to look towards Eastern and Central Europe: you saw the uncompromising strife of parties, the instability of governments, the untrust-

worthiness of politicians; measures which everyone saw were necessary not being accomplished; governments rising and falling every few months; parties far too numerous, unable to govern singly and proving impotent to combine.

I remember some years ago travelling in Italy when an election was in progress and the walls were covered with posters, noticing that someone had scrawled across one of the hoardings "Workmen, do not vote; Parliamentaryism is a mystification." And a friend of mine told me that he had been in Paris once during an election, where as usual the hoardings were covered with all kinds of placards, with such invocations as—"Vive le Parti Socialiste!", "Vive l'Action Française!", "Vive Blum!" and so forth; written on one in big letters were the words "Vive moi!". Perhaps that was a sentiment widespread amongst the electorate.

Parliamentaryism being so discredited, in many places, when the great economic depression came in 1929 and the following years, the democratic edifice, already undermined, quickly came toppling down. The cause was, I suggest to you, largely the faulty working of the Party system, which failed to accomplish what the peoples desired.

Furthermore, even in this country we heard much criticism of the principle of Party; scornful references to Members of Parliament surrendering their individual judgments to Party Whips, and marching through the Division Lobbies obediently voting for whatever their leaders required. In a book by Graham Wallas, *The Great Society*, he quotes an observation made to a Labour Member by one of the Government officials who had had the duty for many years of sitting "Under the Gallery" and watching the proceedings of the House of Commons; when the Member asked him: "What generally is your impression of the House?" he answered very

disrespectfully, "I have seen squirrels run round in a cage before!"

And there are certainly some people who regard Party politics as more or less disreputable, and feel that men of goodwill and of high education and public spirit ought to have nothing to do with Party activities as such. That opinion, which fortunately in this country has not spread very widely, was predominant among large and important classes of the community in France and in Germany, and accounted for the lack of respect shown to the Parliaments in those countries, which had contributed to their inefficiency. Above all has that been so in the United States. One has only to travel there and talk to people about the politicians to realize that anyone who devotes his life to service in a representative assembly, whether a State Legislature or even Congress itself, is not seldom looked down upon as a man of questionable character and motives.

If we were to accept that point of view and were to frame our actions accordingly, what alternative to the Party system should we be able to find? Someone must choose candidates for Parliament, prepare political programmes, support candidates at meetings, do what is necessary to arouse the interest of the electorate. Someone must organize the Legislative Assembly and prevent it being merely "a fortuitous collection of atoms", with no cohesion, no stable, sure support for any government, showing a majority one way on one occasion and perhaps a few weeks later the contrary. The Party provides a continuity of responsibility. Over a long period of years you have a policy being worked out, whether it be Socialist, Liberal or Conservative; the people are there who are qualified to expound its proposals; it is brought up to date with the changing times. Without Parties, in the House of Commons you would have 600 Members without any organization to control the

proceedings, to furnish either support or opposition to the Government. No human activity can be efficient or endure without organization and leadership, whether it be in a ship or a factory, in an army or a State; you must have some form of organization. Is there any group of human beings more perverse and foolish than the Anarchists of Spain?

If you need to have some organization, and you do not have it based upon Parties consisting of people who share the same general outlook—Progressive or Conservative, Socialist, Individualist, or whatever it may be—unless people come together and form groups in localities and national organizations to advance such principles, what other organization would there be? Let Parties dissolve and you would find the great interests taking charge of the electorate—financial, industrial, landed interests. They would band themselves together and organize the people for the sake of their own material advantage. Or, as in some countries, in the lack of other organizations, you would have the religious bodies coming forward and forming, as in Holland, Belgium, France, Italy and elsewhere, Parties based upon religious belief, evoking in reply Parties that are anti-clerical.

Or, if you reject all those, you come to the only other alternative, namely, that appearing on the Continent of Europe in recent years, the totalitarian system of a single Party—Nazi, Fascist, whatever it may call itself—which suppresses all opposition by force, and results in dictatorship, with the disastrous consequences that all the world now knows.

So the essential reason for the Party system is that there must be organization in a democracy with a vast electorate and a representative assembly; and if you do not want that organization to fall into the hands of selfish interests or into the hands of religious bodies, or the like, or else to be dominated by a

totalitarian dictatorship maintained by force, you are bound to come back to the system which has been developed in this country over the last two or three centuries, namely competing combinations of individuals sharing more or less the same political outlook.

To have in Parliament a Government Party and an Opposition Party is a great advantage, for criticism is vital. Without it a Government tends to become lethargic, ineffective, even corrupt. Disraeli wrote in his *Coningsby*: "No Government can be long secure without a formidable opposition"; or, as someone else has said, "Our antagonist is our helper". The Opposition keeps the Government up to the mark, makes it cautious of committing errors, of doing things that the public may disapprove. Criticism, as we all know in our daily lives, is usually salutary.

Then comes the question, and this is a very vital and difficult question, how far should such an Opposition carry its resistance to Government measures? You must have a democracy; you must have Parties; you must have an Opposition: how far should that Opposition resist the measures of the Government of the day?

Tierney, the Whig leader, in the early nineteenth century, said that "the duty of an opposition was presumably to oppose everything and propose nothing." That has been condensed into the saying often heard in political discussions: "The duty of an Opposition is to oppose". The doctrine is frequently used as a justification or an excuse for all kinds of parliamentary manoeuvres, especially the obstruction of Bills generally agreed to be good Bills. When you have times of heat, of political pressure—in the last few years of war-time domestic political controversies have been in abeyance—but in other times, if an Opposition Party is against the Govern-

ment on grounds of principle, it may conscientiously believe that their continued rule is an injury to the nation, and that it has a supreme duty to the people to turn them out of office. That being so, one means of getting rid of them is to reduce them to impotence, to prevent them passing measures, and especially good measures; for the more good measures they are able to pass the more strength they will gain among the people. Holding the very dangerous doctrine that the end justifies the means, they will pursue any lengths in order to bring the Government down. That, of course, was the principle that animated the Irish Nationalist Party. A solid block of 80 Members in the House of Commons had as their business, not to help the legislative machine to work successfully, but to destroy it: to make themselves so obnoxious that the British people should say, "For Heaven's sake, let's get them out of Parliament altogether by granting Irish Home Rule." Living in a state of quasi-rebellion, that was the method they pursued.

In other times also, other Parties, regarding the end as justifying the means, have been unscrupulous in their antagonism to the Government of the day. The effects of that on the strength and well-being of the State may be very grave, for it is essential that there should be in a democracy a strong and firm executive. Free government ought not to mean weak government. If it does, then the very existence of the State is in danger.

In times of economic crisis, or of pending war or actual war, this factor comes to the very forefront. Then indeed it is the duty of the Party politician to reconsider his whole position. Lecky, the historian, who was also a political philosopher, wrote these words—they seem to me very sound, and I commend them for your acceptance—"Party must exist, it must be maintained as an essential condition

of good government, but it must be subordinate to the public interests, and in the public interests it must be in many cases suspended." That, of course, applies especially in war-time. Sometimes the Opposition has the duty actively to support the Government in office; sometimes it is necessary for an Opposition Party to combine with its opponents and to form a coalition administration. There have been many in the past history of Great Britain. In our own lifetime there have been four: Mr. Asquith's Coalition of 1915, Mr. Lloyd George's of 1916, Mr. Ramsay Macdonald's of 1931, and Mr. Churchill's of 1940. Such combinations involve an electoral truce; at by-elections the Parties must bind themselves not to oppose one another. This is indispensable for a Coalition if it is to remain secure and not be torn by internal dissensions. The electoral truce, on the whole, was well observed during the recent War; but it imposed a great strain on the local parties on many occasions.

It is usually supposed that the normal state of things in our House of Commons is a Government in office supported by a solid Party of its own members, belonging to its own political creed. That is not so. During the last thirty years that has been the exception rather than the rule. Most of our Governments have been supported by a combination of parties, or else they have been Coalition Governments, and it is comparatively seldom that we have a situation, such as the present, where one Party has a majority in the House independent of all others.

The next question that arises in the relation between the Party system and national interest is, not when it is right to combine with opponents, but the contrary question—when it is right for a Party to split, to break its own ranks and form new parties. That raises a series of issues of personal conscience

and of political interests. It occurs from time to time, often owing to a change of opinion on the part of leaders. Some of the important members of a Party may declare their disagreement with items in the Party programme, or with the pronouncements of its leader, and break away and form a separate Party. A hundred years ago there was the case of Sir Robert Peel, who, while Prime Minister, threw over the Tory protectionist programme: the Party split, half becoming Peelites, and the rest following Disraeli, and taking the name of Conservatives. Again in 1886 there was the case of Joseph Chamberlain, who on the Irish question, with a number of leading Liberals, including John Bright, separated from Gladstone and formed a new Party of Liberal Unionists.

That is a question which is continually arising—how far is it the conscientious duty of the individual member, because of a change of opinion on his own part, or a change in the policy or leadership of his party, or for any other reason, to separate himself and to risk breaking it up? There are other reasons why people leave their Party, perhaps not so legitimate. Sometimes it is a disappointed politician who has not been given office, and who gradually edges over to some other body in which he might be more successful; as in the words of an eighteenth-century poet—

Here and there some stern high patriot stood,
Who could not get the place for which he sued.

Further questions arise as to Parliamentary methods. There is often a temptation to unscrupulous methods of over-reaching opponents, or of repressing the beginnings of disputes within the Party itself. Prime Ministers have sometimes been blameworthy for sudden dissolutions of Parliament at a moment which they thought particularly pro-

pitious for themselves, and without sufficient regard to the wider interests of the nation. There was one such case in 1900, during the South African War; again in 1918, immediately after the victory in the First World War; in 1931, at the height of the economic depression; and, if I were not afraid of running into controversial matters, I might add that possibly some may think there has been also a later example.

Now those, I suggest, are the general features of the situation viewed as a whole. What are the conclusions that we should draw, and what are the right courses to be pursued? It is obvious that no definite, formal rules can be laid down; politics is much more of an art than a science. There must be such a thing as political science, since there are professors at the Universities who teach it; but certainly any man who has spent his life in politics would be very chary of accepting exact scientific laws as applying in the political field. It is more an art, and the present new Members of the House of Commons who are so numerous, must learn by observation and experience the craft that they are pursuing; and when I use the words art and craft, I do not mean that they should be artful and crafty. Indeed the contrary is the case; in the long run it is usually the most scrupulous and responsible Member of the House of Commons who achieves fame and leadership. Someone wrote: "The House is always ready to listen to men of talent, but it will only follow the lead of men of character."

Difficult problems of conscience, whether of a Minister in the Cabinet or a Member in the House of Commons, arise from the fact that there are three factors involved: there are his own individual convictions and his own past declarations; then there is the need to maintain the unity and continuity of the Party to which he belongs; thirdly, there is the interest of the Parliament taken as a whole. It is in

fact, the inter-relation of the three "P's"—Persons, Parties, Parliament. The member has to balance to some extent his own personal convictions with the course taken by the Party to which he belongs; and also the position of his Party in relation to other Parties, forming together a single assembly speaking for the nation as a whole to other nations.

In the first place he must—and any student of the Party system must realize that this is of deep importance—strive to maintain the efficiency of the democratic system as such. He cannot go his own way in an irresponsible fashion, regardless of any consequences that might follow, disastrous to the working of the democratic system itself. The often quoted couplet of Pope always seems to me a most ill-founded assertion—

For forms of Government let fools contest,
Whate'er is best administered is best.

You will find people repeating that as though it were the last word of wisdom; it is the first word of folly. It illustrates what James Russell Lowell wrote about Pope's poetry in general: "Careless thinking, carefully versified."

"For forms of Government let fools contest"—look at the results in Germany, in Italy, or again in Japan. There you have a form of government dependent on an absurd myth of divine right, which has brought Japan herself to complete disaster and plunged her neighbours into the utmost misery and suffering. All our progress in the nineteenth century in this country and until now; all our new social legislation; all the great variety of progressive measures which have undoubtedly raised our country, in spite of the faults still attaching to it—to a much better standard of living, to a much higher level of civilization—all that progress during the last hundred years or more can be attributed quite

definitely to the great Reform Act of 1832. That historic measure converted a narrow oligarchy into the beginnings of a democracy, and led to the gradual expansion of the democratic system. The struggle over the Reform Bill was the crisis, the testing time. It was only because the form of government was changed that we secured better policies, and better administration as well. So my conclusion is that of Disraeli, to quote him again, though I do not very often find myself in agreement with his opinions; he said in a speech at Manchester: "I believe that, without Party, Parliamentary government is impossible."

Many of you in this room are students of political science; in reading the books of political philosophers and political scientists you will have found this aspect of politics has been strangely neglected until recent years. The thinkers and writers deal with the problems that have been urgent in their own days, and have done so ever since Aristotle. The questions you will find discussed in most of the textbooks are the value of monarchy compared with representative institutions; such questions as two chambers of Parliament or one; if two chambers, what should be the relations between them; the proper expansion or limitation of the franchise; systems of elections also, and similar questions. Those are subjects you will find discussed by John Stuart Mill and many others, but hardly ever will you see any serious attention given to the problems arising out of the working of the Party system.

A more recent writer, whom I mentioned a little while ago, the late Professor Graham Wallas, did make a special study of this question; and if you will read his first book on this subject, *Human Nature in Politics*, which was really a revolutionary contribution to political thought, you will find a very careful

and acute analysis of the Party system, its virtues and its failings. You will find the subject pursued also in his later books, *The Great Society* and *Our Social Heritage*.

If there are, as there certainly are, abuses of Party and faults in its working, and sometimes political vices attaching to the system, that is not a reason for the detachment of men of intelligence and goodwill and public spirit, but on the contrary, it is the best of all reasons for demanding their participation. Another couplet is often quoted, from Addison's play *Cato*, that is equally untrue:—

When vice prevails and impious men bear sway,
The post of honour is a private station.

It is then, above all, that men of honour ought to hurl themselves into the fray, drive out the impious, and help virtue to prevail.

So the conclusion which I offer for your acceptance is that the Party system is right in principle; and that those who take pride in holding aloof from it are not, as they suppose, the superior citizens, but rather the inferior.

The fact remains, as Lecky said, that while in the national interest Party must be maintained, there are occasions also when in the national interest it must be suspended.

Coalitions undoubtedly have their uses. They sometimes bring excellent results, especially in time of war. They enable urgent matters, vital to national security, to be carried swiftly into effect by general consent; they prevent the morale of the Armed Forces in the field from being disturbed by violent political controversies raging at home. Coalitions give a solid basis for military action and for the conduct of foreign policy. In France, in the Balkan States, and in many other countries we can watch the disastrous results of political intransigence.

But Coalitions also have certain disadvantages; they are not suited for ordinary times. A grave disadvantage is that one section can veto action by the others. So long as they are all agreed upon a main issue the plan works well; but the moment that main issue disappears or is in the background, then you find that any one group can impose its own view upon the rest. When you have a Party Government, on any question of importance, if there is a public demand, it is obliged to frame measures, and, if it cannot carry those measures through, it must change its Ministers or resign. But a Coalition cannot change its members; they are too carefully balanced to represent the various Parties; and it cannot resign, because it represents the nation as a whole, and there is no important body of opinion to take its place. I would run the risk again of being controversial by recalling that there was a very clear instance of this during the last few years. The late Coalition, however effective for the conduct of the war, when it came to deal with a question like the use of land under Town and Country Planning and compensation for land publicly acquired, found itself completely impotent. It was unable even to present any proposal at all, though everyone saw that this was a matter of fundamental and urgent importance.

So there arises this further problem, not only when a Coalition should be formed, but when a Coalition should be ended. And the second is often much more difficult than the first; because the formation of a Coalition is usually in response to a general national demand, while the ending of a Coalition must give rise to considerable difference of opinion. I had full experience of this myself in 1931, when it was my duty, as leader of the Liberal Party at that time, to leave the Coalition of Mr. Ramsay MacDonald; and we know that not long ago there

was very considerable controversy as to the ending of the Parliamentary Coalition which had carried the country through the war.

The member of a Party may at any time have to face as an individual the hard dilemma whether or not it is his duty to resign from his Party and help to form a new one. The occasion may arise from the emergence of some new issues; or else from some change of opinion among the leaders; or it may be due to some change in his own opinion. As to this, Gladstone has left on record his own view. "Change of opinion", he wrote, "in those to whose judgment the public looks more or less to assist its own is an evil to the country; although a much smaller evil than their persistence in a course which they know to be wrong. It is not always to be blamed, but it is always to be watched with vigilance, always to be challenged and put upon its trial." That, I submit, is the right doctrine.

New Parties may be needed, again, owing to changes of circumstances, perhaps great economic or international developments. We find our earlier simple system of two Parties now altered by the emergence of a third, and sometimes a fourth Party, with a multiplicity of candidates in particular constituencies. That raises another question which is outside the scope of this discussion, that of a change in the electoral system, and whether we ought to adopt proportional representation, or perhaps the alternative vote.

On the general question of Party cohesion, it is obvious that any kind of continuous co-operation is impossible if members are expected always to insist on maintaining their own opinion on every question, large or small, and of asserting it by vote in the legislature. The Party system would become impossible if each individual carries his conscientiousness so far that he feels himself always obliged to vote against

his own Party whenever he feels the slightest doubt as to the course it is pursuing. Compromise may often be legitimate and need not be in any way dishonourable. Cabinet Ministers are constantly faced with the necessity of subordinating their own individual opinion on some minor point, something they may not feel very deeply upon, to the view of the Cabinet as a whole. The alternative would be frequent resignations and persistent Cabinet instability.

All life is a succession of choices. Public life requires many difficult choices—none more difficult than when a Member of Parliament feels serious doubt on a particular point in the programme of his Party: should he vote on that with the Opposition, perhaps cause a split in the Government, bring about a General Election which nobody wants, and inflict grave injury, maybe, on the political cause to which he has devoted his whole life?

The Labour Party has dealt with this problem in a very drastic fashion. All its members elected to Parliament are pledged to support the Party decisions as decided by a majority at a Party meeting. There is a "conscience clause" which allows in particular cases a member to abstain, or even to vote against his Party, when there is some great matter of principle at stake, as in the case of members who are Catholics, with regard to Catholic education. But to my mind the rule, in spite of its advantages, is open to grave objection. There may be a Party meeting in a Committee Room in the morning, where a Member may offer an earnest plea against a certain measure, declaring it to be injurious to the country and disadvantageous from every point of view; but if he is out-voted, he finds himself in the afternoon bound to vote in the House in favour of that very same measure. The Conservative and Liberal Parties have no such rule; and although, no doubt, it might obviate many difficulties—as I

know only too well from experience of the meetings of the Liberal Party in the Parliament of 1931-35—on the other hand, it gives rise to great evils; and I doubt whether it is a sound principle to remain as a permanent feature of our Parliament.¹

How far Parliamentary procedure should allow the Opposition of the day to prevent or delay action is another point of importance. That a Parliamentary Opposition is necessary to the Constitution is universally agreed. In fact it is recognized in a surprising fashion; for now in this country a salary of £2,000 a year is voted out of public funds, on the motion of the Government of the day, in order to pay a salary to the Leader of the Opposition, whose business it is to endeavour to turn them out of office.

To expedite public business in the Legislature is also a national need. A Parliament must be effective to carry out the will of the people. Minorities in the House of Commons have their rights; but it is no service to democracy if the rights of a minority in Parliament are allowed to defeat the rights of a majority in the electorate. When there are times of controversy, the Government of the day always accuses the Opposition of obstruction, of endeavouring to stop useful measures and neutralize the decisions of the people; while the Opposition accuses the Government of trying to evade legitimate discussion, of a tyrannical abuse of power. The truth is that in this country at the present time we may be over-straining our Parliamentary machine. The chronic congestion in the House of Commons is perhaps due to the fact that the necessary business is too great in volume for proper discussion to be possible in the time at the disposal of Parliament. No doubt procedure could be expedited; and the

¹Since this paper was first prepared in 1945, the Parliamentary Labour Party has suspended the provisions in its Standing Orders referred to.

present Government are bringing fresh proposals before the House—for a greater use of Standing Committees, and for readjustments in the facilities for debate. But the question must present itself sooner or later whether it is right to impose upon a single Legislature and Executive the immense variety of business which is charged upon the British Parliament and Government; whether we are not trying to make one Parliament do work which properly belongs to two, or to several; for we here combine under one Legislature, not only an immense variety of domestic affairs, growing rapidly in importance, such as the responsibility of the State in social and economic matters; but also Colonial, Commonwealth and international affairs.

No doubt improvements in procedure are necessary and practicable in the short range; but from a long-range standpoint, I submit for your consideration whether the right remedy is not devolution. If we still had eighty Irish Members in Parliament, demanding a great amount of parliamentary time for Irish affairs, it would have become obvious that the situation was an impossible one for us; while there is no doubt that Éire and Northern Ireland have gained—as greatly by having their own Parliaments and Governments to attend to their own local business, as the Parliament at Westminster has gained by its withdrawal.

So the question arises whether there ought not to be additional Parliaments for England, Scotland and Wales, dealing especially with the social questions that are coming forward in such great volume. If there were these legislatures there would be a useful emulation between them, a variety of experiment. A great deal of Scottish legislation has long been separate from the English, although it has to be passed through the same Parliament; and we have Scottish laws which have been examples for England,

experiments that have been successful. Many subjects affecting the country as a whole would still be dealt with by a United Kingdom Parliament; which would also deal with Commonwealth and Colonial questions, and above all, with foreign policy and international relations.

We can see that if the United States of America had attempted to dispose of its own business through a single Legislature and Executive, that could only have resulted in complete failure. They have their 49 legislatures and 49 executives; 48 for the States and one for the Federation. Similarly in Canada, on the same principle, and in Australia; in Germany before the Nazis; and in the U.S.S.R. Our own geographical area is very much smaller than in any of these cases; but, on the other hand, our organization is in many respects more complex on account of our Imperial situation. Meanwhile, it is clearly wrong to ask the whole assembly of 640 Members of Parliament to deal with trivial details in Bills; and already the principle has been established that the bulk of detailed legislation should be handed down to Standing Committees of the House, or dealt with by Departmental Regulations or Orders in Council, subject to Parliamentary approval. The precise point where the line should be drawn between the work of the House as a whole and the work of these Committees, or of the Government Departments, is now a matter receiving consideration.

But I believe in the end it all comes back to the individual. We speak of "Britain", or "France", or "Russia"; these are only names. There is no such thing in reality; they are what a philosopher has called "fictional abstractions". The actuality consists in geographical areas and the people who inhabit them. Without Frenchmen there is no France, without Russians no Russia, without British no Britain. All comes back to the

individuals grouped together, organized in various patterns for various purposes. So also with Parliaments, Parties, all other institutions; they are no more than names for organizations of persons. Of the three "P's"—the Person, the Party, the Parliament—it is the person that matters most, for it is he alone that is real. The Hansard Society is of value because it helps the individual man or woman, the citizen or the representative, to a fuller knowledge of our political institutions, a fuller understanding of their practical working, and it is for that reason that I would commend it to your support.

DELEGATED LEGISLATION

by

HUGH MOLSON, M.P.

DELEGATED LEGISLATION

IN every country which has ceased to be primitive, there is a legislature which can amend old laws and make new ones. In many countries, for example the U.S.A., the power of the legislature is limited by the Constitution which cannot be altered except by a special procedure. In Britain there is no rigid constitution, and the King-in-Parliament is omnipotent. Parliament can do anything; it can even postpone the hour of its own death. In 1717, on account of the Jacobite danger, and again during the two German Wars of the present century, it has lengthened its own life. It naturally follows from this that Parliament can give to the King-in-Council, to individual Ministers of the Crown or to other persons or bodies the right to make rules and regulations. This is called the power of delegated legislation. Orders-in-Council, Orders, Warrants, Regulations and Rules were amongst the names used under different Acts, and anyone writing on the subject had to recite them all. As Daniel in his third chapter repeats on each occasion "the cornet, flute, harp, sackbut, psaltery, dulcimer and all kinds of music", so it was necessary when referring to delegated legislation to include Orders-in-Council, Orders, Warrants, Regulations and Rules. A generic phrase has at last been found and the somewhat clumsy expression "statutory instrument" is now the term applied to them all by the Statutory Instruments Act, 1946.

Examples of this practice can be found early in our history. In 1337 a statute provided for the banning of the export of wool from this country "till the King and his Council do otherwise provide". That is an exact

precedent for the common modern practice of leaving much of the substance of an Act to be implemented by Orders-in-Council. For example, the Education Act, 1944, came into effect on a date specified by Order-in-Council.

It is sometimes argued that an Act of Parliament should contain within itself everything necessary for its full application. That would make Acts excessively long and so full of detail as would obscure their main purpose. The National Insurance Act, 1946, contains 79 clauses and 11 schedules, but if it had not provided for ninety-nine sets of Regulations, it would have contained at least three hundred clauses. While it is arguable that some of the Regulations ought to have been enacted in the Bill, it will hardly be disputed that complicated scales of compensation to insurance workers injuriously affected by the measure can properly be dealt with only by regulations. The first merit, then, of delegated legislation is that it shortens Bills and consequently the time taken in considering them. By reducing the time spent on detail, it should enable Parliament to give fuller attention to matters of policy and principle.

Lord Thring, the first holder of the office of Parliamentary Counsel to the Treasury, in advocating this system, wrote in 1877:

"The adoption of the system of confining the attention of Parliament to material provisions only, and leaving details to be settled departmentally, is probably the only mode in which Parliamentary government can as respects its legislative functions be satisfactorily carried on. The province of Parliament is to decide material questions affecting the public interest; and the more procedure and subordinate matters can be withdrawn from their cognizance, the greater will be the time afforded for the consideration of more serious questions involved in legislation." (*Practical Legislation*. Rev. ed. London, Murray, 1902. At p. 44.)

The second merit of delegated legislation is its flexibility. The classical passage on this subject was written by Lord Thring's successor, Sir Henry Jenkyns :

"Statutory rules are in themselves of great public advantage because the details . . . can thus be regulated after a Bill passes into an Act with greater care and minuteness, and with better adaptation to local or other special circumstances, than they possibly can be in the passage of a Bill through Parliament. Besides, they mitigate the inelasticity which would often otherwise make an Act unworkable, and are susceptible of modifications . . . as circumstances arise." (An official minute written in 1893 and quoted in *Concerning English Administrative Law*, by Sir C. T. Carr. O.U.P. 1942, at pp. 33-34.)

The smallest and most uncontroversial amendment of a statute normally requires the passage of another Act through all the Parliamentary stages in both Houses; rules and regulations can normally be amended by a stroke of the pen of the Minister who made them. It is a remarkable fact that in ancient Greece, Plato was able to explain the need for such delegated legislation in the following words :

"In all matters involving a mass of petty detail, the law-giver must leave gaps; rules and up-to-date amendments must be made from year to year by persons who have constant experience from year to year in these things and who are taught by practice until a satisfactory code is finally agreed upon to regulate such proceedings." (Laws, VI. 772 B.)

The third merit of statutory instruments is that they are ideal for an emergency. It is the means by which the Legislature can dispense with its own deliberative procedure and arm the Executive with power to take immediate action. The Economy Act, 1931, enabled the Government to effect any economies they deemed necessary by Order-in-Council, while the Defence of the Realm Act, 1914, and the Emergency Powers (Defence) Act, 1939, virtually impowered the Government to do whatever it deemed necessary to win the two wars. The

Preamble to the Statute of Proclamations (31 Hen. 8, c. 8) sought to justify this worst and widest delegation of power (which gave to any proclamation the King might issue the authority of a Statute) in the following words, "Considering also that soden causes and occasions fortune many tymes which do require spedy remedies, and that by abidinge for a Parliament in the mean tyme might happen great prejudice to ensue to the Realme."

Fourthly and lastly, statutory instruments have inevitably come into greater use as a result of the increased scope of Government activity. Within the last forty years it has extended to national health insurance, unemployment insurance, town and country planning, closer supervision of agriculture, transport and industry, while the fiscal system has been adapted to serve a protectionist purpose. When we are using duties, quotas, bounties, licences and various other expedients as instruments of policy, it is obvious that some accurate, flexible and speedy means must be found to give effect to the policy of Parliament. Under the Import Duties Act, 1932, the Treasury was empowered, subject to the assent of Parliament, to make orders giving effect to the recommendations of the Import Duties Advisory Committee.

While Parliament has in the cases we have been considering delegated its power to legislate, it has retained varying degrees of control. In some cases the statutory instrument cannot come into force until it has been approved by an affirmative resolution of both Houses. In other cases, the statutory instrument must be laid before Parliament which may within a certain number of days, now standardized by the Statutory Instruments Act, 1946 at 40, by negative resolution secure the annulment of the instrument. In the case of an Order-in-Council, the resolution is in the form of a prayer to His Majesty to annul the instrument by a further Order-in-Council, but by a special provision in the Statutory

Instruments Act the instrument in fact ceases to have effect from the moment that the House passes the Prayer. In the case of Departmental Orders, the Resolution is a straightforward motion of annulment having immediate effect, if passed. In exceptional cases, as for example under the Government of India Act, 1935, statutory instruments may be amended by either House, but usually Parliament has no power to make amendments. This "take it or leave it" principle is the reason why procedure by statutory instrument saves Parliamentary time.

Other statutory instruments may be made which are not formally laid before Parliament, and others have to be laid but no provision is made for Prayers or Resolutions to be moved against them. The theory is that such statutory instruments are of minor importance, and that if for any reason a Member wishes to oppose them, he can ask a Question of the Minister responsible or raise the matter in any other appropriate way in accordance with normal Parliamentary procedure.

It was contended in an important debate on this subject on the 26th May, 1943, that matters which ought to have been challengeable by Prayer were dealt with by instruments which were not challengeable. Defence Regulations made under the Emergency Powers Act, 1939, were challengeable, but a Regulation might itself authorize a Minister to make an Order which was not challengeable. The Regulation was called in Parliamentary jargon "the child" of the Emergency Powers Act, and the Order "the grandchild"; and "great-grandchildren" of a statute are not unknown. On this subject, Mr. Herbert Morrison, then Home Secretary, said:

"What we have sought to do with general, but perhaps not complete, success is to ensure that matters of primary importance are dealt with by a Defence Regulation which can be challenged in the House, and that matters of detail are dealt with by a subordinate Order under the Defence Regulations. . . . In certain instances . . . subordinate Orders have sometimes

been used when a Defence Regulation would have been the more appropriate instrument. . . . We will try to clear up the position." (*Hansard*, Vol. 389, 26th May, 1943, at c. 1665.)

It was generally felt that an important power of law-making had been unjustifiably removed from the control of Parliament, and it was therefore provided under Section 4 of the Supplies and Services Act, 1945, that these "grandchildren" also must be laid and a Prayer against them may be moved.

An important question arises as to when a statutory instrument requiring an affirmative resolution should come into force. The whole matter has been reviewed and the new law is contained in the Statutory Instruments Act, 1946. It was argued in that debate that a statutory instrument subject to an affirmative resolution should not come into force until the resolution had been passed. (*Hansard*, Vol. 415, 6th Nov., 1945.) The Government agreed that in cases where there is no urgency, the statutory instrument ought not to be brought into operation until after the affirmative resolution has been passed, but they were not willing to divest themselves of the power to bring it into operation at once if immediate action were in some case necessary. The Opposition then concentrated on the principle that no one should be punished for failing to comply with a statutory instrument of which he did not know and could not have known. This principle was accepted by the Government, although what constituted reasonable publication for this purpose continued to divide opinion. (*Hansard*, Vol. 417, 18th Dec., 1945.)

The Statutory Instruments Act contemplates that publication will normally be effected by printing and making available for sale during a reasonable period. Statutory instruments vary, however, from regulations bringing into operation legislation of wide scope to lists of maximum prices for specialized industrial products

which may be frequently amended. The departments responsible are, therefore, permitted to refrain from printing statutory instruments in suitable cases. A Statutory Instruments Reference Committee was set up under No. 11 of the Statutory Instruments Regulations which were made by the Lord Chancellor on the 15th December, 1947, and came into operation as from the 1st January, 1948. It is responsible for

1. Sanctioning exemption from the obligation to print, and
2. Determining whether the exercise of any power is the exercise of a power to make a statutory instrument.

The members of the Committee are the Lord Chairman and the Chairman of Ways and Means and other officers of the two Houses.

Where many statutory instruments are authorized by an Act, usually some will require an affirmative resolution and others will be subject to annulment on the passing of a Prayer or Resolution by either House of Parliament. The accepted principle is that major issues require an affirmative resolution, minor ones only give rise to a Prayer. When we ask how the line is drawn, the answer is "By the Parliamentary draftsman, subject to the instructions of the Minister". It is a frequent cause of complaint that matters of sufficient importance to need an affirmative resolution are only subject to a Prayer, and to many Bills amendments are moved to transfer some of the more important regulations in the negative to the affirmative category.

No doubt it would be a mistake for too many regulations to require an affirmative resolution. This would occupy so much of the time and attention of the House that the purpose of delegating the legislative power would be largely defeated. The true principle has been laid down recently as follows:

- "4. In the third place, your Committee note the apparent absence of any principle determining the

choice between the procedure by affirmative resolution and the procedure for the annulment of rules and orders by adverse prayer. Rules and orders imposing taxation or modifying the terms of a statute should in their view require the authority of an affirmative resolution, but they are not convinced that orders such as those for the local opening of cinemas under the Sunday Entertainments Act 1932 should be in the same category." (Special Report from the Select Committee on Statutory Rules and Orders, 31st October, 1944.)

It does not follow that because statutory instruments are laid on the Table of the House they are scrutinized. Indeed "laying" a document means handing it to the Librarian who proceeds to lock it up for safety's sake. With the spate of statutory instruments coming from Government Departments, many being of the most technical character, it was extremely likely that some would slip through without being carefully examined. The House of Lords has long had a Standing Committee to which nearly all Special Orders which require Affirmative Resolutions, as defined in Standing Order 203, are referred. What is everyone's business is no one's business, and it seemed desirable that in the Commons also a Special Committee should be appointed to examine all delegated legislation which had to be laid upon the Table of the House. As a result of a Motion moved by the present writer on the 17th May, 1944, a Select Committee has been set up with the following terms of reference:—

"Ordered, That a Select Committee be appointed to consider every Statutory Rule or Order (including any Provisional Rule made under Section 2 of the Rules Publication Act 1893) laid or laid in draft before the House, being a Rule, Order, or Draft upon which proceedings may be, or might have been, taken in either House in pursuance of any Act of Parliament, with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds:—

- (i) that it imposes a charge on the public revenues or contains provisions requiring payments to be

made to the Exchequer or any Government Department or to any local or public authority in consideration of any licence or consent, or of any services to be rendered, or prescribes the amount of any such charge or payments:

- (ii) that it is made in pursuance of an enactment containing specific provisions excluding it from challenge in the courts, either at all times or after the expiration of a specified period:
- (iii) that it appears to make some unusual or unexpected use of the powers conferred by the Statute under which it is made:
- (iv) that there appears to have been unjustifiable delay in the publication or laying of it before Parliament:
- (v) that for any special reason, its form or purport calls for elucidation." (*Hansard*, Vol. 401, 21st June, 1944, at c. 310.)

It will be noted by those accustomed to Parliamentary draftsmanship that the words "some unusual or unexpected use of the powers conferred by the Statute" are unconventional; they are certainly not common form. It is in fact a most original and brilliant piece of draftsmanship, and it serves to bring out the nature of good delegated legislation. The intention is that policy should be laid down in the Act of Parliament and that the detailed provisions for giving effect to that policy should be worked out and enacted by the appropriate Minister. It is not desirable that a minority in Parliament which has failed to defeat the Act establishing the policy should be encouraged to oppose the statutory instrument giving effect to the policy. What should, however, be provided against is that a Minister should be able to use his powers in a way not contemplated by Parliament when it invested him with those powers. The word "unexpected" in the terms of reference does in fact catch very nearly any such case.

The other terms of reference broadly cover the matters which the Donoughmore Committee considered should be kept under close supervision by Parliament

itself. Such a matter as imposing a charge upon the subject is one which according to sound constitutional theory ought to be kept in the hands of Parliament. It has, however, already been pointed out that a protectionist fiscal system does involve a wide variety of differential and sometimes varying duties and these were in fact imposed by Treasury Order. The Import Duties Act, 1932, was the acceptance by Parliament of the principle of protection; the Orders applied the principle by imposing particular duties and each of them required an affirmative resolution.

It can be said that the work of the Scrutinizing Committee, as it is sometimes called, has been satisfactory. It has not, as was feared by some people, engaged in political discussions as to whether a Minister was wise to make an Order, for its terms of reference were carefully drawn to preclude this. It has, however, called the attention of the House to some Orders which seemed to require scrutiny. It has insisted upon greater promptitude by Government Departments in laying Orders on the Table. The Statutory Instruments Act, 1946, was itself the consequence of a Special Report by the Committee in which it pointed out how anomalous and uncertain were the existing rules on the subject.

“Your Committee have been impressed by the apparently illogical diversity of the periods during which action is to be taken in respect of regulations, rules or orders laid before the House. They have noticed that the various periods include 20, 21, 28, 30 and 40 sitting days, 40 days excluding prorogation or adjournment over 4 days, and one month with no requirement that any part of it shall be a time when Parliament is sitting. In present-day statutes the period is presumably standardized, but Your Committee consider it might with advantage be made uniform with retrospective effect; in their view the period should not be one which can run its course at a time when the House is not in Session.” (Special Report of the Select Committee on Statutory Rules and Orders, 31 Oct., 1944.)

Before the Committee brings a statutory instrument to the notice of the House it must give the Department concerned an opportunity to state its case either by a Memorandum or by the oral evidence of an official witness.¹ The success of the Committee is largely due to the expert assistance afforded by the Counsel to the Speaker who prepares memoranda on the agenda and is in attendance.

It has already been said that Parliament is omnipotent. It follows logically from that proposition that no court of law can question the validity of a statute. The same does not apply to a statutory instrument which is only valid if it complies in substance and in form with the provision of the parent act. It is open to any subject affected by a statutory instrument to argue in the courts that it is *ultra vires*. Various expedients have been adopted by the draftsmen to exclude this supervision by the courts. The formula that a statutory instrument "shall have effect as if enacted in this Act" was long thought effective, but in Yaffe's Case the House of Lords decided that it did not exclude the scrutiny of the courts.² The latter formulæ "the validity of an order purporting to be made under this section shall not be questioned in any court of law" and "a certificate by the Minister shall be conclusive evidence that all requirements of this Act have been complied

¹ "Ordered, That it be an Instruction to the Committee that before reporting that the special attention of the House should be drawn to any Rule, Order, or Draft the Committee do afford to any Government Department concerned therewith an opportunity of furnishing orally or in writing such explanations as the Department think fit." (Mr. Secretary Morrison. *Hansard*, Vol. 406. 5th December, 1944.)

²For a full consideration of the doctrine in the series of cases ending with *The King v. Minister of Health*, ex. p. Yaffe (1931), A.C. 494, see *Notes on Delegated Legislation* by Sir William Graham-Harrison, K.C., sometime Parliamentary Counsel to the Treasury. (Privately printed.)

with" have so far proved effective to exclude review by the courts and are therefore objectionable if applying *ab initio*. It is, however, quite reasonable that a time limit should be fixed within which a statutory instrument may be attacked in the courts. It is in fact desirable that after that period anyone can be sure that he is safe in relying upon that statutory instrument as valid.

It is necessary to emphasize that the courts can only declare a statutory instrument invalid on the ground that the terms of the enabling statute have not been observed. The courts cannot consider the wisdom or otherwise of a statutory instrument. If it is bureaucratic, vexatious, embarrassing and harassing to the subject, it is for Parliament to take a political decision and object in whatever way is appropriate. In very many cases a Minister has to exercise a discretion and the statutory instrument embodies his decision. Whether his decision was right or wrong is a political question for Parliament to decide by accepting or rejecting the statutory instrument, or by attacking the Minister responsible. The situation was well described by Mr. Herbert Morrison:

"I remember that there were some Regulations which were brought to me . . . and I was advised that it was really necessary that they should be made. It was true that if the Regulations were not made some people might break their necks, but the number of people who would break their necks as against the number of people to whom the Regulations would be a considerable inconvenience was a case of *de minimis (non curat lex)*. Therefore, I said 'take the Regulations away. We ought not, and I am not going, to make Regulations for the sake of making them.' . . . When . . . a civil servant sees the danger of something happening that ought not to happen he has an instinct . . . that a regulation or a law must be framed with a view to preventing it. . . . It is for the Minister to exercise his discretion whether he will make a Regulation which does not need to be made." (*Hansard*, Vol. 352, 31 Oct., 1939, at c. 1847.)

The advantages of delegated legislation have been

fully stated. Its dangers must also be emphasized. The increased scope of government action has resulted in the regulation of life to an extent which would have seemed intolerable to an earlier generation. Bureaucrats tend to exalt administrative convenience and the national advantage at the expense of the individual and his freedom. The official in his zeal to achieve a desirable result may impose an unreasonable burden upon the subject. The power under a statute to make rules gives him just the opportunity that he wants. The harassed subject will have to send in detailed returns in quintuplicate, take elaborate precautions against a number of pests, diseases and dangers and notify a number of officials whenever some contingency occurs. A Bill containing such vexatious provisions would never get through the House of Commons because Members represent the toad under the administrative harrow, and consequently they regard his feelings as more important than administrative convenience. Delegated legislation, on the other hand, affords the executive an opportunity of slipping through without much scrutiny just those grandmotherly rules which Mr. Morrison refused to sponsor and which Parliament would not approve if it had time to consider them fully.

The power to delegate the legislative authority can moreover be used for the partial or total abrogation of constitutional government. If Parliament uses its unlimited legislative power to delegate that power to another body, Parliamentary government itself is suspended. In Germany, this was in fact the method used by Hitler. Long before the collapse of France in 1940, the Government had been authorized to issue decrees by the French Parliament which thereafter scarcely ever met. Examples have already been given of the very wide legislative powers conferred upon the Government in war-time by the Defence of the Realm Act, 1914, and the Emergency Powers Act, 1939. It is obvious that these wide powers, however necessary in an

emergency, could if not withdrawn in good time be used to destroy the constitution. No clearer proof could be given of the adage that the price of liberty is eternal vigilance. That is why the House of Commons views with a jealous eye all attempts of the Executive to obtain the delegation to it of further power to legislate.

The successful administrator is the man who retains in his own hand the general direction of policy and leaves matters of detail to his subordinates, while still keeping their work under observation. Parliament is in a similar position. It is always in danger of being so overburdened with detail that it has insufficient time for broad matters of policy. Its first duty is to keep the policy and administration of His Majesty's Ministers under critical scrutiny, and its second duty is to pass proper legislation. If broad matters of principle are to be fully considered, Parliament must not be too deeply immersed in detail. It is therefore wise to delegate power to Ministers. But as there is no clear dividing line between detail and principle, Parliament must ensure that the powers given to Ministers are not abused, and the law courts must retain their power to see that they are not exceeded.

APPENDIX

AN EXAMPLE OF DELEGATED LEGISLATION

On the 24th August, 1939, at 6.45 p.m., the Home Secretary, Sir Samuel Hoare, moved that the Emergency Powers (Defence) Bill be read a Second time. In less than two hours it had passed the Second Reading without a division and the Committee Stage followed immediately after. Various amendments were moved to limit the duration and scope of the Bill and to give additional protection to the subject, but in view of the emergency, none of these was pressed to a division, and the Third Reading had been given to the Bill before 9.30 p.m. It was then sent to the House of Lords, passed, and the Royal Assent was given before 10.0 p.m.

Section 1 of the Act reads as follows :—

“1.—(1) Subject to the provisions of this section, His Majesty may by Order-in-Council make such Regulations (in this Act referred to as ‘Defence Regulations’), as appear to him to be necessary or expedient for securing the public safety, the Defence of the Realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.”

“8.—(1) Every Order-in-Council containing Defence Regulations shall be laid before Parliament as soon as may be after it is made. . . .

“8.—(2) If either House of Parliament, within the next 28 days on which that House has sat after such an Order-in-Council as aforesaid is laid before it, resolves that the Order be annulled, the Order shall thereupon cease to have effect except as respects things previously done or omitted to be done, without prejudice, however, to the making of a new Order.”

On the 1st September a large number of Defence Regulations were laid on the Table in accordance with Section 8 of the Act as quoted above. On the 5th September a further series of Regulations were laid, amending the first series. Amongst the Regulations was 18B which provided as follows :—

"The Secretary of State, if satisfied, with respect to any particular person, that with a view to preventing him acting in any manner prejudicial to public safety or Defence of the Realm, it is necessary so to do, may make an Order" detaining him indefinitely without trial.

Other Regulations dealt with the causing of disaffection amongst persons engaged in His Majesty's service, and with influencing public opinion in a manner prejudicial to the Defence of the Realm or the efficient prosecution of war.

On the 31st October, Mr. Dingle Foot rose in his place and moved:—

"That an humble Address be presented to His Majesty praying that the Order-in-Council amending the Defence Regulations dated 1st September 1939, made under Section I of the Emergency Powers (Defence) Act 1939, a copy of which was presented to this House on the Fifth Day of September last, be annulled."

In the course of the debate, it was argued by speakers in all parts of the House that the Regulations were drafted so widely as to go beyond what was reasonably necessary for the purpose in view. At the end of the debate, Sir Samuel Hoare, who as Home Secretary had introduced the Emergency Powers (Defence) Act and was now Lord Privy Seal, made the following offer:—

"I am very anxious that these Regulations should have behind them general assent and on that account I am ready to offer to Hon. Gentlemen opposite and the Hon. Member below the Gangway an opportunity of consultation with the Government. . . . We want general agreement upon these Regulations and, as a result of this consultation, to see whether we can obtain general agreement. I am further ready to give an undertaking that whether or not we reach general agreement—I think we shall—we shall then introduce the whole body of Regulations again, amended as I have just suggested to the House. These Regulations will then run for another period of 28 days during which any Hon. Member can move a Prayer against them." (*Hansard*, Vol. 352, 31 Oct., 1939, at c. 1899-1900.)

This was in effect a victory for those who had moved the Prayer, and Mr. Foot accordingly withdrew his motion. New Regulations were afterwards drafted in consultation with those who had spoken and in due course they replaced the earlier ones to which exception had been taken.

On the 4th June, 1940, a further series of Regulations were laid on the Table. Amongst these was 2D which provided :—

“If the Secretary of State is satisfied that there is, in any newspaper, a systematic publication of matter which is, in his opinion, calculated to foment opposition to the prosecution to a successful issue of any war in which His Majesty is engaged, he may by Order apply the provisions of this Regulation to that newspaper.”

which would bring into operation the following provision :—

“No person shall print, publish or distribute or be in any way concerned in the printing, publication or distribution of any newspaper to which this Regulation applies.”

On the 31st July, 1940, Mr. Silverman moved an humble Address that these Regulations be annulled. There ensued a debate in which the Home Secretary, Sir John Anderson, argued that the Regulations were no more drastic than was necessary at that particular stage in the war, and the House supported the Government on a division by 98 votes to 60.

It will be noted that in both the cases cited above, the Regulations armed the Executive with drastic powers limiting the liberty of the individual. Parliament in each case had to consider whether this grave infringement of individual liberties was justified by the circumstances of the case or not. On the first occasion, the Government admitted the argument that the powers were unreasonably wide, withdrew the Regulations and substituted others more narrowly drafted. On the second occasion, shortly after the evacuation of Dunkirk and

when the country was in imminent danger of invasion, the Government stood firm and was supported by the House in forbidding any propaganda likely to create a defeatist spirit.

By the 25th March, 1941, the Government was pre-occupied with the problem of providing adequate entertainment for the large number of troops confined within the British Isles without any active employment. Accordingly the new Home Secretary, Mr. Herbert Morrison, sought to use the Emergency Powers (Defence) Act in order to permit the opening of theatres and music halls on Sundays. There was very widespread opposition to the use of emergency powers for altering the law of the land in a matter which did not appear to be very closely connected with defence. A Prayer was accordingly moved on the 1st April and when the Government saw that it would be carried against them they did not resist it. On the 4th April, 1941, an Order-in-Council revoking the previous Order was made.

A large number of Orders were made at different times under Defence Regulations, but in these cases, as has been explained above, it was not possible for the House to pray against them. Under the Supplies and Services (Transitional Powers) Act, 1945, it is provided that where a statutory instrument is made in exercise of a power so delegated, that "grandchild" of the Act shall also be laid and be subject to annulment. (See p. 101.)

It may be worth while to give an example of the wide powers that may be exercised by an Order made under a Regulation, and which therefore did not have to be laid before Parliament until the Supplies and Services Act, 1945.

The Cereal Crops Order, 1942, Dated Sept. 1, 1942.
1942. No. 1781.

"In exercise of the powers conferred on them by Regulations 55 and 62 of the Defence (General)

Regulations 1030, and of all other powers enabling them in this behalf, the Minister of Agriculture and Fisheries and the Secretary of State for Scotland hereby order as follows:—

3. Except with the written consent of the Committee, no person shall feed growing or unthreshed wheat or rye to livestock, provided that this Article shall not apply to gleanings or, where the practice would be reasonable and in accordance with the rules of good husbandry, to the cutting of rye green for feeding or silage or to the grazing of wheat or rye before the crop is in ear."

A BIBLIOGRAPHY

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