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THE UNEMPLOYMENT ASSISTANCE BOARD

A CASE STUDY
IN ADMINISTRATIVE
AUTONOMY

by

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PREFACE

Intended as a commentary upon contemporary constitutional and administrative organization for the relief of the industrially unemployed, this study may now have to take its place as an historical record. A catastrophe so pervasively disruptive as war must necessarily leave its mark also on relief administration. One evidence of this fact has been the broadening of the scope of the Unemployment Assistance Board's authority so as to include wartime distress. Any person over sixteen years of age may apply to the Board for assistance upon the ground that he is in need as a result of having been evacuated from his home under an official plan, or upon the ground that war circumstances have deprived him or the person upon whom he was ordinarily dependent of his normal means of livelihood. Time will reveal the ultimate significance of this extension of the Board's authority.

More importantly, the conditions of war necessarily modify the democratic assumptions upon which this study is based. Zealously as has Parliament thus far guarded its rights, wartime conditions admittedly do not permit the same extent of criticism and agitation as peace-time. Whether the cessation of hostilities will permit a return to the circumstances prevailing before September 3, 1939, remains to be seen. The thesis of this book ended with the declaration of war against the Nazi Government of Germany.

Lest the title be misleading, it should be explained that this is not a general treatise on the Unemployment Assistance Board. This essay does not pretend to present

a detailed account of the organization of the Board nor of the process whereby an individual obtains unemployment assistance. Whether the means test in principle or in detail is justified, whether unemployment should be centrally or locally administered, whether the policies of the Board are defensible—these are important questions, but they have not been answered here.

As the sub-title indicates, this book is concerned with only one phase of the Unemployment Assistance Board—its constitutional and administrative position in the hierarchy of the government of the United Kingdom. Concentration upon this single aspect neither is artificial nor demands apology. It is a subject of immense importance to all students of government. Writing in the introduction to one of the early studies on the subject of administrative autonomy, Graham Wallas observed, "The most striking political tendency of our time is a movement away from the simple optimism of nineteenth-century parliamentarism. Now that we have made the world safe for democracy we are asking ourselves what democracy is, and whether (as Nurse Cavell said of patriotism) it is 'enough.' The tactics of parliamentary majorities and parliamentary elections seem utterly inadequate to provide wise and progressive direction for the organized co-operation of great industrial societies."¹

Perhaps Professor Wallas was right, perhaps parliamentary majorities and parliamentary elections are inadequate for the government of the economic society which our scientists, technicians, and capitalists have wrought. At least the issue must be clearly understood.

¹ In Robert M. Dawson, *The Principle of Official Independence* (London, P. S. King & Son, 1922), pp. xiii-xiv.

To what extent can the instrumentalities of government be freed from the ordinary constitutional methods of enforcing political responsibility and a democratic government still be preserved?

The creation of the Unemployment Assistance Board in 1934 was more than merely another British experiment in administrative autonomy. It marked the extension of the device to an important and vital social service affecting the lives of hundreds of thousands of people, and posed more squarely than ever before the question whether reasons of administrative efficiency or political strategy had prompted the action. An examination of the peculiar status bestowed upon the Board affords an opportunity to review the general subject of autonomy for administrative agencies.

Even to the student primarily interested in unemployment policies rather than problems of governmental organization the status of the Unemployment Assistance Board is important. Those dissatisfied because the Board did not take more definite and far-reaching steps to cope with unemployment needed to appreciate at least two aspects of the Board's "independence." The Board could not move farther ahead than the policies of the Government of the Day permitted. As these pages will emphasize, the Board had no independent sources of income with which to experiment in restorative treatment of the jobless. And secondly, such a student might ponder the question how a more vigorous political leadership, if it had gained control of the Government, might have proceeded to deal with an agency supposedly not subject to political direction. How vital were these factors, the following chapters hope to make clear.

A word of explanation about the presentation of this subject matter may be warranted. Inasmuch as the principal object of this discussion throughout is the Unemployment Assistance Board, the first two chapters recount the story of its creation and its early history. The third chapter introduces the debate between ministerial responsibility and administrative autonomy as the basis for organizing governmental activities. Chapters IV and V portray the "independence" of the Board in practice, while Chapters VI and VII examine the case in favour of this "independence." The last chapter contains some general reflections upon the topic of administrative autonomy, with some suggestions how the central administration of unemployment assistance might have been more satisfactorily organized.

One brief explanation about grammatical construction should be added. An American finds the English practice of using the plural pronoun and verb form with a collective noun somewhat disconcerting. I have throughout endeavoured to refer to the Government of the Day as "they," but in speaking of the Unemployment Assistance Board where the agency, not the members of the Board, was referred to, I have employed the singular verb.

My obligations to those who made the prosecution of this study and its publication possible are many. In the first place I am indebted to the Social Science Research Council of New York City for the fellowship award which enabled me to spend a year abroad. To my friend Dr. William A. Robson of the London School of Economics and Political Science I owe constant encouragement, numerous introductions, and a careful reading of the manuscript. Miss Ethel Foster, formerly

of the Ministry of Labour, has also been very helpful. While it is not possible to mention by name those persons within the Unemployment Assistance Board who generously answered my questions and expedited my inquiries, I can at least anonymously acknowledge my appreciation for their assistance. Dr. Eveline M. Burns and Professor Lindsay Rogers of Columbia University have contributed much to the proof. And to the others not specifically named here who in many different ways have made this book possible, go my heartfelt thanks.

As is customary on such occasions, I hasten to absolve all those who have aided me from any responsibility for the statements I have made. I alone must be held accountable for the content of these pages.

JOHN D. MILLETT

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Chapter I

THE CREATION OF THE UNEMPLOYMENT ASSISTANCE BOARD

The passage of an unemployment insurance scheme by the British Parliament in 1911 did more than afford partial protection against the hazards of joblessness to some two and a quarter million workers. Primarily significant was the official acknowledgment that destitution might result from more than personal factors, and that as a "problem of industry" unemployment should be dealt with on a level different from the unpopular requirements of the Poor Law. In the enthusiasm for constructing a "home fit for heroes" unemployment insurance was extended in 1920 to cover the greater part of the field of industrial employment. Supposedly the scheme was insurance because a man out of work drew benefit for a limited time in some proportion to his contributions while employed. But the "flood" of unemployment in the post-war years squarely posed the problem: when workers have exhausted unemployment benefit, what then?

Successive Governments—Coalition, Conservative, and Labour—faced this issue during the 1920's without finding any solution they could hail as satisfactory. Because a man had held a job once in an insurable occupation and had exhausted his insurance benefit rights he was regarded as having a separate status. *Prima facie* his unemployment was the fault of society, and in consequence he deserved some kind of public aid before he

was reduced to a position where his neighbours through the Poor Law would be responsible for his maintenance.¹ A growing Labour Party dependent largely upon the increasing political-mindedness of the working classes fostered this attitude, and Conservatives did not care to attack it.

For ten years, from 1921 to 1931, the period during which benefit might be paid was variously lengthened under such labels as "uncovenanted," "extended," and "transitional" benefit.² Always it was hoped that a definite improvement in the employment situation would lessen the demand for these extensions as well as recoup some of the necessitated outgo. But each temporary extension had to be succeeded by another one, while sustained improvement in employment statistics continued elusive. In the meantime the Unemployment Insurance Fund exhausted its resources and had to borrow ever more heavily from the national Exchequer, even after the cost of transitional benefit was entirely assumed by the latter on April 1, 1930. The deepening of the depression after 1929 increased the numbers of the unemployed as well as the financial burden imposed upon the Exchequer. The embarrassing issue of overhauling the finances of the insurance scheme could no longer be postponed. The obvious "out" of the Labour Government was a Royal Commission on Unemployment Insurance, appointed on December 9, 1930, under the chairmanship of Judge Holman Gregory, to recommend how the insurance

¹ For an explanation of the unpopularity of the means test and the Poor Law, see E. Wight Bakke, *Insurance or Dole?* (New Haven: Yale University Press, 1935), pp. 188-96.

² See *Ibid.*, pp. 70-5.

scheme could be made self-supporting and what arrangements should be made outside insurance for the unemployed who were capable of and available for work.³

Events did not wait for the conclusion of the hearings and the deliberations of the Royal Commission. Early in the Commission's hearings a representative of the Treasury appeared and flatly asserted that the continual borrowing of the Unemployment Fund from the Exchequer as well as the mounting cost of transitional benefit at a time of severe curtailment of business activity was threatening the security of the nation's finances.⁴ A drastic reform was immediately necessary. When challenged by his fellow party members the Chancellor of the Exchequer, Philip Snowden, refused to repudiate this alarmist forecast. A subsequent Conservative motion of censure of the Government because of the state of the national finances, moved on February 11, 1931, was countered by Government acceptance of a Liberal motion that a committee should be appointed to advise the Chancellor on "all possible reductions" in the expenditures for the supply services. The Royal Commission

³ The story of unemployment problems and policies prior to 1930 has been too well told elsewhere to necessitate more than this very brief summary. See especially Sidney and Beatrice Webb, *English Poor Law History: Part II, The Last Hundred Years*, vol. ii (London: Longmans, Green & Co., 1930); Sir William Beveridge, *Unemployment: A Problem of Industry*, new edition (London: Longmans, Green & Co., 1930); Ronald C. Davison, *The Unemployed: Old Policies and New* (London: Longmans, Green & Co., 1929); and E. Wight Bakke, *op. cit.*

⁴ Testimony of Sir Richard V. N. Hopkins, Controller of Finance and Supply Services, Treasury Department, to the Royal Commission on Unemployment Insurance, *Minutes of Evidence*, Tenth Day (January 29, 1931), p. 381.

had already been asked to make a preliminary report on the financial condition of the unemployment insurance scheme. Accordingly, their first report was submitted to His Majesty on June 1, 1931.⁵ The May Committee on National Expenditure reported several weeks later, on July 24th.⁶ Both reports urged that the Unemployment Fund cease borrowing, that income and outgo be balanced by increasing the rate of contributions and reducing the rate of benefit as well as the duration of payment. The May Committee further advocated that after the exhaustion of insurance rights transitional benefit be paid only after applicants had undergone a test of need.

On the issue of the extent to which these proposed financial reforms should be effected the Government of the Day floundered. The unalterable opposition of the Trades Union Congress to both a reduction in insurance benefit and the imposition of a means test as qualification for transitional benefit added a political to the financial crisis. The Labour Government under Mr. MacDonald resigned, and the Prime Minister, supported by Mr. Snowden and Mr. J. H. Thomas, succeeded in forming a National Government drawing almost all of their support from the Conservative and Liberal Parties. In September Parliament passed the National Economy Act which authorized for one month's time the making of Orders in Council effecting reductions in certain specified services.

There followed on October 7, 1931, the Unemployment Insurance (National Economy) (No. 2) Order,

⁵ *First Report of the Royal Commission on Unemployment Insurance* (Cmd. 3872).

⁶ *Report of the Committee on National Expenditure* (Cmd. 3920).

which among other things abolished transitional benefit as from November 12th, and set up a system of "transitional payments" subject to a means test.⁷ These payments were limited to persons "normally employed in insurable employment" who had exhausted their unemployment insurance benefit rights or had not made a sufficient number of contributions to qualify for such benefit. While the investigation and assessment of need were to be undertaken by the Public Assistance Committees of the local Poor Law authorities, the entire cost of transitional payments was to be borne by the national Exchequer. This new arrangement was regarded as a temporary makeshift until some definite policy could be decided upon by the Government. The dilemma of the 1920's had finally been met by dividing the unemployed into two groups and imposing a means test as qualification for State assistance after insurance benefit had run out. None the less, the unemployed who had once had insurable employment were still regarded as a separate class to be differentiated from those dependent upon the Poor Law. This distinction was acknowledged by the fact that the central government assumed financial responsibility for the payments to this class.

In the meantime the Royal Commission continued their work. Proposals for a more permanent policy and organization were still awaited. On one aspect at least there was practically universal agreement: the charge for care of all the industrially unemployed would have to be

⁷ Standing Rules and Orders, 1931, No. 853. For a concise but more detailed account of these events, see Ronald C. Davison, *British Unemployment Policy Since 1930* (London: Longmans, Green & Co., 1938), pp. 10-32.

borne by the central government. In this connection Labour opposition to the Poor Law was reinforced by the concern of property owners over local rates. If the great numbers of the unemployed were to be added to those other destitute aided by the public assistance authorities, the necessitated increase in rates would have a severely deflationary effect on property values. The more varied financial resources of the central government together with the conviction that as a social and economic problem unemployment could be combated only on a national scale were arguments for lodging all, or almost all, of the unemployment cost onto the national Exchequer.

But as for the principle upon which the State should base its care of the unemployed there were differences of opinion. Organized labour held the point of view that society was obligated to provide every man a job and that compensation was owing the man who was available for work but for whom no work was available. Admitting that the insurance scheme had broken down, the Trades Union Congress General Council argued that no distinctions should be attempted among the unemployed "capable of and available for work," all of whom should receive payment from the general revenues of the State. The Council suggested not only that the scheme of employee and employer contributions to an insurance fund be abolished, but also that benefit for a limited period give way to allowances of an adequate size for all unemployed as long as they were without work and regardless of their resources.⁸ Other organizations and

⁸ See memorandum of the Trades Union Congress General Council to the Royal Commission on Unemployment Insurance, *Minutes of*

individuals advocated no such far-reaching reform. They were generally agreed that unemployment insurance should be retained, providing benefit for a limited period, with contributions and outgo balancing. Workers who had exhausted unemployment benefit should be supported by the State, subject to demonstration of their need. The very terms of reference given the Royal Commission clearly foreshadowed such a system. The steps taken by the National Government had merely anticipated the reorganization.

The means test was necessary as a limitation to the financial burden imposed upon the central government. Those to be socially aided should be without individual or family resources by which they might be sustained. The disability of destitution was the basis of Poor Law eligibility for assistance; it was the manifestation of society's limited liability in an economy where the individual was supposed to be able to provide for himself. The same principle should be applied to relief of the industrially unemployed. The majority of the Royal Commission, in different words, accepted this thesis when making their final report in November 1932. Two of the seven members strongly dissented, expressing in their minority report the Labour doctrine already noted.

The differentiation having been accepted between the unemployed drawing benefit and those who had exhausted or were not entitled to benefit, there remained the problem of how administratively to care for the second group. Essentially the choice was one between national-local co-operation and the establishment of a

Evidence, Twenty-sixth Day, p. 971. Cf. John Hilton, "The State and the Unemployed," 4 *Political Quarterly* (1933) 16.

new national service. While financial and other reasons prevented burdening them under the Poor Law with the industrially unemployed, the local authorities did possess existing machinery, modernized as recently as 1929 by the Local Government Act of that year, for investigating the means and assessing the needs of individuals. Furthermore, the granting of cash assistance to the unemployed might well be made in conjunction with the whole complex of social services locally administered for the aid of the economically weak.

The majority of the Royal Commission proposed that permanent machinery for the relief of the unemployed should follow the lines of the arrangements for transitional payments, with certain refinements and improvements. Investigation of means and assessment of need should be performed by a new committee of the local authorities designated "Unemployment Assistance Committee." Thus would the distinction be continued between the able-bodied unemployed capable of work and the Poor Law dependents whose care was provided by the Public Assistance Committees. A major part, but not all, of the cost of relieving the able-bodied unemployed should be borne by the central government; in order that they might have a definite sense of financial responsibility the local authorities should pay a part of the cost from the local rates. The Minister of Labour should have ample powers of supervision over local administration of unemployment assistance; he should lay down general rules for the guidance of the local authorities and ensure that these rules were observed.⁹

⁹ *Final Report of the Royal Commission on Unemployment Insurance* (Cmd. 4185), pp. 142-55, 278-94.

The reasons for proposing this system of unemployment relief administration were important. The Commission noted the two alternatives of paying relief on a fixed statutory basis similar to insurance benefit or of paying relief on a discretionary basis according to the needs of the individual applicant. The majority concluded that for a service based on a means test and applying to an infinite variety of human circumstances payment on a discretionary basis was the only feasible procedure. The possibility of entrusting a discretionary service to the Ministry of Labour was dismissed, because discretionary payments were "foreign to the experience" of the Employment Exchanges and because local discretion was incompatible with central interference with decisions and ministerial responsibility to Parliament. Accordingly, the "natural body" for exercising local discretion in determining the need of individual cases was the local authority.¹⁰

A year passed before the Government introduced into the House of Commons on November 8, 1933, a comprehensive measure dealing with unemployment insurance and unemployment assistance. The provisions of Title II of the bill, the part dealing with unemployment assistance, revealed that the Government had discarded the recommendations of the Royal Commission. Instead, a new central agency, a statutory body somehow to be both a part of the Ministry of Labour and yet independent of the Ministry, an Unemployment Assistance Board, was to be created. This new body was to provide assistance for both the unemployed who had

¹⁰ *Final Report of the Royal Commission on Unemployment Insurance* (Cmd. 4185), pp. 130-7.

exhausted their insurance benefit and other able-bodied unemployed then receiving Poor Law relief. Assistance was to be provided after investigation of means and assessment of need of the applicants by the Board's own staff in accordance with regulations drawn up by the Board and approved by Parliament. Local authorities participated in the scheme only by having to make a contribution to the cost according to a complicated formula in recognition of the smaller burden of relief they would thereafter carry. This last item caused more immediate protest than any other feature of the proposed scheme of unemployment assistance, and the bill was withdrawn in the face of the mounting complaints from local authorities at having to contribute to the central government. The unemployment measure was reintroduced as Bill No. 1 in the session opened by the King on November 21, 1933, and put down for immediate consideration. Meanwhile the Chancellor of the Exchequer began negotiations with the local authorities in the hopes of reaching some agreement on the subject of their contributions.

Here we are concerned specifically with the announced intention to establish a new agency of an "independent" status. A number of reasons had prompted the Government to resort to this expedient, which had not been mentioned at all in the report of the Royal Commission.

First of all, there was an attitude of distrust of the efficiency of local administration. The ever-present scepticism of Whitehall had been reinforced particularly as a result of the experience in the administration of transitional payments. The opposition of the Labour Party to the means test had been evidenced in the way

several local authorities under their influence had determined need. While by order the Public Assistance Committees could not grant as transitional payment more than the corresponding rate of benefit to which the applicant was entitled if still under insurance, the Committees had considerable latitude in deciding how family resources should be treated. In some cases applicants were paid the full amount of transitional payment, and the earnings of other members of the family were disregarded entirely.¹¹ The situation became such that in two areas, Durham and Rotherham, special commissioners were appointed by the Minister of Labour to assume the responsibilities of the Public Assistance Committees in the administration of the means test to applicants for transitional payments. The Minister of Labour also had had to make representations to some ten or twelve other local authorities concerning laxity in administration. In certain other places Labour Party members refused to serve with their majority colleagues on Public Assistance Committees when administering transitional payments. Despite the fact that these difficulties had affected only a few of the two hundred local Poor Law authorities, the Government feared that the defects were endemic.

This distrust of local government was heavily fortified by additional factors. Whitehall had little faith in whatever statutory powers of supervision over local government it might be given. The exercise of such supervision was ever likely to arouse local antagonisms and provoke bitter feelings against the Government of the Day. For

¹¹ *Report of the Unemployment Assistance Board for 1935* (Cmd. 5177), p. 13.

example, the Minister of Health's statutory powers over Poor Law administration were vast: from ability to fix administrative areas, appoint and remove officers, to the authorization to make rules regulating the extent and duration of outdoor relief to able-bodied persons.¹² Actually these powers had been practically never used. The Minister had never been willing or felt able even to fix a definition of destitution or a fairly uniform scale of relief. Central supervision had to be exercised cautiously.¹³ Yet caution in control seemed incompatible with the assumption by the central government of the financial burden of a service. Poor Law assistance at least was paid for by the local authorities, with negligible national aid. Hence inefficient or lenient administration had no direct repercussions upon the Exchequer. Unemployment assistance did have such repercussions. And it was doubted that the exercise of central controls could be sufficiently strengthened by the fact that the money was centrally provided. Direct central administration would be the better method by which to achieve the requisite efficiency and uniformity of standard. For such reasons as these the possibility of central-local partnership was set aside.

The device of an independent agency was looked upon as the method for avoiding the defects of placing such a service as unemployment assistance under a minister responsible to Parliament. There had been several bodies recently established—the British Broadcasting Corpora-

¹² Poor Law Consolidation Act, 1930, 20 Geo. V, Ch. 17. Cf. memorandum of William A. Robson to the Royal Commission on Unemployment Insurance, *Appendices to Minutes of Evidence*, p. 561.

¹³ Cf. T. S. Simey, *Principles of Social Administration* (Oxford: Oxford University Press, 1937), pp. 54–6.

tion, the Central Electricity Board, the London Passenger Transport Board—which had been freed from detailed supervision by a responsible minister, and so freed likewise from close scrutiny by members of Parliament. The Unemployment Assistance Board would be but another step in the same direction. Furthermore, some sort of statutory body had been several times mooted during the hearings of the Royal Commission on Unemployment Insurance. Most of these suggestions, it is true, had as their objective the erection of safeguards for the solvency of the Unemployment Insurance Fund.¹⁴ As a result the Royal Commission had recommended the creation of a statutory commission with certain powers over the finances of the insurance scheme. But in the hearings of the Royal Commission there had been some mention of such an agency for the administration of unemployment assistance.

In a memorandum to the Royal Commission submitted on March 31, 1931, Sir William Beveridge wrote that those who had exhausted their insurance benefit “should be treated as an industrial rather than a social problem, by a central rather than a local authority, either by the

¹⁴ See *Minutes of Evidence*, memorandum by G. D. H. Cole, p. 742; memorandum by the Trades Union Congress General Council, p. 970; and memorandum by the National Confederation of Employers' Organizations, p. 1010. Mr. Cole wanted a statutory commission to frame unemployment insurance regulations; the National Confederation of Employers' Organizations desired a Board of Trustees to maintain the solvency of the insurance fund. It was obvious that the Trades Union Congress General Council favoured a simple method of framing regulations overriding decisions of the Umpire deciding conditions for the payment of insurance benefit. Mr. Cole expanded his ideas in “The Method of Social Legislation,” 9 *Public Administration* (1931) 4.

Ministry of Labour or (preferably) a statutory commission supervised by the Ministry." He added: "The relief of these men should be a matter, not of contractual right enforced by quasi-legal process before an Umpire, but of need, judged by the administering authority, and would be subject to conditions imposed by the authority; the necessity of side-tracking detailed Parliamentary scrutiny of the action taken in individual cases makes it desirable that this authority should be a commission with statutory powers, and not a Minister directly responsible to Parliament."¹⁵ Here was the clearest forecast of what the Government actually decided to do to be found any place in the work of the Royal Commission. The National Confederation of Employers' Organizations did suggest in a memorandum that while the necessary local machinery for unemployment assistance might be provided through proper co-ordination of the facilities of the public assistance authorities and the employment exchanges, Parliament should set up a statutory commission empowered to lay down the principles governing the scales of relief and to supervise local execution thereof.¹⁶

A different kind of statutory agency in connection with unemployment assistance was suggested by Mr. (now Sir) Ronald Davison. In his memorandum to the Royal Commission he advocated a statutory commission composed of representatives of the Ministries of Health and Labour, of local authorities, and of employers and trades unions to keep their respective bodies in touch with the problems of unemployment assistance and to

¹⁵ *Minutes of Evidence*, Nineteenth Day, p. 723.

¹⁶ *Ibid.*, Twenty-seventh Day (May 5, 1931), p. 1011.

obtain their active co-operation in meeting those problems.¹⁷ Inasmuch as he foresaw actual administration by either a national agency or the local authorities under the direction of a national agency, he was really seeking a statutory body to act in an advisory capacity.

There were not lacking, however, admonition and experience which might have cast some doubt on the expediency of establishing an "independent" agency to administer unemployment relief. When asked whether the Ministry of Labour or a statutory commission were the preferable mechanism, Mrs. Sidney Webb, who favoured national administration of unemployment assistance, told the Royal Commission: "The difficulty is that the treatment of the unemployed throughout the whole Kingdom concerns so many persons and interests that I doubt very much if you could get the necessary amount of consent without some kind of Parliamentary control. I have no fixed opinion about that, but it seems a dangerous thing to multiply these commissions outside of Parliamentary control." She added that she feared independent machinery would lead to a lot of discontent.¹⁸ Well might these words have been seriously pondered.

Later an incident in the House of Commons should have been highly instructive to those adept at interpreting Parliamentary sentiment. On February 8, 1933, the Parliamentary Secretary to the Ministry of Labour announced the appointment of four commissioners, three in Durham and one in Rotherham, to supersede the local

¹⁷ *Appendices to Minutes of Evidence*, p. 508.

¹⁸ *Minutes of Evidence*, Fortieth Day (November 12, 1931), pp. 1331-2.

Public Assistance Committees in the assessment of need for transitional payment applicants. He added: "The Commissioners stand in the same relation to my right hon. Friend's department as the Public Assistance Committees. We have the same control or lack of control over them as we have over the Public Assistance Committees."¹⁹ In response to an inquiry as to what arrangements had been made for the House of Commons to obtain by questions information concerning the Commissioners' administration in Durham, the Parliamentary Secretary on February 20th, reiterating that the Commissioners were comparable to the Public Assistance Committees in status, denied that the Ministry had any responsibility for their actions.²⁰ A storm of protest greeted this statement, and notice was served that inasmuch as the answer was unsatisfactory the subject would be raised on motion of adjournment at the earliest opportunity.

The next night at 7.45 p.m. the necessary time was afforded. The Minister of Labour reasoned from the nature of the Order in Council establishing the procedure for transitional payments that he was not responsible for the determination of cases, but he none the less promised a general inquiry into the situation so far as the Commissioners were concerned.²¹ The leader of the Opposition Liberals, Sir Herbert (now Viscount) Samuel, succinctly refuted the Minister's argument. He pointed out that the Public Assistance Committees were divisions of the local councils, and were accordingly accountable

¹⁹ 274 H.C. Debs., 5 s., col. 179. All citations to Parliamentary Debates hereafter are to the Fifth Series unless otherwise stated.

²⁰ *Ibid.*, col. 1440.

²¹ *Ibid.*, cols. 1696-9.

to local opinion. The Commissioners were not locally elected, but had been appointed by the Minister. How then were they to be held responsible for their actions? Sir Herbert admitted that it might not be feasible for the House to discuss individual cases, but at least policies in relation to categories of cases should be debated.²² The Minister rose to say that he was certain no responsible official or union would have difficulty in getting before a Commissioner to ask for an explanation of a decision.²³ Two days later he suggested to the House that members' representations be made directly to the Commissioners.²⁴

The incident was momentarily closed. The Minister had not retracted the declaration that he was not responsible for the decisions of the Commissioners, but he had acknowledged the right of members of Parliament to take up individual cases directly with the Commissioners. Obviously this was an illogical arrangement, but it served to meet Parliamentary demands. It was also tacit warning to the Commissioners that they must maintain an attitude of accommodation to members of Parliament or suffer the consequences. It was a sort of oblique Parliamentary control.

Whatever may have been the value of the warnings, it is evident that the decision to establish an "independent" statutory Unemployment Assistance Board was not a fabrication of Whitehall without some previous advocacy or precedent. The immediate objectives behind this decision seem to have emanated from the Treasury.²⁵

²² 274 H.C. Debs., 5 s., cols. 1703-4.

²³ *Ibid.*, col. 1705.

²⁴ *Ibid.*, col. 1876.

²⁵ "The creation of the Unemployment Assistance Board was a surprise move originating wholly in Whitehall; not social needs, but

Reasons of national economy dictated, first that the administration of unemployment assistance be conferred upon a central agency rather than be left to local authorities whose primary interest would lie in assessing need at a generous figure, and secondly that the central agency should be given an "independent" status in order that it might be protected from direct Parliamentary pressure to increase individual allowances. Over the scepticism of the Minister of Labour the Treasury carried the day. The Government proposed to set up an "independent" Unemployment Assistance Board.²⁶

On November 30, 1933, the Minister of Labour, Sir Henry Betterton, moved that the omnibus Unemployment Bill be read a second time. He claimed that the measure was "one of the most comprehensive and constructive pieces of social legislation which has been introduced into this House for many generations," and called it "the logical, the inevitable, and the obvious development of the policy which has been pursued by every party in this country during the last thirty years."²⁷ He declared that the measure tackled the complex and difficult problem of devising an adequate system of unemployment relief in a "courageous and practical manner." The bill was based on the principle that on political and financial calculations inspired it." Ronald C. Davison, *British Unemployment Policy Since 1930*, p. 45.

²⁶ On November 21, 1933, in opening the debate on the King's address which had announced "immediate consideration" of a comprehensive unemployment bill, a Conservative member of Parliament noted that in adopting a protective tariff "we made a change in the practice of less than a hundred years. . . . But in substituting national for local administration of the assistance of those in need we break finally with the tradition and practice of centuries." 283 H.C. Debs., col. 10.

²⁷ 283 H.C. Debs., col. 1073.

the one hand there should be a contributory insurance scheme covering as many workers as possible, and on the other hand outside insurance "the State should assume a general responsibility for the relief of the able-bodied industrial unemployed."²⁸

In explaining the general features of Part II of the bill, the Minister justified the nationalization of the unemployment assistance machinery by saying: "The local authorities are at present administering transitional payments on behalf of the central government, but without any financial responsibility at all. There is a complete divorce between the responsibility of the central authority, which is providing the money, and that of the local authority, which disburses it. I venture to lay down this rule as axiomatic, that, if the responsibility is to be a national obligation, the administration can no longer remain local but must be national also."²⁹ He declared that the great variations in local standards were indefensible when the burden of cost was national. Finally, he pointed to the desirability of doing more for the unemployed than merely relieving need, to the desirability of "restorative treatment," which he implied could be undertaken only by the central government.

From this premise it was then necessary to rationalize the decision in favour of the Unemployment Assistance Board. Sir Henry Betterton explained that if there were to be a national service three courses were open. The first possibility would be to administer the scheme through the Ministry of Labour, the second would be to hand the whole question to a board independent of Parliament, while the third would be to devise some

²⁸ 283 H.C. Debs., col. 1077.

²⁹ *Ibid.*, cols. 1091-2.

means of freeing the Minister "from responsibility for individual decisions while maintaining the right of Parliament to approve the general policy to be followed and the general standards of assistance to be adopted."³⁰ Sir Henry declared that it was the third course which had been adopted by the Government in the bill.

The Minister rejected the first alternative because it "would mean transferring the whole question of discretionary payments into national politics in a most acute form." He argued that assessment of need would have to be discretionary, and that if this type of assessment were performed by officials of the Ministry of Labour the Minister would have to assume responsibility for their decisions. "No Minister of Labour should or could be held responsible for the amount of payment in individual cases." He deprecated entrusting assessment to a local committee which was not responsible for providing the money. If the Minister laid down directions for the guidance of such committees, he would have to accept responsibility for their actions—an "intolerable situation." A board completely independent of Parliament was dismissed with the statement that Parliament must share in the responsibility for care of the unemployed. Then he explained that under the device to be utilized "the Minister of Labour will be responsible to Parliament for general policy and for obtaining money, but the application of the policy approved by the Minister and by Parliament will be the business of an independent board."³¹

This presentation of the position of the proposed Unemployment Assistance Board was more than in-

³⁰ 283 H.C. Debs., col. 1093.

³¹ *Ibid.*, col. 1094.

genious. It had a profound significance which seemed to escape general comprehension. The distinction attempted between a completely independent board and the mechanism actually projected was quite real. The Minister was serving notice that the Government expected to exercise some control over the Board, particularly as the Board's policy might affect the nation's finances. At the same time he was endeavouring to disown any necessity on the part of the Minister to justify in the House of Commons the application of basic policies to individual cases. Nevertheless, if there was considerable confusion as to just what was to be the status of the Board, it was understandable in the light of the contradictory statements made by Government Ministers. Thus, shortly after Sir Henry Betterton's speech, the Financial Secretary of the Treasury, Mr. Hore-Belisha, said that in placing the salaries of Board members on the Consolidated Fund "the object that the Government have in view is to impress upon the nation that the Board is not a servant of the Ministry of Labour but enjoys an absolutely independent status."³²

In the debate which followed the account of the bill by the Minister of Labour an Opposition Liberal member (Mr. Graham White) declared that the statutory device might be satisfactory for the administration of electricity supply and broadcasting, but when the lives of many people were to be intimately affected, such a principle was being carried too far. He recalled the fate of a previous effort of this kind, the Poor Law Commission of 1834.³³ What he meant by "carrying the principle too far" went unexpounded. A Labour member asserted that

³² 284 H.C. Debs., col. 162.

³³ 283 H.C. Debs., col. 1120.

the administration of the Poor Law was being taken out of the hands of the local authorities "in order to protect local authorities from Socialist majorities." He accused the Government of trying to destroy the Constitution and representative government with their board, which he characterized as "an attempt to take poverty out of politics . . . to make the poor dumb."³⁴ It remained for a later Labour speaker (Major Harry L. Nathan) to utter prophetic words whose accuracy time was to vindicate. Through the use of the board device, he told the Government, "you are depriving the great mass of the unemployed of a safety valve. Sit on the safety valve, and an explosion may very likely follow." He added: "I need not repeat what has been said before that the talk about keeping this question of unemployment assistance out of politics is sheer nonsense. It is simply bringing the dole to Westminster, to become one of the acutest issues in every election."³⁵

One of the Government's own supporters (Sir J. Walker-Smith) blamed the unemployment assistance part of the bill on the Minister's advisers, remarking, "It has occurred to me, however, that in the drafting of this bill official effrontery has carried us rather further than we are accustomed to go."³⁶ He then subjected the Unemployment Assistance Board's status to a severe analysis:

The provisions of Part II seem to be based upon certain questionable assumptions. . . . The first assumption seems to be that Parliament has now become so invertebrate and Ministers so effete that they can no

³⁴ 283 H.C. Debs., cols. 1316-17.

³⁵ *Ibid.*, cols. 1414-15.

³⁶ *Ibid.*, col. 1576.

longer be relied on or indeed no longer desire to discharge the irksome duties of their offices without having some quasi-independent body to shield them from the worry and trouble of real responsibility. Secondly, there seems to be an assumption that local authorities are now so craven that they succumb readily to fears of the electorate and can no longer be relied upon to discharge their duties loyally and courageously.

After repudiating these assumptions, he noted the third: "There is one more assumption upon which this provision is based which is, perhaps, less untruly founded and that is the assumption that democratic government either has broken down or is in the process of breaking down, and that for the efficient discharge of unpleasant functions or duties involving great courage we must resort to some form of dictatorship."³⁷

Following three full days of debate the Unemployment Bill was read a second time on December 5, 1933, and passed to Committee of the Whole House for more detailed consideration. In the meantime the passage of an Unemployment Financial Resolution to accompany the bill gave occasion for yet more vigorous denunciation from the Opposition benches, such as the declaration that "the kind of organization that is going to be created under this bill means that you are turning your back on Parliamentary institutions and you are furthering the progressive curtailment of British liberties";³⁸ "we are removing democracy from the British House of Commons because it would give the Minister of Labour sleepless nights";³⁹ and the complaint that while a

³⁷ 283 H.C. Debs., cols. 1577-8.

³⁸ 284 H.C. Debs., col. 149.

³⁹ *Ibid.*, col. 817.

member could still ask a question about a criminal sentence he would now be precluded from asking about a sentence on the unemployed.⁴⁰

To expedite the consideration of the Unemployment Bill the Government introduced a time-table allotting fourteen days for committee debate divided among the various clauses and four days for the report stage and third reading.⁴¹ On February 13, 1934, the sixth day in committee, Part II of the bill and the provisions for the Unemployment Assistance Board were reached. The arguments traversed familiar ground, the burden of the Government's case being the desirability of placing unemployment assistance "outside political influence,"⁴² while Labour Party members were vigorous in asserting the rights of the unemployed to have their cases inquired into by their elected representatives.

One Labour member admitted that in the case of relief administered by Public Assistance Committees "there was some influence that could be brought to bear upon those who were responsible for assessing the need of the unemployed and for the payment of their allowances."⁴³ Another argued: "The Government transfer the burden (of assessing unemployment assistance need) from the local authority to the State, and by that transference they transfer the obligation of the local authority to the recipient of public assistance. By the same act, and by the logic of that act, they ought to transfer the responsibility of the local authority to this House, but that is precisely what they do not do."⁴⁴ Once again

⁴⁰ 284 H.C. Debs., col. 1059.

⁴¹ *Ibid.*, col. 1129.

⁴³ *Ibid.*, col. 1845.

⁴² 285 H.C. Debs., col. 1865.

⁴⁴ *Ibid.*, col. 1892.

there were dire warnings: "The Government may think they are getting rid of an awkward problem by putting it outside the influence of the House of Commons, but that very action will in the long run wreck this Government."⁴⁵

In rebuttal Sir Henry Betterton spoke first of local dissatisfaction with having to administer transitional payments, of the desire expressed by the County Councils' Association and the Association of Municipal Corporations that the administration of unemployment assistance "be removed from the sphere of local party politics."⁴⁶ He denied, however, that relief could be "taken out of politics" or that the bill had any such intention. Instead, he declared, Parliament was given increased responsibilities, and he elaborated upon the controls provided the House of Commons. Lastly, the Minister insisted that the right of the individual applicant for assistance to approach members of Parliament had been neither altered nor lost. At that time decisions as to qualifications in order to be eligible for assistance were fixed by Courts of Referees and an Umpire over whom he had no control, while the individual assessments were determined by local authorities with whom he could not interfere either. If this defence was something less than candid, it nevertheless revealed that the first concern in the Minister's mind was to avoid responsibility for individual determinations. Unanswered was the argument that under a centralized system of relief assessment members of Parliament would have obligations to individual constituents similar to the obligations of council members under existing practice.

⁴⁵ 285 H.C. Debs., col. 1850.

⁴⁶ 286 H.C. Debs., cols. 64-5.

After a three-day extension of time for consideration the third reading of the Unemployment Bill was moved on May 14th. The Minister of Labour spoke of the fact that twenty-seven days had been spent in discussing the bill. "This is by far the longest time that has been spent in discussing a measure on the Floor of the House for very many years—certainly since before the war."⁴⁷ He summarized the provisions of Part II in words again somewhat ambiguous. "We have recognized that the responsibility for unemployed industrial workers outside insurance is a national one. Having accepted that responsibility, central administration and central direction of policy inevitably follow. The former will be placed in the hands of an independent board, and the latter will rest with the Minister of Labour and Parliament. This ensures—and I attach the greatest importance to this—that the problem of unemployment is treated as a whole under one central responsibility, that is, the Minister of Labour."⁴⁸

To the Minister the Liberal Opposition made answer in the words of Sir Percy Harris: "Incidentally, this is another chapter in legislation which is open to great and fundamental objections. It is the creating of a dangerous precedent which may be used by Governments of different character and principle, and with different ideas from the present Government. . . . I am afraid that in their heart of hearts the Government are afraid of democracy."⁴⁹ And a Labour spokesman voiced sentiments similar to those already heard from his benches:

⁴⁷ 289 H.C. Debs., col. 1471. This record was broken the following year in debate on the Government of India Act.

⁴⁸ *Ibid.*, col. 1474.

⁴⁹ *Ibid.*, col. 1494.

"I heard a speaker to-day say something about the bill taking the unemployed outside Parliament. The Government may succeed in doing that, but they cannot take the unemployed outside politics. They may remove the unemployed outside the House of Commons, but in the country the unemployed will be keener than ever about politics; they will make their numbers felt in every industrial constituency, and many hon. Members will live to regret the part they have taken in pushing this bill through the House."⁵⁰

The Unemployment Bill passed the House of Commons in only slightly amended form from that in which it had been originally introduced. In the House of Lords the second reading of the bill was moved on June 5, 1934, by Lord Rochester, the Paymaster-General. He explained: "The authority set up by Part II of the bill is a non-political Board appointed by His Majesty by warrant under the Sign Manual. Members of the Board will hold office in accordance with the terms of their warrants. They will be above the ebb and flow of Party politics, and I am confident your Lordships will agree that it is desirable that they should be so." Then, significantly, he added: "It would be altogether foreign to the best traditions of our Constitution that any Board or authority, however well chosen, should be given such powers and left immune from any control by, or *effective suggestion from*, the Government of the Day and Parliament. Steps are therefore taken under the bill to protect that position."⁵¹ Lord Rochester did not elaborate this statement, but it was surely acknowledgment that the

⁵⁰ 289 H.C. Debs., col. 1552.

⁵¹ 92 H.L. Debs., col. 816. Italics are mine.

Government had no intention of casting the Unemployment Assistance Board loose from all moorings.

The Labour point of view as expressed by Lord Marley revealed continued concern about Parliamentary, not Governmental, controls. "Under Part II the Unemployment Assistance Board is not responsible to Parliament. Therefore if they administer a means test in a way which brings still further suffering to these families, they cannot be brought to book by being brought under the criticism of elected members of Parliament. We object to that plan of dealing with the needs of the people by a body which is not subject to Parliamentary control."⁵² He repeated the threat already voiced in the House of Commons that when the Labour Party came into power "we shall abolish the means test. We shall abolish the Unemployment Assistance Board."⁵³

For the Liberal Opposition, Earl Buxton expressed the belief that in conferring a peculiar status upon the Board the legislation went "much too far." He doubted if the requirement of Parliamentary approval of the regulations would provide any real check, and he was concerned about the absence of control once the regulations had been approved. He declared that it was a "great safety valve" for persons to be able to appeal first to their local authority, secondly to the Minister, and thirdly to their member in Parliament, who could, if necessary, raise a question in the House. Now under this bill these "safety valves" would disappear, and applicants for unemployment assistance who felt aggrieved would have no opportunity to bring their case before the public.⁵⁴

⁵² 92 H.L. Debs., col. 823.

⁵³ *Ibid.*, col. 830.

⁵⁴ *Ibid.*, col. 880.

A statement by the Lord Chancellor reviewed the familiar arguments of the Government in defence of the Board. The Unemployment Bill was read the second time in the House of Lords on June 6th. In two days of committee consideration a number of drafting amendments were adopted; without debate the bill was read a third time and passed on June 19th. The amendments were accepted by the House of Commons a week later, and the bill received the Royal Assent on June 28, 1934.

Thus the cleavage between unemployment insurance and unemployment assistance begun by the 1931 Order in Council was given statutory recognition. Permanent machinery for the administration of assistance was created at the national level, not under a minister responsible to Parliament, but under a so-called "independent" Unemployment Assistance Board. The problems produced by resort to this particular device were left for time to solve.

Chapter II

THE STANDSTILL AND AFTERMATH

On June 29, 1934, the Prime Minister, Mr. MacDonald, announced to the House of Commons the composition of the newly created Unemployment Assistance Board. He said that after an "exhaustive examination" of the field of selection the Government had come to the conclusion that the most suitable person for chairman was the then Minister of Labour. "His well-known qualities of sympathy and impartiality" would be invaluable, especially in the early years of the Board. Although it meant the sacrifice of his political career, Sir Henry Betterton at the unanimous request of his colleagues had accepted. The deputy chairman was to be Sir Ernest J. Strohenger, and the other members Miss V. R. Markham and Messrs. H. M. Hallsworth, T. Jones, and M. A. Reynard.¹

Sir Henry Betterton had sat in Parliament since 1918 as Conservative member for the Rushcliffe division of Nottinghamshire. He had been Parliamentary Secretary to the Ministry of Labour from 1923 to 1924 and from 1924 to 1929. With the formation of the National Government in the summer of 1931 he had become Minister of Labour. In the New Year's Honours List of 1935 the chairman of the Unemployment Assistance Board was created Baron Rushcliffe of Blackfordby. Sir Ernest Strohenger was a civil servant. At the time of appointment as deputy chairman of the Unemployment

¹ 291 H.C. Debs., cols. 1450-1.

Assistance Board he had been for two years Under Secretary of the Treasury, but a long period of his career had been spent in the Ministry of Health, especially as Accountant General of the Ministry. It was inevitable that his Treasury background should have given rise to the suspicion that he was the representative of the point of view of that all-pervasive department in the conclaves of the Unemployment Assistance Board. Sir Ernest retired from the Board in 1937. The deputy chairmanship was then conferred upon the woman member of the Board, Miss Markham.

Miss Violet R. Markham was chairman of the Central Committee on Women's Training and Employment, a private body financed by grants from the Ministry of Labour to direct women's training for employment. Miss Markham had been active in labour matters, having served on the Industrial Court since 1920 and having for a time represented the Canadian Government on the Governing Body of the International Labour Office. She had taken some part in politics, having once contested a Parliamentary seat as an Independent Liberal and having been a town councillor and mayor of Chesterfield.

Mr. H. M. Hallsworth was Professor of Economics in the University of Durham, a one-time co-author of a work on unemployment in Lancashire. Mr. Thomas Jones, at the time secretary of the Pilgrim Trust, had formerly been deputy secretary to the British Cabinet and secretary to the Economic Advisory Council. He had been a special investigator for the Poor Law Commission 1906-9, a professor of economics, and secretary to the National Health Insurance Commissioners for Wales from 1912 to 1919. He was the author of several works

on relief and other subjects. Mr. Mathew A. Reynard was a local government officer, the director of Public Assistance for Glasgow. From 1926 to 1929 he had been a member of the Consultative Council on Local Health Administration and General Health Questions. Three of the members of the Unemployment Assistance Board were over sixty years of age, and another was just short of that age.

Two tasks immediately confronted the Unemployment Assistance Board. One was the establishment of an organization embracing England, Scotland, and Wales, ready to take over the responsibility of determining the means and assessing the need of those eligible for assistance. The second was the framing of draft regulations requiring Parliamentary sanction which would set forth the scale of allowances by whose terms the Board would relieve their applicants. Only after these preparations could the Board actually embark upon the administration of assistance.

Part II of the Unemployment Act, which separately was to be cited as the Unemployment Assistance Act of 1934, provided that the Board should within four months of the passage of the Act submit draft regulations to the Minister of Labour embodying a proposed scale of assistance.² Afterwards the Minister said that he received the draft from the Board on October 26, 1934.³ Without amendment he laid the draft regulations before the House of Commons on December 11th, accompanied by a short explanatory White Paper.⁴ Six days later the

² 24 and 25 Geo. V, Chapter 29, Section 52(2).

³ 296 H.C. Debs., col. 1158.

⁴ Cmd. 4765. The regulations themselves may be found as an appendix to *Report of the Unemployment Assistance Board for 1935*.

Government made consideration of the regulations the first item of business on the Order Paper, with three days of debate allowed.

At the outset the Speaker was called upon to decide whether amendments to the regulations could be moved from the floor of the House. He ruled that the power to amend must be stated in the organic law, and that from the words used in the statute [Section 52(4)] he could only decide that amendments were not in order. However, a motion of disapproval specifying the parts needing change would be accepted as an amendment to the motion of approval.⁵ Thus the House was without power to amend the regulations. The debate could result only in approval or disapproval *in toto*.

Approval of the draft regulations was moved and the debate opened by the Minister of Labour, Mr. Oliver Stanley. Two aspects of his argument proved of profound importance subsequently. For one thing he laid great emphasis upon the discretionary powers which the Board enjoyed and which the regulations provided should be used to meet "special circumstances" and "exceptional needs." The Minister remarked: "I would say that this service must be a discretionary service in view of the paramount duty of relieving the needs of the whole household, and therefore the regulations . . . cannot lay down any arbitrary figures. All that they can do is to lay down, first of all, a general standard of payments; secondly, to afford a minimum protection to certain resources; thirdly, to indicate the various points at which discretion will be necessary; and fourthly, as far as possible, to place the exercise of that discretion within

⁵ 296 H.C. Debs., cols. 831-3.

limits of which this House can be aware.”⁶ He pointed out that under the regulations, where a member of a family other than the applicant, his wife, mother, or father had some savings or capital resources, these were to be treated more generously than the Act itself provided.

The second important statement, also put forward in the White Paper, was that according to an estimate made from a sample checking, with the total number receiving assistance remaining constant, the Board in the ensuing year would pay out £3,000,000 more than the present outlay for transitional payments.⁷ The Minister hastened to add that this, of course, did not mean that every single person was going to receive more than he did as transitional payment. Nevertheless, Mr. Stanley’s remarks clearly created the impression that discretion would be widely exercised and that more generous assistance would be the lot of most of the unemployed then drawing transitional payments. The estimate of increased cost reinforced this impression.

A number of objections were voiced by the Labour speakers. It was complained that the regulations were too general, and that the nine-page White Paper was a mere paraphrase providing no answer to concrete questions such as how personal requirements of wage-earners would be treated. The scale was declared to be too low, below that of some public assistance authorities. Assessment of need was said to be arranged on too mathematical a basis, and the prediction made that the discretionary power would be little used. Lastly, it was complained that too little time had been permitted for members of the House to inquire exactly how the scale would affect

⁶ 296 H.C. Debs., cols. 841-2.

⁷ *Ibid.*, col. 855.

individual cases in their constituencies. The Minister had received the regulations in October, while the House had only six days between the time when they were presented in December and the beginning of the debate.⁸

Two critics of the regulations based their opposition upon assertions that the Board had not been free from certain pressures in determining the scale of allowances to meet the needs of the unemployed. Said Mr. Griffith of the Liberal Opposition: "There are three inhibitions in the way of it (the Unemployment Assistance Board) performing its statutory duty. The first one obviously is the fear of the Treasury. . . . The second inhibition is fear of competing with wage rates. . . . More serious than either of the two inhibitions which I have mentioned is the fear of competing with the statutory unemployment benefit rates."⁹ Miss Rathbone, Independent member for the English Universities, was not so general; she blamed solely the Treasury. "It (the scale) has been built in response to the admonitory, wagging finger of a Treasury continually reminding the Board, 'We cannot afford to spend too much. The nation cannot afford luxuries.' I am not suggesting that the Treasury has actually interfered in the deliberations of the Board, but is not its general attitude towards increased expenditures on social services well known, and has not the Board been furnished with an ex-Treasury official, saturated with the spirit of the Treasury, as its deputy chairman?"¹⁰

The debate on the regulations ended at nine-thirty in the evening of the first day, when the Labour Opposition pointed to a typographical error in the regulations

⁸ 296 H.C. Debs., cols. 858-80.

⁹ *Ibid.*, col. 972-3.

¹⁰ *Ibid.*, col. 1029.

presented to the House and chided the Government because no amendment could be moved to rectify this fault. A corrected copy was presented the next day, and the debate continued until 11 p.m. on that and the following day. The regulations were approved by a Party vote, the Government having "put the Whips on" to ensure passage of the motion.

The House of Lords gave part of one day to consideration of the regulations. Approval was moved on December 20th by Lord Rochester, the Paymaster-General, who again emphasized the liberality of the scale of allowances and the prospect of more generous treatment for the unemployed.¹¹ For the Labour Party Lord Marley repeated the objections, complaining first of the inability to amend the regulations—"the form in which the Regulations are put before both Houses I would describe as a Parliamentary Fascism";¹² of the fact that there was no part for the local public assistance committees to play in the new scheme; and lastly, of the inadequacy of the scale levels. After brief remarks by two other members, Lord Rochester closed the debate, and the motion of approval was passed without a vote.

The Unemployment Assistance Board was to assume responsibility for the relief of the unemployed at two times, designated the First and Second Appointed Days, determined by the Minister of Labour with the approval of the Treasury. On the First Appointed Day the Board was to take over all those persons receiving transitional payments under the system begun in 1931. These were individuals in need who had had an insurance status at some time, but were ineligible for unemployment insur-

¹¹ 95 H.L. Debs., col. 653.

¹² *Ibid.*, col. 659.

ance benefit, mainly because of the length of their joblessness. On the Second Appointed Day the Board was to take over those able-bodied unemployed then supported by local authorities, if the normal occupation of these persons was one in which contributions were payable under the Widows', Orphans', and Old Age Contributory Pensions Acts; or, for those unemployed since reaching sixteen years of age, if the normal occupation might reasonably have been expected to be one in which such contributions were payable. The Board's scope, consequently, included all the able-bodied unemployed who had been or might have been engaged in work having an insurance status under the broadest national provisions. With the approval of the regulations, the Minister of Labour set January 7, 1935, as the First Appointed Day and the following March 1st as the Second Appointed Day.

On the first date the Board's scale of allowances, determined after investigation of the circumstances of each applicant and with deductions for family resources, became applicable to all those who had been receiving transitional payments. Immediately protests began to rise as cuts were made from the amount formerly provided. Within a short time the outcry swelled in volume until a political storm of the first magnitude appeared on the horizon. Reassembling on January 28th after the Christmas recess, the House of Commons was eager to give vent to the indignation sweeping a good part of the electorate. It so happened that there was pending before the House a supplementary civil estimate appropriating £5,000,000 for Unemployment Assistance Board allowances until the end of the fiscal year, March 31st. That

this sum should be proportionately considerably below the £44,000,000 annual cost estimated in the White Paper was all that was necessary to touch off an explosion.

In presenting the estimate and acknowledging responsibility to answer for it, the Minister of Labour revealed his awareness that the Government were in for a difficult time. He pointed out that he had never tried to conceal that the regulations, if approved, would lead to reductions in certain cases. He insisted that these reductions would be most numerous and severe in those areas "where the administration of the existing law had ever been lax." He then explained that in the stress of getting a new organization under way the Board's officers had not understood how they were to exercise their discretion, and he informed the House that steps were then being taken by the Board to bring the correct interpretation to their officials' attention. Lastly, he declared that it was still too early to judge the full effect of the regulations on the country as a whole. If there were anomalies and hardships, the Board would want to submit to the Government and to Parliament the necessary amendments to the regulations.¹³

The Labour attack was launched by Mr. Lawson.¹⁴ He began by asserting that the Government had led them to believe that the lot of the unemployed under the regulations was to be improved. As proof that this was not the case he pointed to a letter published that day in the *Manchester Guardian*, signed by Nonconformist, Church of England, and Roman Catholic clergy in South Wales, protesting the "harsh application" of the means

¹³ 297 H.C. Debs., cols. 43-5.

¹⁴ *Ibid.*, col. 47.

test, the handling of cases in a "ruthless general manner," the breaking up of homes, and the reduction of the purchasing power of the community. Mr. Lawson then cited reductions in cases in Durham, where administration of transitional payments had been under the Minister's own commissioners, who could scarcely be called "lax." He concluded by declaring: "We are in a minority in this House and little heed is paid to us as far as the Lobby is concerned, but the Government are going to be faced in the months to come with a situation among the unemployed more dangerous than any it has known since the end of the Great War."¹⁵

Others took up the denunciation. One spokesman revealed his emotion by declaring that "the deliberate reduction to lower levels of subsistence of large numbers of our population, a reduction to a level that no Member of the Government and no supporter of the Government would dare justify even in this House," constituted a social revolution.¹⁶ He charged: "This National Government are shielding themselves behind this so-called national board. They have deliberately created it, and they are seeking to hide themselves behind its rotten bulwarks."¹⁷ His closing peroration rang out like a clarion call to his own type of revolution: "I hope the working classes of this country will pay heed to what is said and done here to-day and that from now onwards the agitation which is at such a height in South Wales (Hon. Members: 'And all over!') will spread like a flame throughout the country and that the English and Scottish working classes will join with the Welshmen and make the demand that, come what will, these damnable regula-

¹⁵ 297 H.C. Debs., col. 54. ¹⁶ *Ibid.*, col. 59. ¹⁷ *Ibid.*, col. 63.

tions must be withdrawn from the Statute Book of this country.”¹⁸

What was most significant, however, were the voices of protest heard from the ranks of the Government’s own supporters. One confessed that he had thought that the regulations would benefit the unemployed, whereas investigation in his behalf had revealed widespread reductions. “I do say with all sincerity that that is a state of affairs which cannot be tolerated.”¹⁹ He added: “The new administration is brutal. . . . I appeal to the Government to review the situation as quickly as possible.”²⁰ Another admitted “a very strong feeling had been aroused.”²¹ A third rose to testify that “under these regulations the conditions of the unemployed are in many cases worse,”²² while yet another was more specific: “Eighty per cent of the people in my constituency who came before the Board suffered a reduction.”²³ This was, he added, a “very serious thing.” There was “something wrong.” “Unless something is done there will be a great deal of trouble in my part of the world.” He excused his support of the regulations on the ground that “it was quite impossible to foresee the result.”²⁴

As the evening wore on more and more of the back benchers on the Government side of the House added their protests. “I have had experience of much discontent at the way the present regulations are affecting my constituents. . . . There is not the least doubt that they are harsh and severe in some respects. . . . It is the duty of the Government to adjust those hardships.”²⁵ Another

¹⁸ 297 H.C. Debs., col. 63.

¹⁹ *Ibid.*, col. 64.

²⁰ *Ibid.*, cols. 66-7.

²¹ *Ibid.*, col. 68.

²² *Ibid.*, col. 94.

²³ *Ibid.*, col. 100.

²⁴ *Ibid.*, cols. 102-3.

²⁵ *Ibid.*, cols. 110-11.

related that since the debate had begun he had telephoned his district, and the Provost of a burgh had told him he regretted to say that under the new regulations "there was a good deal of unfairness." "I am mentioning this," the member went on, "in order to try to help the Government to realize the seriousness of the situation."²⁶

Mr. Harcourt Johnstone observed: "We have all been to some extent disappointed by the rigidity with which the regulations are working. . . . The hopes raised in the House—and I think the hopes were generally raised in the House among the supporters of the Government—have, as we have seen from the testimony which has been offered this afternoon, on the whole been falsified." Then he raised directly the issue of how this dissatisfaction was to be met in consequence of the Board's position. "Where are we as Members of Parliament to apply in cases of extreme and immediate hardship? Are we to apply to Sir Henry Betterton's Board, and in what form and how? In ordinary cases where a Department of State is responsible for the administration of an Act of Parliament we know exactly where to go, but in this case we are in a great deal of doubt, and it would be useful to the whole Committee if the right hon. Gentleman would clarify that point."²⁷ And still another back bencher remarked that this was the most serious debate he had heard in five Parliaments. "I rise to warn the Government. I am sure things will be rectified."²⁸

Government supporters, Labour, and Liberal Opposition alternated in offering criticism. Few words in defence or even extenuation were uttered. The Parlia-

²⁶ 297 H.C. Debs., col. 121.

²⁷ *Ibid.*, cols. 122-5.

²⁸ *Ibid.*, col. 140.

mentary Secretary when he finally rose to close the day's debate confronted a turbulent House. He made some attempt to defend the Board, declaring that the reductions resulted from the previous lax administration of local Public Assistance Committees as well as from increased employment in the families of applicants. He insisted that more money per case was going to be spent under the regulations than had been spent for transitional payments. Then, as to how grievances were to be ventilated, he made an important statement. "I think it is clear that Members of Parliament have access both to the Board and to the Minister. If a Member knows of any particular case to which he thinks our attention ought to be called no doubt he will write to us and we will do our best to get from the Board an explanation of the particular circumstances and let the Member have it."²⁹

This was the first time a responsible Minister had definitely pledged the Ministry of Labour to act as a means of Parliamentary communication with the Unemployment Assistance Board. It was, moreover, a blanket promise, without exception, specifically to seek explanation of individual decisions.

Another phase of the Ministry's relations with the Board was included in his assurance that all points raised in the debate "would be referred by us to the Board, and I think it is safe to say that the Board will in fact be able to meet the several points they desire to have met by administrative action."³⁰ He closed by expressing the belief that the debate that day had served a good purpose and that the Board and their chief officers would read what the Members of Parliament had said

²⁹ 297 H.C. Debs., cols. 153-4.

³⁰ *Ibid.*, col. 154.

with care and would make sure, so far as they could, that all cases of hardship were sympathetically dealt with. While the Parliamentary Secretary could not promise complete review of the regulations, inasmuch as existing determinations were not final but subject to the approval of the appeal tribunals, he did pledge that the existing situation would be carefully looked into. Upon this word the debate for that day closed. But a demonstration in the galleries upon adjournment was still another indication of the feeling which had been aroused.

The next day, Tuesday, January 29th, the debate was continued. The Government's failure to press for a division the night before was a concession to the desire of the House for further discussion of the Unemployment Assistance Board regulations. Mr. Lansbury, the first Labour speaker, was more conciliatory in tone than were his colleagues on the previous day. He appealed to the Government to hold up the execution of the regulations until the machinery was in working order. He was really suggesting postponement of the First Appointed Day. Concerning the function of the House he said: "We are here to deal with the grievances of the commons of this country."³¹ He then went on: "It is not that the Government are a set of people who wish to depress and oppress the poor, but somehow or other they think that they have produced a scheme which at one and the same time will save money and also feed the masses who need money." Mr. Lansbury moved that the Committee report progress, which would have meant repudiation of the Unemployment Assistance Board, by not of the Government, by the House of Commons.

³¹ 297 H.C. Debs., col. 195.

The Lord President of the Council, Mr. (now Earl) Baldwin, on the Government's behalf declined the motion. He admitted that the assistance machinery might not be working as it should, and expressed satisfaction that the House so soon after the inception of the Board's work could have this debate and that members could bring to the House, as the "proper place," all the criticisms they had of the new system.³² In individual cases, he acknowledged, adjustments "might well have to be made." With the rejection of Mr. Lansbury's motion, members once again took up the complaints of harsh treatment in individual cases under the new regulations.

A Government supporter (Captain Archibald Ramsay) intervened to suggest a way out of the general dissatisfaction. He began by observing that in the face of the Government's avowal that more money was to be spent under the regulations so much discontent must have arisen because of defects in administration. Then he made his request. "I see an interval of time between now and the satisfactory functioning of these regulations, and, assuming that the efforts of the new Board are not very satisfactory at the outset, will not the Minister of Labour consider making some sort of stand-still order which would result in these cuts which are being effected not becoming operative until the people who are suffering them shall have been able to have their cases heard on appeal?" He went on: "I feel that it is not the country's wish, nor is it the wish of this House, to save the few thousands of pounds that may represent the difference between carrying on the old rates of pay for the few weeks until the appeals are heard and making the cuts operative

³² 297 H.C. Debs., col. 198.

at once. I hope the Government will consider that possibility."³³

A Labour speaker following immediately endorsed the proposal. It was obviously based on the defence made by the Parliamentary Secretary the night before that adjustments could be expected from the appeal tribunals set up under the Unemployment Assistance Act. For a short period, until the appeals could be considered, it was suggested that the former determinations of the local Public Assistance Committees be continued. Nothing more that evening was heard of this possible solution. Government supporters generally were clearly inclined to blame the machinery for not achieving the desired flexibility of administration; the Government's intentions were held above reproach.

Early in the evening the Minister of Labour concluded the debate. He asserted that "both the Government and hon. Members as individuals have no desire to see hardships created by this new machinery," and he repudiated the insinuation that either the Unemployment Assistance Act or the regulations had been designed as economy measures.³⁴ After noting the specific criticisms made by members, he declared: "All of these difficulties, in the opinion of the Board, can be met by the issue of instruction as to the way discretion is to be used. I am informed by the Board that they believe themselves capable of doing that and that they intend to take that action."³⁵ Sir Stafford Cripps at once challenged how far the Board could legally exercise their discretion in meeting the revealed difficulties, but the Minister insisted that the

³³ 297 H.C. Debs., col. 215.

³⁴ *Ibid.*, col. 240.

³⁵ *Ibid.*, cols. 245-6.

Board could do this, and that in contrast with the rigidity experienced at first more and more discretion would be exercised in the coming weeks. He promised haste in dealing with cases of hardship, assuring Government supporters that many hardships had already been rectified, that the Board was making "urgent and definite" inquiry into other cases, and that everything possible would be done to meet them.

A final Opposition speaker expressed disappointment that the Minister could not promise something more "tangible and definite," and challenged the power of the Board to change the regulations as they had passed Parliament.³⁶ At 7.40 p.m. a division was taken and the Vote for the Unemployment Assistance Board approved by the Committee on Supply.

The dissatisfaction, however, with unemployment allowances as administered by the Unemployment Assistance Board was far from being allayed. The two days of debate in the House of Commons had merely focused more attention upon the situation. Protests in the depressed areas were still being voiced vigorously; unrest in many constituencies perturbed the rank and file of Government supporters. There was still an expectation that the Government would do something dramatic and definite to quell the complaints heard on so many sides. In the House of Commons on January 31st Mr. Lansbury intimated that members were expecting some important statement from the Minister of Labour on the report stage of the Unemployment Assistance Board Vote.³⁷

On Tuesday, February 5th, the report on the Unemployment Assistance Board supplementary estimate was

³⁶ 297 H.C. Debs., cols. 249-50.

³⁷ *Ibid.*, col. 530.

placed first on the Order Paper. The Minister of Labour arose to make his eagerly awaited statement. He began by repeating that the regulations were not an economy measure but designed to improve the lot of the unemployed. He related that in consequence of the debate a week before he had made representations to the chairman of the Board about the opinions and details of cases conveyed to him by members during and after the House discussion. The Minister well knew that there was some amount of exaggeration in the criticisms, that political opinions coloured the statements, but he was nevertheless convinced that there was "a substantial amount of grievance and hardship in existence" and that there was widespread uneasiness, not confined to one political party, as to the way the regulations were operating in practice.³⁸

He had made these representations, the Minister said, because "I felt, too, that in this matter I had a special responsibility. It fell to my lot as Minister of Labour to conduct the passage of these regulations through the House." While the statements he had then made had been subject to qualifications difficult to forecast accurately, he appreciated that these statements had influenced the passage of the regulations. "But from the information I have been able to get and the inquiries I have been able to make, I have seen enough to make me uneasy as to the accuracy of the picture which I then presented to the House on which, to some extent, I asked the House to approve the regulations."³⁹ He still regarded the regulations as sound in principle, but adjustment in details would take time. Amendment should not be undertaken

³⁸ 297 H.C. Debs., col. 962.

³⁹ *Ibid.*, col. 963.

hurriedly; there should be reasonable time in which to investigate, to consider, to decide. Yet where the lives of men and women were at stake, it was impossible to say that hardships should be endured while time was spent in consideration and devising a cure. The Minister continued that he had no apologies to make for his representations to the Unemployment Assistance Board. The various means afforded for the House to bring under review the policy "of this independent body" and the need of insuring that the Board was aware of Parliament's wishes amply justified his action.

As for the Board, the Minister said they were indignant that the regulations should have been characterized as at starvation levels. Furthermore, the Board felt that the public were not fully aware of the reasons for the reductions, especially of the fact that family resources had never been fully revealed to the Public Assistance Committees. Yet the Board were willing to examine the whole situation afresh in the light of the criticism voiced in the House. But since an immediate reconsideration of all cases was impossible, the Board had decided, and the chairman had so informed the Minister, to order their officers to make allowances to all applicants according to either the regulations or the transitional payment practice, whichever was the higher. Past reductions would be refunded. This arrangement was temporary, it would perpetuate certain anomalies, but in the meantime the Board would have opportunity to make their investigations and subsequent proposals. Whether this decision would require Parliamentary sanction or not was being considered and an announcement made later.⁴⁰

⁴⁰ 297 H.C. Debs., cols. 965-7.

The Minister of Labour concluded by saying that he did not regard this decision as weakening the Government or the Unemployment Assistance Board. Both had placed humanity above pride. He thought the realization that "public opinion could still find an outlet and that the House of Commons is not impotent in a matter of such importance" would not impair the prestige of the Board but strengthen their possibilities of proving a humane and useful organization. With these words of pious hope the Minister proclaimed the retreat from the first regulations.

To Government supporters the decision brought welcome relief. Further admissions were made of dissatisfaction with the regulations, and concrete suggestions for improvement put forward. To Opposition Labour and Liberal members was afforded a brief hour of gloating. A general "I told you so" came from speaker after speaker.⁴¹ The Government was twitted about the political motives for their action, about their fear of electoral disaffection. The Parliamentary Secretary concluded the debate by explaining that the "Standstill" would continue until new regulations could be introduced and passed. Ignored was an interruption by Mr. Boothby, Conservative, who protested continued mention of the Board's intentions and the inference that basic questions were being decided without reference to the Government. The Parliamentary Secretary did state that new legislation

⁴¹ To whom Lord Dunglass made answer thus: "They can hardly blame us on this side for not paying too much attention to their prophecies, because we have heard many on different subjects from those benches; and he will realize that the value of prophecy is sensibly diminished when it is often repeated and so seldom fulfilled." *Ibid.*, col. 1002.

would be required to effect the decision announced by the Minister, and that this would be presented shortly.⁴² The Vote for the Unemployment Assistance Board was passed with only six negatives recorded, the Labour and Liberal members abstaining.

The Unemployment Assistance (Temporary Provisions) Bill was introduced in the House of Commons on Friday, February 8th. The second reading, it was said, had been scheduled for the following Tuesday. The Bill carried out the promise that applicants for assistance allowances should receive a sum determined under the Unemployment Assistance Board regulations or transitional payment practice, whichever was the greater. Past reductions were to be restored, and the Second Appointed Day indefinitely postponed. The Standstill was to come to an end upon order by the Minister of Labour, confirmed by resolution of both Houses of Parliament. The measure was briefly explained by the Parliamentary Secretary to the Ministry of Labour when he moved the second reading.⁴³

Mr. Greenwood, speaking first for the Labour Party, declared that his criticisms were directed against the Government, not the Unemployment Assistance Board, for it was the Government who had determined the amount of cloth from which the Board had to cut their coat. "If the Unemployment Assistance Board could not produce a larger coat it was because there was not sufficient cloth provided by the Government wherewith to make a larger coat, and the fault rests with the Government and not upon the Unemployment Assistance Board. No aspersions will be cast by my hon. Friends on this

⁴² 297 H.C. Debs., cols. 1055-9.

⁴³ *Ibid.*, col. 1777.

side against the Board. We prefer to save our powder for the Government which is primarily responsible."⁴⁴

The relations of the Government to the Board were the subject of additional comment during the day. A Government supporter laid the blame for the fiasco upon the Board. "I want to say frankly that I consider the Unemployment Assistance Board to have lost the confidence of this House of Commons, of the country, and of the unemployed under its present management and under its present policy."⁴⁵ Pointedly he asked the Government about future policy, programme, and personnel of the Board. He implied that, if not previously, from this time on the Government must assume direct responsibility for the Board's actions. An Independent Labour Party speaker objected to the efforts made to shift responsibility from the Government to Board and back again, complaining of the uncertainty and confusion which resulted.⁴⁶ Another Government supporter remarked that "it was quite obvious that there had been a bad slip-up between the Ministry of Labour and the Unemployment Assistance Board."⁴⁷

Later the Minister of Labour replied: "Hon. Members in all parts of the House have talked about responsibility and about attempts to put responsibility on this or that person. I am not looking for anyone on whom to put responsibility, and I am certainly not going to put it on the officials of the Board. . . . The responsibility of submitting those scales (the regulations) to Parliament was not the Board's; it was mine."⁴⁸ He indicated that

⁴⁴ 297 H.C. Debs., col. 1784.

⁴⁶ *Ibid.*, cols. 1820-1.

⁴⁸ *Ibid.*, cols. 1888-9.

⁴⁵ *Ibid.*, col. 1800.

⁴⁷ *Ibid.*, col. 1825.

during the Standstill the Board would conduct an investigation and make proposals to the Government, which they would consider.

The committee stage, report, and third reading of the Bill were completed by 9.30 p.m. the following evening, February 13th, and the bill was sent to the House of Lords. There it was introduced the next day, the Standing Orders dispensed with, and motion made by the Paymaster-General for a second reading. Lord Rochester explained that while some dissatisfaction with the regulations was to be expected, the Government had taken the humane and courageous point of view that pending detailed investigation of the reasons for complaints no hardships should be inflicted. It was impossible to say what the cost of the Standstill would be. At first it had been expected that Unemployment Assistance Board allowances would exceed transitional payments by £3,000,000 annually, "but that estimate has not been confirmed by the experience of the short period which has elapsed since January 7th."⁴⁹ This was the first definite admission by a Government spokesman that the lower outlay than estimated in the White Paper was the Achilles heel whose vulnerability the Standstill was designed to protect. Lord Ponsonby followed with comment upon the "atmosphere of panic in which we are legislating to-day" and upon "this historic example of pitiable incompetence."⁵⁰ After short statements by four other Lords, Lord Rochester closed the debate, the bill was read a second time, referred to committee, reported, read a third time, and passed without additional debate. Royal Assent to the Unemployment Assistance

⁴⁹ 95 H.L. Debs., col. 942.

⁵⁰ *Ibid.*, cols. 943, 945.

(Temporary Provisions) Bill was affixed the following day. Thus the Standstill became a law of the land.⁵¹

By the terms of the Standstill the Unemployment Assistance Board was required to administer a "complicated double standard" of relief to the unemployed who had had an insurance status. In every case, including those applying after January 7, 1935, the Board's officers had to ascertain what the applicant would have received if his local Public Assistance Committee had been assessing his need as well as what he was entitled to under the regulations. Determination of the former often necessitated a certain amount of guess work, and the standard varied with the changing practices of the local authorities. Thus many of the variations throughout the country which previously had been strongly criticized and used to justify the Unemployment Assistance Board were perpetuated. Yet in each case transitional payment and unemployment assistance allowance had to be ascertained and the applicant given whichever was the higher.

While the Board regarded this situation as most unsatisfactory, entailing even an "abuse of public money,"⁵² the Government soon revealed that they were in no hurry to alter the arrangement. Inasmuch as the Standstill quelled the outcry over the regulations as quickly as it had arisen, sleeping dogs were best left alone.

As early as April 1935, two questions were asked in the House of Commons as to when the Unemployment Assistance Regulations would be revised. The Minister of Labour replied that he could give no answer, but

⁵¹ 25 Geo. V, Chapter 6.

⁵² *Report of the Unemployment Assistance Board for 1935*, p. 15.

scouted as rumour the prediction that their introduction would be delayed until after the next General Election.⁵³ On May 22nd the Parliamentary Secretary to the Ministry admitted that on the previous day the Minister had received a report on the Standstill from the Unemployment Assistance Board, advising in some detail how the regulations should be amended.⁵⁴ There was still no intimation when the Government would introduce revised regulations.

Subsequent questions throughout the spring and summer of 1935 were answered with the reply that the Minister had nothing to say about terminating the Standstill. When the House of Commons reconvened on October 22, 1935, after the summer recess, the first question was when would new regulations be presented. The Minister of Labour, Mr. Ernest Brown, replied that he had given the matter "anxious and prolonged examination, in consultation with the Unemployment Assistance Board, and our inquiries are not yet completed." He added that it was a subject of "great difficulty and complexity," and that he did not "anticipate any alteration in the existing position of the Standstill arrangements before next spring at the earliest."⁵⁵

This pledge was repeated in a statement issued by the Government before the General Election, which they had called for November 1935. The principal public issue at this time concerned foreign affairs, specifically the application of sanctions against Italy because of the invasion of Abyssinia. Domestic questions were relegated to secondary importance. While somewhat diminished,

⁵³ 300 H.C. Debs., col. 1989.

⁵⁴ 302 H.C. Debs., col. 351.

⁵⁵ 305 H.C. Debs., cols. 1-2.

the Government's majority was still more than sizeable after the election.

In the meantime the recriminations against the Unemployment Assistance Board were dying, and the Government preferred to let the Board fret with their administrative difficulties rather than revive controversy. The total number of the Board's applicants was declining—from 735,000 on January 7, 1935, to 620,000 at the end of June 1936—and the average weekly payment was increasing—from 21s. 10d. before January 7, 1935, to 23s. 7d. by June 1936. From 51 per cent in March 1935, the number of applicants assessed according to transitional payment practice rose to 59 per cent by June 1936.⁵⁶ An increasing majority of applicants were being assessed according to local standards, and all were being treated more generously as the numbers of unemployed fell. Here was statistical explanation of the evaporation of the Board's disfavour and of its actual growing popularity. The Government waited until they were certain that no interruption would be occasioned by the introduction of revised regulations.

The Minister of Labour was periodically pressed during the early months of 1936 to say when he would present new assistance regulations, but his replies continued non-committal. The matter was raised on adjournment the night of March 31, 1936, but no satisfaction was obtained from the Minister.⁵⁷ At the Easter adjournment on April 9th and again on the reconvening April 21st no answer was forthcoming. On May 26th the Prime

⁵⁶ All figures from *Memorandum by the Minister of Labour* (Cmd. 5228) submitted to Parliament in July 1936 to accompany the revised regulations.

⁵⁷ 310 H.C. Debs., col. 1957.

Minister, Mr. Baldwin, told the House that he regretted that it had not yet been possible to introduce new regulations. "The Government have felt it necessary to make a very exhaustive examination of the possible effects of any changes. The variety of conditions existing in different parts of the country has rendered this examination much more protracted than was expected. I am not able to indicate the precise date when the new regulations will be presented to Parliament, but I do not anticipate that final decisions will now be long delayed."⁵⁸ To the question whether the difficulties were with the Unemployment Assistance Board in preparing the regulations or with the Cabinet in accepting them, Mr. Baldwin replied that his oath as a Privy Councillor prevented him from answering.

On the Whitsuntide adjournment, May 29th, the subject was again broached without any definite reply from the Minister. At last, on June 30, 1936, the Minister of Labour told the House: "I anticipate that I shall be in a position to lay a draft of these regulations on July 14th, with a view to their publication that evening."⁵⁹ In view of the criticism that the House was not being given adequate time to consider the new regulations, the Prime Minister announced on July 8th that the regulations were then being presented and would be available the next day, that three days of debate would be allocated, but that the Government intended to press for action before the summer recess.

Accompanying the regulations the Minister this time presented two White Papers, one (Cmd. 5228) a short memorandum of eleven pages by the Minister giving a

⁵⁸ 312 H.C. Debs., cols. 1823-4. ⁵⁹ 314 H.C. Debs., col. 223.

brief summary of the new proposals, together with some statistical tables prepared by the Unemployment Assistance Board, and the other (Cmd. 5229) a copy of the regulations with an explanatory memorandum from the Board. The Unemployment Assistance Regulations, 1936, departed from the 1934 version in a number of respects. In essence the differences involved liberalization of the relief scale and of the means test, and more circumspection in the application of the regulations.

The standard of assistance, or need, for a householder and wife or husband remained at twenty-four shillings a week, except that if a family had no resources at all they were to receive not less than the unemployment insurance benefit rate, which at the time was two shillings more. Allowances for female members of a household and for additional children were raised to the standard for male members and the first child respectively. Children between sixteen and eighteen years of age were to receive the same allowance as those over eighteen, an increase from six to eight shillings a week. The allowance for all persons living alone was put at a uniform fifteen shillings, where it had formerly varied from twelve to fifteen shillings.

Furthermore, the automatic rent formula of the first regulations was modified. According to this formula approximately one-fourth of the total scale allowance for a household was supposed to be for rent. If the actual rent was more, an increase up to one third of the total allowance was to be given; if the rent was below a corresponding deduction was to be made. When the first regulations were before Parliament the Minister, like the White Paper, had emphasized the possible increase in

allowances because of high rents. The possible deductions for low rents were slighted. The Board and the Minister subsequently admitted that they were unprepared for the low rents which most applicants paid. The new regulations continued the increase in high rent cases, but eliminated the automatic deduction, providing instead that such deduction as the Board's officer thought reasonable, subject to confirmation by an appeal tribunal, should be made. Lastly, the treatment of capital assets held by some member of the household other than the applicant and wife or husband, and the treatment of earnings of all members of the household were modified so that the individual might retain more for his own use. Thus the new regulations somewhat increased the scale of household need, modified the rent rule, and liberalized the measurement of household resources.

The other important differences in the 1936 regulations concerned the method of their application. For one thing, reductions from transitional payment levels necessitated by the regulations were to be effected not at one time, but over a period of eighteen months. During that period assistance allowances were to be gradually reduced to the Board's standards; there were to be no cuts in one fell swoop as in January 1935. Secondly, the local advisory committees authorized by Section 35(3) of the Unemployment Assistance Act were now set up and given three functions. They were to advise the Board on the extent of deductions for low rents in their area, on reductions in rural areas having a lower standard of living than urban communities, and on the progressive liquidation of the Standstill. The Board's memorandum added that other assignments would from time to time

be given the advisory committees, and that they would be consulted in cases of special difficulty. In other words, the committees were to become an important defensive bulwark for the Unemployment Assistance Board, providing a cast of local participation in the decisions made.

On July 21, 1936, the Minister of Labour moved in the House of Commons that the revised regulations submitted by him nearly two weeks before be approved. Following a general review of the legislation and history of the Unemployment Assistance Board, the Minister acknowledged that the first regulations had not worked as expected. The Standstill had been to enable the Minister and the Board to investigate the difficulties. Perhaps they had been "over-long" in the process, but he insisted it was not a question concerning which they could take a "hasty decision."⁶⁰ He related that he had early decided that the framework of the act was sound, and that with certain local variations the Board could administer unemployment assistance on a national basis. He reaffirmed what had been said in 1933 when the legislation was introduced: "It is a sound principle of administration that the responsibility for the expenditure of money should not be divorced from the responsibility for raising the necessary funds."⁶¹

Taking up the new regulations, the Minister asserted that the changes were all in the interest of aiding the applicant. To a challenge from the Opposition that the local advisory committees were merely a "smokescreen," he replied, "I cannot conceive of a case in which a reasonable recommendation by an advisory committee would be neglected by the officer of the Board."⁶² While being

⁶⁰ 315 H.C. Debs., col. 288. ⁶¹ *Ibid.*, col. 291. ⁶² *Ibid.*, col. 303.

careful to include ample qualification, the Minister repeated the estimate of the Board's memorandum that on the basis of the existing number of applicants, some 620,000, the new regulations would involve an annual outlay of £750,000 above that then being expended.

In the debate which followed the new regulations were hailed for their generosity by Government supporters, while Opposition members attacked the concept that the Unemployment Assistance Board was independent and questioned the adequacy of the scale of need. The Labour Party members voiced anew their unalterable opposition to the means test. On the second day the debate ran through the entire night. The division on the motion of approval was taken at midnight, July 23rd, the Government majority carrying the motion.

The revised regulations were debated in the House of Lords on July 27th. The Paymaster-General, Lord Hutchison of Montrose, moved their approval, admitting that under the first regulations a "reduction of allowances occurred to a far greater extent than had ever been expected,"⁶³ but predicting that the new version would prove "much more flexible and adaptable to local circumstances."⁶⁴ Criticism was voiced by Lord Marley alone, and with two other short statements of support the motion was passed.

The Minister of Labour set November 16, 1936, as the effective date for the revised regulations, and April 1, 1937, as the Second Appointed Day. This time no concerted protests greeted the execution of the assistance regulations. The Government and the Unemployment Assistance Board had learned some lessons.

⁶³ 102 H.L. Debs., col. 237.

⁶⁴ *Ibid.*, col. 239.

Chapter III

MINISTERIAL RESPONSIBILITY VERSUS ADMINISTRATIVE AUTONOMY

The preceding chapters have sketched the early history of the Unemployment Assistance Board with particular reference to the determination to bestow upon this new government agency an "independent" status in the administrative hierarchy. Before examining in more detail the reality of this independence and the reasons for its conference, it may be well to state a few general considerations. A position of "independence," or of administrative autonomy, for a government body is commonly regarded as the antithesis and exception to a status marked by the limitations imposed through the doctrine of ministerial responsibility. Since this is the case, it is necessary to appreciate the norm first, from which the opposite is thought of as a departure.

Ministerial responsibility has two phases. Individually a minister of the King assumes responsibility on behalf of the Government of the Day and its supreme organ, the Cabinet, for the execution of policy in the sphere of State activity over which he presides. Collectively the ministers make up the Government of the Day, who assume responsibility to the legislature for the direction and management of State services. Not only does the British legislature (legally the King in Parliament) authorize the performance by the State of certain activities and lay down the broad outlines along which they are to proceed, but also the control of those services rests

with ministers who hold office at the pleasure of the legislature and must have the legislature's constant support and confidence.¹

Called by Sidney Low the "theoretical basis of our modern English Constitution,"² ministerial responsibility was one of the happy results of the evolution of British history. At least three steps were especially important in the development of the practice. The first was the emergence in Tudor times of the doctrine of the seals. The courts of the land, already on the road to asserting a law higher than the will of the King, would recognize the King's acts as lawful only if the proper documents were signed by the King's secretary, the forerunner of the modern Secretaries of State and Ministers, and impressed with either the Great Seal of the Realm or the Privy Seal.³ Granted that the purpose behind this doctrine may well have been the mutual protection of both the Sovereign and his judges, the requirement of the countersignature of the King's acts and the impression thereon of one of the seals was to make possible a development of great constitutional importance. The King had to have as servants ministers to whom the seals could be entrusted and who would countersign his papers.

¹ Cf. the definition that ministerial responsibility means that "the responsibility for administering a particular sphere of State activity has resided in an individual politician, nearly always an 'amateur' with respect to the business over which he presides, who superintends the execution of policy in Whitehall and accounts for it at Westminster." Terence H. O'Brien, *British Experiments in Public Ownership and Control* (London: George Allen & Unwin, 1937), p. 19.

² Sidney Low, *The Governance of England* (London: T. Fisher Unwin, 1927), p. 135.

³ F. W. Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1926), p. 203.

The second step was the result of the assertion of the right by the House of Commons to attack the King's ministers through the process of impeachment. Impeachment proceedings were of ancient origin, the first recorded instance of its use occurring in 1376. But in the Parliamentary struggles which featured the Stuart period impeachment was used as a political weapon to embarrass the King by proceedings against his ministers. Between the years 1620 and 1688 there were some forty instances of the institution of impeachment proceedings against the highest ministers of the realm. Parliament even declared that a plea of having acted at the direction of the King did not place a minister beyond its power to accuse and condemn of high treason against the State.⁴

The Glorious Revolution of 1688 and the establishment on the Throne of William and Mary brought a solution to what threatened to become an impossible situation. A King could act only through ministers, who might in turn at any time be attacked in Parliament because of political differences by what was essentially a criminal process. Such a constant threat was scarcely conducive to a bold, forthright dispatch of the State's business. In 1693 Sunderland advised King William that the best method out of the impasse was to obtain Parliamentary support beforehand by entrusting the important offices to the leaders of Parliament.

That ministers should sit in Parliament was scarcely an innovation. It is interesting to note that as far back as the minority of Henry III there had been demands that the King's ministers should sit in Parliament, but

⁴ T. P. Taswell-Langmead, *English Constitutional History*, 9th ed. (London: Sweet & Maxwell, 1929), pp. 610 ff.

upon reaching his majority Henry, as well as later monarchs, resisted these demands.⁵ But for at least a century and a half before the reign of William and Mary ministers had sat in Parliament, particularly in the House of Lords to which almost always the Sovereign had sooner or later raised his principal advisers.⁶ What was new was that there should be no ministers save Members of Parliament and that they should be the acknowledged leaders of that body. King William reluctantly accepted the further advice that ministers should come from the dominant political party in Parliament. The Whig Government of 1695 is sometimes referred to as the first of modern ministries.⁷ Certainly at this time the institution of ministerial responsibility was well on its way toward realization. Yet for a century more ministers endeavoured to serve both King and Parliament before it was fully recognized that they owed their primary allegiance to the latter and could not serve the monarch unless they enjoyed Parliament's confidence.

For a time Parliament looked askance upon the development of ministerial responsibility. But the prohibition contained in the Act of Settlement of 1701 against officers of the Crown sitting in the House of Commons never became effective, while the Security Act of 1705 and the Place Act of 1707 restricted the disability to persons holding offices created after 1705. Any member of the House of Commons appointed to

⁵ William Stubbs, *The Constitutional History of England*, library ed. (Oxford: The Clarendon Press, 1880), vol. ii, pp. 609-11.

⁶ R. H. Gretton, *The King's Government* (London: G. Bell & Sons, 1913), pp. 32-3.

⁷ Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York: The Macmillan Company, 1902), pp. 75-7.

an office created before 1705 had to resign from the House, but might stand for immediate re-election. As additional offices of State were created after 1705 it was usually provided that the incumbent might sit in the House of Commons without resigning and standing for re-election. For the earlier offices, the requirement of re-election was suspended three times during the World War, rescinded in 1919 so far as it affected ministers chosen nine months after the opening of a new Parliament, and finally repealed entirely in 1926.

The administration of State services became subject to Parliamentary criticism and control long before Parliament can be said to have represented the masses of Englishmen. The democracy which resulted from the extension of manhood suffrage to electors of members of the House of Commons and from the limitation upon the co-ordinate authority of the House of Lords found in the institution of ministerial responsibility the means for exercising democratic direction of administrative activities. The doctrine of ministerial responsibility did even more than make an hereditary monarchy and a democratic state compatible. It achieved that synthesis between the legislative and executive authority in the State which is absolutely essential to dynamic operation of government.

Administration is dependent upon the legislature for authorization of the policy it is to pursue and the use of the State's coercive power, for the broad outlines of its organization, and for the public money necessary to its existence. How to achieve the indispensable co-operation between legislature and executive while preserving certain individual values upon which they set much store

has taxed the ingenuity of the world's great political thinkers and devisers. That end has perhaps been best achieved through the English doctrine of ministerial responsibility and a deep, abiding concept of the fundamental elements of justice. Another thing that doctrine has done. Because a member of Parliament has been made responsible for whatever action is taken by the organization over which he presides as Minister, the actual work can be carried on by a corps of permanent civil servants relieved of political functions.

Modification but not nullification of the institution of ministerial responsibility has come about through latter-day developments, especially since the power of party machines has made Cabinets superior to Parliament and unchecked save by a healthy concern for periodic electoral approval. Essentially to-day ministerial responsibility means that the conduct of State services can be criticized freely in the House of Commons, and that the direction of those services can be changed when the electorate enables a different political party to gain control of the House of Commons. In themselves these are surely no insignificant features, to be dismissed as of small value.

To recapitulate, the doctrine of ministerial responsibility has done these things for the British Constitution, that is, for the practice of British government. First, the presence of ministers in Parliament has permitted direct questioning by any member. In the House of Commons this practice has become a regular part of each day's procedure, and here the Minister or Parliamentary Secretary of each great Department of State must justify every act of commission or omission which is brought to his notice. The opportunity for the ventilation of

grievances is accompanied by the like opportunity to explain and defend. The fact that ordinarily at question time the benches are better filled than at any other time, and that the questions and replies are extensively reported in the press attests how important the practice is.

Secondly, the presence of the heads of the administrative services in Parliament has afforded them direct access to press for new legislation and to explain their financial needs. Moreover, because the ministers are available for immediate questioning, Parliament has not had to enact minute details into legislation in order to insure that the legislative will is observed. If the Cabinet as the supreme executive organ of the State as well as the leader of Parliament have become more powerful than the body to which they are nominally responsible, nevertheless the Cabinet's will is not unlimited, for they cannot command the electorate how to vote—in that sphere they must persuade.

Thirdly, through ministerial responsibility not only have an hereditary monarch and a permanent civil service received democratic direction, but also peaceful change of that direction has been made possible according to the will of the electorate. All these things has ministerial responsibility accomplished.

Yet if the advantages of ministerial responsibility to the parliamentary government of Great Britain must be highly valued, there have also been defects which have brought about numerous departures in practice from the general doctrine. An important indictment of ministerial responsibility has been the allegation that the House of Commons tends to raise questions about relatively unimportant matters which must yet be the subject of

careful inquiry and justification. Admitting that there is a point at which there is danger arising from the interference by a popular assembly with the action of the executive, a recent edition of Anson comments:

That point is not easy to define. The modern practice of questioning Ministers of the Crown in either House, joined to the facility with which information of some sort on all subjects is procurable through the post, the telegraph, and the press, would seem to keep the executive under a standing committee of inquiry. And yet it is also certain that Parliament recognizes to the full the importance of non-intervention in matters of government, and that on the rare occasions when it has encroached upon executive functions, such encroachment was the result of error rather than intention. Disapprobation of a Minister, of a department, of a policy may be and is from time to time expressed, but interference with the action of a Minister, or of a department, or with the development of a policy is, on the whole, carefully avoided.⁸

Such a definition of the relative sphere of competence of legislature and executive represents an ideal rather than a practice. Actually an attempted differentiation between matters of policy and of administrative detail is, and must be, indistinct. Moreover, the differentiation, if it could be made, ill-accords with the realities of Parliamentary interest in the conduct of government business.

Is it possible to visualize policy apart from adminis-

⁸ William Anson, *The Law and Custom of the Constitution*, 4th ed. by A. Berriedale Keith (Oxford: The Clarendon Press, 1935), vol. ii, p. 402.

trative details? Surely Parliament cannot be expected merely to accept a ministerial declaration on such a subject, say, as age of enlistment in the armed forces without inquiring how that policy is being observed in practice. Details reveal adherence or non-adherence to an announced course of action. Moreover, details secrete, if not actually create, policy. Only one ignorant of the work of great government departments can imagine that all questions which arise can be quickly dealt with according to some clear, well formulated pronouncement from the responsible minister. The infinite variety of individual circumstances with which any government service must cope defy simple comprehension, and unforeseen contingencies bring about modification, or even inauguration of a new method of dealing with these cases. Sometimes questions about details are necessary to reveal a changed policy. Sometimes questions about details are necessary to effect a new policy where a previously announced one produces anomalies. Administrative details are policy in execution.

On the other hand, what is the nature of the interest of members of Parliament in the work of the government departments? The primary policies of the Government of the Day are determined by the Cabinet in consultation with whatever interests or individuals they select. The House of Commons must then accept those policies or prepare to face dissolution and a general election. And the power of the central party machine under the Cabinet's domination to punish dissenters is such that the individual must follow his party's lead unless he is one of the very, very few who cannot be thus intimidated. This situation is too well known to require comment. A few members

may debate policy, but the great majority must content themselves with being part of the silent horde invaluable at division time *or* with asking questions about administrative details.

By asking questions does the member indicate his concern for his constituency. The single individual in the electorate does not so much care about finely worded statements of policy as about the way any government action affects the little sphere in which he lives. When adversely dealt with, a person may make inquiry of his elected representative. The least the elected representative can do is pass the inquiry on to the proper department. The right to inquire formally at question time insures that matters raised informally will be considered. Thus are the "fences back home cultivated." Furthermore, the voicing of grievances is dignified by being called one of the great functions of Parliament.⁹

Certainly the members of the Opposition are not interested in preserving any niceties of constitutional distinction, but are alert for any and all means to embarrass or ridicule the Government of the Day and so to jeopardize their support among the electorate as to cause their party's defeat at the next general election.

An attempted reconciliation based upon a demarkation of the relative spheres of competence of legislature and executive is not convincing. The possibility of legislative interference in administrative matters cannot be explained

⁹ "After forming a Government, the most essential function of the House of Commons in our system is the ventilation of grievance." Harold J. Laski, *Parliamentary Government in England* (London: George Allen & Unwin, 1938), p. 147. Cf. Walter Bagehot, *The English Constitution*, 2nd ed. (London: Kegan Paul, Trench, Trubner & Co., 1922), p. 133.

away. Interference does exist, and the arguments that this situation is undesirable must be confronted. The burden of complaint is that responsibility to Parliament breeds timidity among civil servants and ministers, results in a loss of initiative and enterprise, places too much emphasis upon the avoidance of criticism rather than constructive action.

Dr. William A. Robson has written: "The most conspicuous fact about the present situation is the depressing effect on departmental initiative and administrative energy. . . . Routine, precedent, and the avoidance of risks tend to become the navigating lights by which the departmental ship is steered."¹⁰ Another English student, Mr. T. S. Simey, has elaborated upon the charge. Under the system of ministerial responsibility, he has noted, that since their critics of to-day may be their masters to-morrow, the permanent officials incline toward impartiality in the worse sense—they lose the qualities of enthusiasm and zest in their service. Not only do they keep meticulous records, but they insist that every important question go to the minister for decision in order to protect themselves. Mr. Simey has added: "The critics of departmental work are one of the most potent factors making for the multiplication of Red Tape, for the ever-present fear of the slings and arrows of outrageous questioning in Parliament makes departmental procedure and records cumbersome in the extreme."¹¹

A former Assistant Postmaster-General, Viscount Wolmer, has declared: "A Minister must offer as small

¹⁰ William A. Robson, ed., *Public Enterprise* (London: George Allen & Unwin, 1937), p. 378.

¹¹ T. S. Simey, *Principles of Social Administration*, pp. 78-9.

a target as possible to the snipers of other parties, and he therefore tends only to adopt a forward policy on the rare occasions when the risks of doing nothing are judged to be greater than the risks of doing something."¹²

These are serious charges. It is undeniable that British civil servants are eternally aware that their actions may be called to account in the House of Commons, and that many dislike this limitation. But does it necessarily follow that Parliamentary questioning is therefore to be deprecated? A healthy concern for the popular reaction as mirrored in Parliament has probably saved many an administrator from some ill-advised step. Furthermore, a carefully reasoned decision which can be produced and defended if necessary is a powerful safeguard to all who may be affected by administrative action. When persons of widely divergent political points of view rail against ministerial responsibility, it may mean that their dissatisfaction is more with the hesitancy and indecision of democratic government. As for rigid and cumbersome procedures, these feature administration in countries which do not know the practice of ministerial responsibility. A legislature which does not have direct access to and control over administration may seek to ensure the execution of its will by the enactment of minute details into law.

Ministerial responsibility, moreover, has not been without its defenders. A recent English commentator has observed: "Ministerial responsibility to Parliament for every act of every official provides the essential safeguard for an honest and efficient executive and for its proper

¹² Viscount Wolmer, *Post Office Reform* (London: Nicholson & Watson, 1932), p. 227.

subordination to public policy.”¹³ Furthermore, he has pointed out that criticism and publicity may spur on to achievement, that inventiveness may win praise as well as hostility. Where improvements are needed and criticism justified, criticism and suggestion are preferable to silence.¹⁴ He might have asked also whether timidity and lack of initiative were so much traceable to a system of conducting government business as inherent defects of personality in British civil servants and ministers.

How important is the House of Commons’ function to air grievances, Professor Laski has indicated in these words:

Of the value of this right, no one who has watched its operation can have any doubt at all. No better method has ever been devised for keeping administration up to the mark. It assures that what a Government does will, overwhelmingly, have to be done in the light of day and answered for in the light of day also. I do not say that it gives an assurance that justice will be done; it does give an assurance that there will be a careful examination into the accusation of injustice. The Minister against whose department the accusation is made knows that he is on trial. He is eager, if he possibly can, to convince the House; he is even anxious, if he can, to persuade his critic to accept his explanation.¹⁵

Excessive centralization of administration is another grave defect imputed to ministerial responsibility. This point of view was given official sanction in a famous statement by Sir Austen Chamberlain to the House of

¹³ H. R. G. Greaves, *The British Constitution* (London: George Allen & Unwin, 1938), p. 176.

¹⁴ *Ibid.*, pp. 182–3.

¹⁵ Harold J. Laski, *op. cit.*, pp. 148–9.

Commons on April 2, 1902, when as Financial Secretary to the Treasury he answered questions relating to the Post Office:

In a great administration like this there must be decentralization, and how difficult it is to decentralize, either in the Post Office or in the Army, when working under constant examination by question and answer in this House, no honourable Member who has not had experience of official life can easily realize. But there must be decentralization, because every little petty matter cannot be dealt with by the Postmaster-General or the Permanent Secretary to the Post Office. Their attention should be reserved in the main for large questions, and I think it is deplorable, absolutely deplorable, that so much of their time should be occupied, as under the present circumstances it necessarily is occupied, with matters of very small detail, because these matters of detail are asked by honourable Members, and because we do not feel that an honourable Member will accept an answer from anyone but the highest authority. I think a third of the time—I am putting it at a low estimate—of the highest officials in the Post Office is occupied in answering questions raised by Members of this House, and in providing me with information in order that I may be in a position to answer the inquiries addressed to me concerning matters which, in any private business, would be dealt with by the officer on the spot, without appeal or consideration unless grievous cause were shown.¹⁶

Similar sentiment has been expressed by others.¹⁷ Yet

¹⁶ 106 H.C. Debs., 4 s., col. 733.

¹⁷ Cf. Clement Attlee, "Post Office Reform," 2 *New Statesman and Nation* (November 7, 1931), 565.

here again there is reason to doubt if an undesirable condition in administration has altogether been ascribed to the proper causation. Over-centralization is a fault of all large organization which must be combated with positive efforts if it is to be remedied. Hierarchy of authority causes a natural propulsion of decision to the top. The reason, which has nothing to do with ministerial responsibility, has been well expressed by a prominent Civil Servant, who used the Army as illustration but could well have applied his remarks equally to a large civil organization.

Centralization has long been known as one of the besetting sins of all armies in peace time; and though the vast scale of modern war has made it impossible in the fighting of battles, and though all soldiers are now (at all events in theory) advocates of decentralization, and not least in matters financial, so human is the heart that beats under a red coat, that it is a common experience to find a soldier enthusiastically keen on decentralization, down to the particular place he holds in the chain, but much impressed by the practical difficulties involved in carrying it any lower.¹⁸

The personality of the head of an organization has much to do with the degree of decentralization obtainable below him. Distrustful and cautious ministers desire decisions to be made close to them, not by officials in the field. Proximity to the magic personality of the "chief" evidently engenders greater wisdom than can be found in those immediately confronted with a problem. This state of affairs has likewise characterized great

¹⁸ Sir Charles Harris, "Decentralization," 3 *Public Administration* (1925), 117, p. 123.

departments in countries where ministerial responsibility is not part of the constitution. But in England a minister of different calibre must also combat the tradition of the civil service which makes officers of the administrative class the fount of all important decisions. The members of this class congregate in Whitehall, only occasionally visiting the field, and are usually hostile to encouraging too great a sense of initiative and responsibility in the departmental class officers outside London. None of these factors would automatically cease to operate if ministerial responsibility were suddenly to cease to exist.

In addition, the deficiencies of Parliamentary questioning have from time to time been deplored. Viscount Wolmer wrote, "The unfortunate thing is that this House of Commons' criticism is seldom sufficiently well informed to be constructive or even to diagnose the underlying causes of subjects of complaints. It is a mass of individual complaints coloured by party recriminations."¹⁹ Similarly, Major Attlee, later the leader of the Labour Party in the House of Commons, asserted in 1931: "As regards policy, Parliamentary control is perfunctory and there is little informed criticism."²⁰ And while justifying the status of government corporations only, Dr. Robson has written:

There can be little doubt that on the whole the relinquishment by Parliament of its detailed day-to-day "control" over the undertakings run by public boards is an immense advantage. The so-called "control," even if nominally exercised, would certainly not be effective in any sphere of activity where the service is technical.

¹⁹ Viscount Wolmer, *op. cit.*, p. 230. ²⁰ Clement Attlee, *op. cit.*

The haphazard sniping which takes place during question time does not result in real control even in the case of the Post Office. What it does is to ensure the ventilation of comparatively minor abuses, injustices, stupidities, extravagances, and grievances, and thereby reduce the likelihood of their occurrence.²¹

Yet if Parliamentary criticism is so ill-informed, then it should not be difficult to answer effectively. And surely the ventilation of even minor grievances suffered by some complaining citizen is not entirely unimportant.

These do not exhaust the arguments against the system of having government services under the direction of ministers responsible to Parliament. Enough has been said to indicate that whether justified or not dissatisfaction has been voiced. More than that. In practice from time to time departures have been made from the doctrine of ministerial responsibility. During the nineteenth century, at the very time when ministerial responsibility was becoming increasingly significant, outstanding efforts at weakening the ties between Parliament and administration were made in connection with important social reforms. The amendment of the Poor Law in 1834 was accompanied by the creation of a Poor Law Commission, composed of three members none of whom sat in Parliament, which was to exercise central supervision over the way in which local Boards of Guardians fulfilled their duties.²² Before its demise in 1847 the Poor Law

²¹ William A. Robson, *op. cit.*, p. 377.

²² For a brief account of the Poor Law Commission, see Gilbert Slater, "The Relief of the Poor," in Laski, Jennings, and Robson, eds. *A Century of Municipal Progress, 1835-1935* (London: George Allen & Unwin, 1935), pp. 338-43.

Commission encountered many vicissitudes which cast doubt upon the desirability of the device. Even so, another such organization, the General Board of Health, was established in 1848; its independent status was changed in 1854, and the Board came to an end in 1858.

The experience of these years was such that Walter Bagehot, writing about 1870, could say, "The experiment of conducting the administration of a public department by an independent, unsheltered authority has often been tried and always failed."²³ Referring specifically to the Poor Law Commission, he noted that in this instance the experiment had been tried under the most favourable circumstances; one of the commissioners was Sir George Cornewall-Lewis, "the best selective administrator of our time," and the Commission's secretary, Edwin Chadwick, was one of the ablest of government servants. The reason Bagehot ascribed for the failure is important: "The House of Commons would not let the Commission alone. For a long time it was defended because the Whigs had made the Commission and felt bound as a party to protect it."

Another verdict on these early departures is worth quoting, because of the mixed reaction engendered by the result.

The administrative history of the nineteenth century shows a sweeping victory won by the principle of ministerial responsibility against the rival theories of "expert" or "judicial" administration. Viewed from the political angle its success was completely justified. From the point of view of the administrator the wisdom of

²³ Walter Bagehot, *The English Constitution*, p. 189.

the final decision is more doubtful, for it proved difficult to reconcile ministerial control with departmental efficiency.²⁴

Whatever the warning of nineteenth-century experience, an affinity for boards without direct responsibility to Parliament survived.²⁵ Opposition, however, was not lacking. In 1914 the McDonnell Commission on the Civil Service strongly criticized the system of boards in Scottish administration,²⁶ and as a result most of them were abolished. The Haldane Machinery of Government Committee in 1918 endorsed the recommendations of the McDonnell Commission and declared: "We think that where . . . a Board is set up without explicit statutory provision for a Minister responsible to Parliament for their work, the position is obviously unsatisfactory. . . . There should be no omission, in the case of any particular service, of those safeguards which Ministerial responsibility to Parliament alone provides."²⁷ The Committee urged rather that a study be made of methods for eliminating irritation and obtaining a more satisfactory Parliamentary control.²⁸

²⁴ T. S. Simey, *op. cit.*, p. 28.

²⁵ It should be noted that a few so-called boards in British administration are actually ministries under a single head responsible to Parliament. So it is with the Board of Trade, of ancient lineage, and with the Board of Education created in 1899. The evolution of the Local Government Board, set up in 1871, into the Ministry of Health, 1919, was outward acknowledgment of the true status of the department.

²⁶ *Fourth Report of the Royal Commission on the Civil Service* (Cd. 7338), p. 78.

²⁷ *Report of the Machinery of Government Committee*, Ministry of Reconstruction (Cd. 9230), p. 11.

²⁸ *Ibid.*, pp. 14-15.

Another committee, this time inquiring into the status of the Post Office, as late as 1932 undertook a defence of ministerial responsibility.

It cannot be denied that Parliamentary intervention in the minor details of daily administration may be harassing and sometimes vexatious; it indubitably involves in many instances an expenditure of time and effort quite disproportionate to the importance of the matter in question. At the same time, we are inclined to think that this insistence upon the supposed results of Parliamentary intervention in matters of detail is somewhat unduly stressed, and that in the long run the advantages of the power of Parliamentary intervention outweigh its disadvantages. It seems to us that where complaints are expressed against a business so closely in contact with the everyday lives of the public as the Post Office some means of ventilation are necessary and on the whole we believe that the House of Commons provides the best machinery for this purpose. In effect, we do not consider the relationship in which the Post Office stands to Parliament is a factor which essentially and inevitably makes the efficient performance of its duties impossible.²⁹

Despite these expressions of opinion, there has been a marked tendency since the World War to set up administrative bodies on a statutory basis freed in some degree from control by a responsible minister. As a result, a recent commentator has written, "The administrative system has become far more complicated than is commonly realized. The simple dichotomy of central

²⁹ *Report of the Committee of Enquiry on the Post Office* (Cmd. 4149), p. 20.

departments responsible to Parliament through Ministers . . . no longer exists."³⁰

In explaining this development, Dr. Jennings has listed four primary motives behind the creation of these numerous agencies.³¹ First of all, he noted a desire to free some service of the State from "political control," and specified as examples the British Broadcasting Corporation and the Unemployment Assistance Board. Secondly, such bodies as the Flour Millers Corporation, the Herring Industry Board, and the agricultural marketing boards have been created to assist producers in marketing their products with a minimum of State interference. Also various professional bodies have been set up to control the entry into and the discipline of the professions with little political control. Thirdly, a number of technical enterprises which for various reasons it seemed best to nationalize have been given a separate status. These include the Port of London Authority, the Central Electricity Board, the Forestry Commission, and the London Passenger Transport Board. Lastly, a number of agencies exercising "quasi-judicial" authority have been created.

Considering these various types in reverse order, we encounter in the "quasi-judicial" agencies a domain which bridges the spheres of administration and justice. It has long been a basic element of the British Constitution that judges should be free from political control. Accordingly, their appointments are for life, their salaries are included on the Consolidated Fund, and their decisions cannot be questioned save in a higher court of

³⁰ W. Ivor Jennings, *Cabinet Government* (Cambridge: Cambridge University Press, 1936), p. 80.

³¹ *Ibid.*, pp. 75-6.

law. The only control Parliament exercises over the judiciary lies in its power to change by new legislation any construction of the law by the courts of the land.

To-day in certain instances it has seemed desirable to apply to individuals the basic policies determined by Parliament through a process closely modelled on the judicial. This procedure is of two identifiable kinds. In one case protection against the decisions of an administrative official is afforded by such a device as the local Courts of Referees and the central Umpire under the unemployment insurance scheme. Here when a question arises whether an insured contributor to the scheme has fulfilled the statutory conditions in order to qualify for benefit, the binding decision is handed down by the Court of Referees, or on appeal by the Umpire. In the second case, in order to determine the point where individual activity encroaches upon the public good such bodies as the Area Traffic Commissioners may be constituted, from whom a licence must be obtained before a local authority or an individual may engage in the road transport of persons or goods. Such questions must be decided as whether existing transport facilities are adequate and whether there is a demand for additional service. A decision on these questions, it is thought, is best reached by an approximation of judicial procedure.

In reality these so-called administrative tribunals are courts, courts of a new kind whose number and importance are constantly increasing.³² Their advantages are several. They specialize in a certain kind of case, and so develop a particular competence. Their procedure is

³² See William A. Robson, *Justice and Administrative Law* (London: Macmillan & Co., 1928).

more flexible than that of courts bound by common law precedents. Their utilization is quicker and less costly than resort to the regular law courts; the aggrieved individual frequently conducts his own case without counsel.³³ Finally, these tribunals deserve the term "administrative" because their approach is fundamentally different from that of the common law courts—protection of the social good from the depredations of the individual is paramount to the protection of the individual from the "tyranny" of government.

While nominally the Courts of Referees and the Umpire are part of the organization of the Ministry of Labour, and the Area Traffic Commissioners are part of the Ministry of Transport, the respective Ministers do not control or interfere with the decisions of these bodies. They are independent parts of the administrative organization. This type of autonomy has proven both its feasibility and its usefulness, and few, if any, adherents to the doctrine of ministerial responsibility desire any change in this kind of agency. Where a Minister does not agree with a decision of such a body he may seek new legislation to clarify the Parliamentary intent.

The departure from ministerial responsibility which has attracted the most attention in recent years has been in connection with the creation of government or public corporations. On both sides of the Atlantic the interest attached to this development has been manifested in a considerable array of published inquiry.³⁴ In general the

³³ Cf. *Report of the Committee on Ministers' Powers*, 1932 (Cmd. 4060), p. 97.

³⁴ On the English public corporation, see Herbert Morrison, *Socialisation and Transport* (London: Constable & Co., 1933); Marshall E. Dimock, *British Public Utilities and National Development* (London:

investigators have agreed upon the desirability of the device. For the management of what are essentially business services the government corporation has demonstrated its ability to achieve, in Herbert Morrison's happy phrase, "a combination of public ownership, public accountability, and business management for public ends."³⁵

The specific advantages attributed to the government corporation have been several. Organized as a statutory body headed by a board of directors none of whom usually may sit in the House of Commons, these agencies have been freed from many of the requirements which accompany departments under a responsible minister. For one thing, since they do not depend upon annual appropriations from Parliament, they are not subject to Treasury controls over the financial aspects of their activities.³⁶ In the second place, the ordinary civil service

George Allen & Unwin, 1933); William A. Robson, ed., *Public Enterprise* (London: George Allen & Unwin, 1937); Terence H. O'Brien, *British Experiments in Public Ownership and Control* (London: George Allen & Unwin, 1937); and Lincoln Gordon, *The Public Corporation in Great Britain* (Oxford: Oxford University Press, 1938). On the public corporation in the United States, see Harold Van Dorn, *Government Owned Corporations* (New York: Alfred A. Knopf, 1926); Marshall E. Dimock, *Government-Operated Enterprises in the Panama Canal Zone* (Chicago: University of Chicago Press, 1934); Dimock, *Developing America's Waterways* (Chicago: University of Chicago Press, 1935); Herbert Emmerich, "Government Corporations," in President's Committee on Administrative Management, *Report with Special Studies* (Washington: Government Printing Office, 1937); John McDiarmid, *Government Corporations and Federal Funds* (Chicago: University of Chicago Press, 1938); and John Thurston, *Government Proprietary Corporations in the English-Speaking Countries* (Cambridge: Harvard University Press, 1937).

³⁵ Herbert Morrison, *op. cit.*, p. 149.

³⁶ "The absence of Treasury control of the traditional kind is wholly desirable, having regard to the narrow outlook and antiquated doctrines

requirements have not been applied to them. Because their activities have required a particular technical competence, these bodies have not had to model their hierarchy on the pattern of the regular government departments whose highest places are occupied by members of the administrative class. Moreover, because they are engaged in a business enterprise, they have been permitted to pay whatever salaries they thought necessary in competition with other businesses. Thirdly, board members are appointed for a fixed term of years, and so are not dependent upon party fortunes in the House of Commons for their retention at the head of the enterprise. Not being politicians pursuing a Parliamentary career, the board members do not circulate from one department to another according to individual, personal fortunes. In consequence the management of these enterprises is more stable, is able to concentrate on long-range objectives with some likelihood of seeing their materialization.

These advantages are substantial, and they are inherent in the use of the mechanism of the government corporation. There are other advantages—greater flexibility in adjustment to meet varying circumstances, freedom from excessive cautiousness, the promotion of business efficiency, freedom from the more undesirable forms of political pressure³⁷—which are also advanced in behalf of the government corporation, but the extent to which these characteristics are dependent upon the type of

commonly entertained by Treasury pundits on the subject of public finance, capital expenditures, economy in the social services, unemployment, and monetary policy." William A. Robson, *Public Enterprise*, p. 383.

³⁷ Cf. Herbert Morrison, *op. cit.*, pp. 137, 141.

personnel on the board rather than inherent in the device itself must be debatable.³⁸

Dr. Robson has briefly summarized the case for the government corporation in these words:

The complex technological problems involved, the need for a spirit of boldness and enterprise, the desire to escape from the excessive caution and circumspection which day-to-day responsibility to Parliament necessitates, the recognition that the operation of public utilities and industrial undertakings requires a more flexible type of organization than that provided the ordinary Whitehall department—these were the principal causes which led to the establishment of the independent public service board and helped it to gain favour. . . . It is certain that electricity supply, broadcasting, metropolitan transport, and the docks and harbours of London have been substantially better managed and developed than would have been the case if the task had been given to an ordinary Government department or left to the unregulated competition of private profit-making ownership.³⁹

Nevertheless, Dr. Robson has acknowledged that there are latent dangers in the establishment of these boards which may cause difficulty. One of these is the possibility that a government corporation might prove unamenable to a fundamental shift in opinion concerning the enterprise. There are, as he points out, certain safeguards against this eventuality—Parliament can always give

³⁸ An incidental advantage lies in the suability of the enterprise, since a corporation as a statutory body is not given the freedom from legal responsibility for torts which the common law has extended to the regular departments under the principle that the "King can do no wrong."

³⁹ William A. Robson, *op. cit.*, p. 363.

directions by statute. And provision might be made for the removal of members or the appointment of additional members of the board. A second danger is that in surrendering day-to-day supervision of these agencies Parliament will sacrifice its means of ultimate control. Dr. Robson advocates that there should be a searching inquiry periodically into the affairs of government corporations, when Parliament would have an opportunity to gain information and to consider basic policies.⁴⁰ Thirdly, there is the possibility that by extending the number of boards which are independent of the hierarchy subject to Cabinet direction the administrative organization may be pulverized, with inconsistent, mutually cancelling activities resulting. The problem of arranging some planning machinery, some co-ordinating mechanism, for government corporations may arise in the near future.⁴¹

The desirability of the government corporation has not been universally accepted. The device has not made much headway against existing governmental activities, but has been utilized mainly when new responsibilities have been undertaken by government. In November 1931, as a result of public criticisms by Viscount Wolmer, Assistant Postmaster-General in the Baldwin Government of 1924-9, some 320 members of Parliament signed a petition to the Prime Minister requesting that a committee be appointed to inquire into the organization and status of the Post Office. Alleging inadequacies and incompetencies in the telephone, telegraph, and postal services, Lord Wolmer advocated that the Post Office be set up as a public corporation freed from Parliamentary

⁴⁰ William A. Robson, *op. cit.*, pp. 377-8.

⁴¹ *Ibid.*, p. 399.

interference and Treasury control.⁴² In consequence the Postmaster-General appointed a committee to make the desired investigation.

Reporting in August 1932, the Bridgeman Committee recommended a number of changes in Post Office organization, but did not advocate the establishment of a government corporation. The Committee felt that desirable reforms could be accomplished without sacrifice of the doctrine of ministerial responsibility. Thus they made a number of recommendations for internal reorganization of the Post Office along more decentralized lines of responsibility, implying that the existing status of the department was no obstacle to this reform.⁴³ The Committee also advocated a change in the financial status of the Post Office, so that it might retain part of its revenue for its own use as it pleased without going through the Treasury.⁴⁴ Another recommendation, that administrative posts be opened to technical officers who had demonstrated administrative ability,⁴⁵ was admission that existing civil service practices were not entirely adequate. While the Committee would not accept the arguments made to them that the Post Office was hampered by the fact that the position of Postmaster-General was regarded as a stepping stone in a promising Parliamentary career, they did deprecate "frequent and avoidable" changes in the position.

Although making these concessions to the advocates of the government corporation, the Committee affirmed their general faith in ministerial responsibility. "We

⁴² Viscount Wolmer, *Post Office Reform*.

⁴³ *Report of the Committee of Enquiry on the Post Office*, pp. 18, 32-8.

⁴⁴ *Ibid.*, pp. 21-6.

⁴⁵ *Ibid.*, pp. 38-9.

consider that the public have a right to the influence which Parliamentary discussion and control alone can bring."⁴⁶ It must be admitted that the Committee's report was not altogether satisfying. It assumed without detailed examination or defence that many of the advantages of the government corporation might be achieved within the framework of a department under a responsible minister. This was an extremely important conclusion, one worthy of profound consideration. As it was, the protagonists of the government corporation did not feel fully answered.

Besides technical services of a business character entrusted to the government corporations, there are one or two bodies administering a special type of social service which have been given a separate status. An example is the Board of Control, which is only nominally within the Ministry of Health. This Board, composed of two doctors, a solicitor, and a woman, has considerable latitude in exercising supervision over the activities of local authorities in caring for the insane. Dr. Jennings has indicated that the Board have not found their status of much assistance in their work.

It must be admitted that the Board of Control meets more opposition than other central bodies concerned with local government. Many think that the standards which it lays down are too high—recently, indeed, it has relaxed them. It is difficult to arouse enthusiasm for a service which is so expensive and which produces so little in the way of obvious results. Yet this unpopularity is not due to the Board's coercive powers. They are by no means so great as those of the other central authorities

⁴⁶ *Report of the Committee of Enquiry on the Post Office*, p. 18.

It is due to the fundamental difficulty of securing co-operation between an enthusiastic central authority and reluctant local authorities. It is not an unimportant factor, too, that the Board is regarded as a technical body, so that it is not directly and consistently controlled politically.⁴⁷

Furthermore, there are a number of other agencies with a somewhat obscure relationship to the governmental structure—the British Museum, the Charity Commission, the Registrar of Friendly Societies, the Land Registrar, the Ecclesiastical Commission. Of these it may be said that they have raised few questions of general public interest.

Thirdly, Dr. Jennings mentioned the agricultural marketing boards and the bodies governing the professions. The Agricultural Marketing Act of 1931 permitted producers of agricultural commodities to organize in order to obtain a more orderly and profitable sale of their produce. If producers desired group action, they might set up a board, a preponderant majority of whose members they elected. Such a board might possess broad powers to buy and sell agricultural produce, or to fix prices at which such produce might be sold. Certain safeguards were retained through a Consumers' Committee named by the Minister of Agriculture, which had power to investigate and report on the effect of any board's policies on consumer interests. A Committee of Investigation was then to inquire into the more serious charges, and the Minister had authority to modify a board's action. Under the general authority of the Act

⁴⁷ W. Ivor Jennings in *A Century of Municipal Progress, 1835-1935*, p. 451.

boards were created for the milk, pig and bacon, hops, and potato producers.⁴⁸ Unfortunately, no inquiry has yet been made into the exact degree of relationship between these boards and the Ministry of Agriculture. Especially should the question be examined whether the safeguards preserved in the Minister's hands actually are ample protection for the broader interest of the consuming public.

It has often been ignored that such bodies as the General Medical Council, the Dental Board, the Central Midwives Board, and the General Nursing Council are "in a very real sense organs of the State."⁴⁹ Upon them the government has usually conferred very broad powers to fix professional qualifications, admit to the register of qualified practitioners, and discipline members. In many cases any governmental supervision over the exercise of these powers has been practically surrendered. Although clothed with the coercive authority of the State, the professions have been permitted to govern themselves. A careful study of the British professions has concluded: "It is not desirable that these authorities should be entirely independent of State control; registration implies, or should always imply, the granting of privileges to the registered, and the State ought not wholly to divest itself of the duty of ensuring that the registered, to whom it has given these privileges, are efficient."⁵⁰

While believing that the professions should themselves continue to exercise supervision over their own standards,

⁴⁸ See W. H. Jones, "The Agricultural Marketing Boards" in *Public Enterprise*, p. 247.

⁴⁹ A. M. Carr-Saunders and P. A. Wilson, *The Professions* (Oxford: The Clarendon Press, 1933), p. 352. Cf. the list of the governing bodies, p. 343.

⁵⁰ *Ibid.*, pp. 386-7.

the study just cited advocated that the government, preferably through the Privy Council, should retain four definite powers of control. The government should have the power to appoint some of the members of the regulatory authorities, to approve their orders and regulations, to require annual reports, and ultimately to supersede an unsatisfactory authority.⁵¹ Furthermore, definite rights of appeal in cases of disciplinary action should be provided.⁵² It need only be said here that the present position of these agencies is obviously unsatisfactory from the standpoint of the general interest of the public, and that such a reorganization as that proposed by Mr. Carr-Saunders and Mr. Wilson ought to be made.

The concept of an autonomous position in order to avoid political pressures, the last of the purposes mentioned by Dr. Jennings, is to be examined at length in the following pages.

It is possible only in broad terms to explain what administrative autonomy signifies in British administration. The general features of the independent agencies have already been mentioned—a collegial board of managers, freedom from direction by a responsible minister, the lack of representation in the House of Commons, and some insulation from Parliamentary control, involving perhaps limitation upon the questions which may be asked or continuity in the high command despite changes in party fortunes. While all of these characteristics do not apply to every one of the administrative agencies noted, they are the significant attributes for which the investigator must look. All these character-

⁵¹ A. M. Carr-Saunders and P. A. Wilson, *The Professions* (Oxford: The Clarendon Press, 1933), p. 388.

⁵² *Ibid.*, p. 411.

istics have one common intention: relaxation or impairment of political responsibility. Decisions are generally not made by or under the control of persons whose continuance in office depends upon periodic electoral approval. Whether such political irresponsibility is real or justifiable in a democratic State, inquiry alone can reveal.

Chapter IV

THE UNEMPLOYMENT ASSISTANCE BOARD AND THE MINISTRY OF LABOUR

It has been well written that "independence of ministerial control is necessarily a matter of degree. It is therefore no easy matter to distinguish precisely between a statutory body subordinate to a minister and an independent statutory authority."¹ Merely because a body is declared to be "independent" does not necessarily make it so. To be sure, solemn pronouncements as to status may convince some, confuse others, and obscure actualities. Some amount of inquiry and reflection, however, should indicate how trustworthy is the façade of common attribution.

The Sixth Schedule of the Unemployment Act, 1934, concerned the constitution and proceedings of the Unemployment Assistance Board. First, it provided that the Board should be a "body corporate" with a common seal, consisting of a chairman, deputy chairman, and not less than one nor more than four other members appointed by the King by warrant under the Sign Manual. At least one member of the Board had to be a woman. The members of the Board were to hold office in accordance with the terms set forth in the warrant of appointment. No member might sit in the House of Commons. The salaries of members were to be determined by the Treasury at the time of appointment, but

¹ W. Ivor Jennings, *The Law and the Constitution*, 2nd ed. (London University of London Press, 1938), p. 191.

might not aggregate more than £12,000 per annum. The salaries were to be paid from the Consolidated Fund. Lastly, it was stated that "the functions of the Board, and of the officers and servants appointed by the Board, shall be exercised on behalf of the Crown."

These were the statutory provisions conferring an "independent" status upon the Unemployment Assistance Board. What did they mean? Appointment by His Majesty was actually appointment by the Prime Minister, who would probably discuss the matter with certain of his Cabinet colleagues if not consult the body as a whole. When announcing the names of the members of the Board to the House of Commons in June 1934, the Prime Minister said that Sir Henry Betterton had been requested unanimously by his Cabinet colleagues to assume the chairmanship. But the Prime Minister was the one who presented the names to the King for appointment.

"Independence" for the Board consisted in the provisions that no member might sit in the House of Commons and that salaries of members should be charged to the Consolidated Fund. Since members could not sit in the House of Commons, the Board were not responsible to Parliament. At the least this meant that the Board could not directly confront their critics. In addition to judges, others appointed under the Sign Manual with salaries drawn from the Consolidated Fund included the Civil Service Commissioners, the Comptroller and Auditor-General, the Comptroller of H.M. Stationery Office, the Umpire of the unemployment insurance scheme, and the members of the Board of Control. The Chancellor of the Exchequer, Mr. Cham-

berlain, during the debate on the Unemployment Bill explained that placing their salaries on the Consolidated Fund made the members of the Unemployment Assistance Board irremovable for the duration of their tenure.²

The length of tenure was at the discretion of the Government at the time of appointment, but members were eligible for reappointment. Since Consolidated Fund expenses were not voted annually, but only at the beginning of each reign, members of the Board could not be attacked personally in the House of Commons through the customary practice of a motion to reduce a salary by £100. Being irremovable, except upon joint address to the King by both Houses of Parliament, members of the Board did not change whenever there were alterations in the party composition of His Majesty's Government. The Unemployment Assistance Board were *supposed* to be outside the realm of party conflicts and able to pursue their course unperturbed by mundane considerations.

The meaning of the provision that the Board was to be a "body corporate" and also an agency of the Crown was questioned in the House of Commons by Sir Stafford Cripps. He pointed out that a corporate body was ordinarily suable in the courts of the realm, while an agency of the Crown was not.³ Were not these provisions, then, contradictory? The Solicitor-General, Sir Donald

² 284 H.C. Debs., col. 1069.

³ "The Solicitor-General knows that the proceeding which has to be adopted when it comes to bringing an action against the Crown, is something which anybody embarks upon with considerable trepidation, and it makes it almost impossible for any action to be brought in those circumstances." 288 H.C. Debs., cols. 1724-5.

B. Somervell, endeavoured to clarify the legal status of the Board.

This body, which is exercising its functions on behalf of the Crown, is entrusted, under an Act of Parliament, with the performance of a national duty—a duty which the principle of the Bill accepts as a duty of the State of improving the condition of unemployed persons and of making allowances to them. The principle of the Bill is that that is a duty of the State to undertake, and therefore, those whom the State employs to carry out the duties of a State undertaking would, in my opinion, be held to be exercising their functions on behalf of the Crown in the same way as members of a Government Department, whether they are or are not exercising State functions where, under our Parliamentary procedure and practice, there is a minister directly responsible in this House for the Department, or whether, as in this Bill, the responsibility and control of this House does not take the same form.⁴

The Solicitor-General particularized by expressing the opinion that the Board might be sued in cases of contract by petition of right (the customary procedure applying to government departments), but would not be suable for torts or fraud. The Board would be subject to issuance of the writs of *certiorari* and *mandamus* where they exceeded the law or failed to act. The Board would not be taxable, but the government might make payments, as it did in other cases, in lieu of rates to the local authorities in which the Board held property. The Solicitor-General concluded: "But I do not in the least disagree with what is obvious, that this body has no precedent, and those who

⁴ 288 H.C. Debs., col. 1732.

approve of the passing of this Bill are proud of that fact. We believe that we are, without precedent, producing a great social improvement.”⁵

Sir Stafford Cripps attacked the Solicitor-General’s exposition as an admission that the Government was endeavouring to deprive the House of Commons of its functions. Other corporate bodies, like the British Broadcasting Corporation and the Central Electricity Board, had not been made servants of the Crown.

The importance of the matter is that when the Crown acts through agents in governmental functions, those agents must always be represented in the legislature. That is essential to a democratic constitution. Here we have the setting up of a separate body corporate with a Common Seal which is not in its nature likely to become an agent of the Crown with political responsibility. You say that you are going to put it outside the House of Commons, because it is a separate body corporate with a Common Seal and its own separate life. Having done that, you say that it is to be treated as if it were an agent of the Crown. Hitherto those two things have been wholly inconsistent in the Constitution of the country.⁶

Sir Stafford observed from a legal point of view the status which the Government was proposing for the Unemployment Assistance Board. Legally, the Board had all the attributes of a regular government department. Constitutionally, however, the Board was not responsible to Parliament in the customary manner, through a responsible minister. In one light the phrase “body corporate” may be regarded as so much verbiage, intended to imply ‘an analogy to such agencies as the

⁵ 288 H.C. Debs., cols. 1733-4.

⁶ *Ibid.*, cols. 1735-6.

British Broadcasting Corporation and the London Passenger Transport Board. In another sense the expression may be said to indicate that the decisions were to be those of the Board as a body, not of any single individual. Thus was re-emphasized the fact that the Board was not responsible to Parliament.

In reply to a question in the House of Commons, the Lord President of the Council, Mr. Baldwin, on July 3, 1934, announced the terms of tenure and salaries for the members of the Unemployment Assistance Board. The chairman was appointed for seven years at £5,000 per annum. The deputy chairman, Sir Ernest Strohmenger, was to serve for five years and receive £3,000 annually. The other four members were given terms of three years each and salaries of £750 a year, except that Professor Hallsworth was to receive £1,000 a year, inasmuch as it was necessary for him to relinquish his professorial chair. Only the chairman and the deputy chairman were expected to give their full time to the Board's work, while the others would devote whatever time might be necessary.⁷ As mentioned above, Sir Ernest Strohmenger retired from the Board in May 1937, and his place as deputy chairman was taken by the woman member of the Board, Miss Violet Markham. The other three members of the Board were reappointed at the expiration of their first three-year term. Thereafter the Board consisted of five rather than six persons.

The appointment of members of the Unemployment Assistance Board for a fixed number of years had some significance. Ordinarily appointments under the Crown are made at His Majesty's pleasure. Constitutional prac-

⁷ 291 H.C. Debs., cols. 1746-7.

tice dictates that Ministers shall serve as long as they have the confidence of a majority of the House of Commons, while civil servants, judges and others serve until they retire. While not politically responsible to Parliament, neither did the members of the Unemployment Assistance Board enjoy the security of tenure of judges or civil servants. Inasmuch as Unemployment Assistance Board members were appointed for a fixed number of years, a Government possessed some element of control through their power of appointment. Periodically there was opportunity to influence in some degree the make-up of the Board. Moreover, any member who made himself definitely *non grata* to the Government of the Day could scarcely expect reappointment at the end of his term. To an individual who found the duties or emoluments of office attractive this would be of some importance. Furthermore, the possibility that a Government might introduce legislation to abolish the Board must not be entirely ignored. All of these factors qualified somewhat the "independence" bestowed upon the Unemployment Assistance Board. While such imponderables are difficult to assess properly, their existence must be acknowledged.

Of greater importance to an understanding of the position of the Unemployment Assistance Board is an appreciation of the controls which the Government, principally through the Minister of Labour, retained over the powers of the Board. These controls, together with certain corollary influences, were very real and extremely important.

Framing the Assistance Regulations.—Before the Unemployment Assistance Board could begin to provide

assistance to the able-bodied unemployed it was essential to set up a scale of need and standards for the measurement of household resources. Section 52(2) of the Unemployment Assistance Act required the Board within four months of their appointment, and thereafter "from time to time as the occasion may require," to prepare draft regulations establishing a scale of need. Section 38(3) provided that the resources of an applicant should include the resources of all members of his household, with due regard to the personal requirements of those members whose resources were taken into account. There followed statutory direction how certain resources—health insurance benefit, disability pension, workman's compensation, and capital assets—were to be treated.

However, the Board's decision on the draft regulations was in nowise final. The regulations had to be submitted to the Minister of Labour for his consideration, and the Minister was authorized to make such variations or amendments as he saw fit. If the Minister made any changes, he was required so to inform the Board and to consider a report thereon which the Board were to submit. In turn, the draft regulations, in order to be effective, needed Parliamentary approval. If the regulations which the Minister submitted to Parliament differed from those originally proposed by the Board, the Minister was to present also a statement of his reasons for making the changes, together with the Board's report on the matter.⁸

The essence of this procedure was simply that the assistance regulations did not come into force until they were acceptable to the Minister of Labour, and through

⁸ Section 52(3) of the Unemployment Assistance Act, 1934.

him to the Government of the Day. The requirement of positive Parliamentary approval constituted more a strengthening of the Government's power over the regulations than a Parliamentary safeguard as to their acceptability. The Minister alone could amend. In other words, so far as the preparation of regulations embodying a standard of assistance was concerned the Unemployment Assistance Board was really an advisory body to the Government. The responsibility for the regulations rested squarely upon the Government.

The accuracy of this interpretation is attested by all the evidence. The most uncompromising statement of the Minister's responsibility was not made in the House of Commons itself, but by Sir Henry Betterton to a delegation of members of Parliament who called upon him on March 27, 1934. The delegation was perturbed concerning prospective allowances for children which might be made by the proposed Unemployment Assistance Board, and desired certain assurances that the scale would not be inadequate. To them the Minister was reported to have said that there was a good deal of misconception as to the responsibility of the Government and of Parliament for the policy and standards of administration of the Unemployment Assistance Board. The Board, he explained, would be required to submit draft regulations for the Minister's approval. The Minister would take responsibility on behalf of the Government for the regulations, and they would be subject to affirmative approval by Parliament. The Minister's responsibility for policy was therefore complete.⁹

While no such 'sweeping admission was ever made in

⁹ *The Times*, March 28, 1934, p. 9.

the House itself during the debate on the Unemployment Bill, all the assurances that the regulations would not become effective until approved by both Houses of Parliament meant that the Government assumed responsibility for them. The Unemployment Assistance Board had no separate access to the legislature. The Minister of Labour, on behalf of the Government, not only introduced the regulations, but also vigorously urged their adoption. Even more significant was the fact that at the conclusion of the debate on the first and second draft regulations the Government Whips mustered the affirmative vote in the division lobby.¹⁰ The regulations were made a party issue; no free vote of the House was permitted. Under these circumstances a defeat of the regulations would have been regarded as a vote of no confidence in the Government, not in the Unemployment Assistance Board.

It is inconceivable that any Government could permit such a body as the Unemployment Assistance Board untrammelled sway in determining the standards of relief assistance. The financial burden of the assistance allowances rested upon the Exchequer, and no Government was going to surrender their control of the finances of the land. Obviously a Government would want to know what would be the cost to be raised from taxation required by the proposed standard of assistance. And a Government would then have to decide whether they desired to raise or allocate such a sum from the national

¹⁰ On July 8, 1936, a Labour member asked the Prime Minister if in order to permit a free expression of opinion he would withdraw the Government Whips and permit a free vote on the revised regulations. Mr. Baldwin laconically replied, "No Sir." 314 H.C. Debs., col. 1191.

revenues. One of the chief complaints against the system of transitional payments was that the scale of relief, subject to the maximum limit of the unemployment insurance benefit rate, was determined by bodies without any responsibility for raising the necessary funds to defray the outlay. Was it likely that a Government dissatisfied with this situation would seek a solution by transferring the function from many local, financially irresponsible agencies to one national, financially irresponsible agency? The basic purpose of obtaining a closer control over unemployment assistance expenditure belied any such intention.

The requirement of approval of the scale of assistance by the Minister of Labour meant approval also by the Government, including the Treasury. No Minister of Labour could give his sanction to so important a matter without consulting his Cabinet colleagues as a body, or at least the Prime Minister and a few others. The doctrine of collective responsibility means that the Government as a whole must share the responsibility for the decision with the Minister of Labour. And the Government's approval of a matter involving expenditure would not be voiced without reference first to the Treasury. In the course of Committee debate on Part II of the Unemployment Bill an amendment was offered requiring that before the Minister of Labour approved the assistance regulations he should consult the Treasury. The amendment was withdrawn when the Parliamentary Secretary to the Ministry declared that for his chief to give any such approval without prior consultation with the Treasury would be a "constitutional monstrosity."¹¹ So eloquent

¹¹ 287 H.C. Debs., col. 1731.

an expression of the situation could not be bettered by further elaboration.

Even so, the true status of the Unemployment Assistance Board as an advisory body to the Government as far as the regulations were concerned was confused by the supposed "independent" position of the Board and by the Board's important administrative duties. Certainly the Act was not explicit as to the consultative relationship between the Board and the Minister of Labour. Was the Minister to wait until the Board submitted proposed draft regulations to him before his department took up the matter, or might there be an exchange of viewpoints in the process of preparing the regulations? After the regulations were in the hands of the Minister, might he intimate to the Board certain particulars which he or the Government thought ought to be changed, and the Board then make the alterations? Of course, in case of disagreement the Government's was the deciding voice. But did an amenable attitude on the part of the Board compromise their administrative "independence"?

Suppose a Minister approved of regulations but did not regard the time as propitious for their submission to Parliament. Was there any time limit in which he should send the regulations to Parliament? Lastly, after regulations were once approved by both Houses could a Minister initiate subsequent changes? The Act said that following preparation of the first regulations the Board might "from time to time as the occasion may require" submit amendments or new regulations. Did the highly ambiguous phrase "as the occasion may require" include a situation where the Minister believed a change desir-

able? All of these questions arose early in the history of the Unemployment Assistance Board.

As related previously, the first regulations were submitted to the Minister of Labour by the Unemployment Assistance Board on October 26, 1934, and the Minister in turn laid the regulations before the House of Commons on December 11, 1934. While the Minister did not indicate that he had made any changes, it subsequently appeared that on these respective dates the versions of the draft regulations differed. In reply to a question in the House of Commons on February 5, 1935, the Minister of Labour explained that while he had received draft regulations from the Board in October, on further examination the Board had felt that the draft was incomplete and needed amending. Accordingly, they had prepared new draft regulations, increasing the allowances, which were submitted to the Minister and which he had handed to Parliament. He refused, however, to make public the original draft or to specify the particulars in which the two drafts varied. He did deny the rumour that the Treasury had disliked the first draft because the scale of allowances was too generous.¹²

Subsequently, in the debate on the Standstill, Sir Stafford Cripps asked the Minister of Labour a number of specific questions: Was there any consultation between the Board, the Minister, the Treasury, and any other department before October 26, 1934? Was there any such consultation about the draft submitted on October 26th after that date? And why did the Unemployment Assistance Board withdraw the first draft? Sir Stafford asked that the Minister give full information upon these points

¹² 297 H.C. Debs., cols. 936-8.

so that the House might judge whether the withdrawal had been prompted by the Government or had been made solely upon the initiative of the Board. Lastly, he asked, did the Minister intend to consult with the Board concerning new regulations to replace those then being modified by the Standstill?¹³

The Minister, Mr. Oliver Stanley, repeated his previous explanation that the first draft had been withdrawn by the Board before he or the Government had decided upon approval or disapproval. The draft laid before the House was identical with the one subsequently submitted to him. As for consultation with the Board during his consideration of the regulations, he merely said that he had asked the Board for "a considerable amount of information" concerning the meaning and effect of various provisions. Again he denied reports that the first draft involved an outlay of £5,000,000 or £10,000,000 more. "It is quite untrue that I, as Minister responsible in the Cabinet for these regulations, ever put any pressure or suggested to the Board that they should make any alterations whatsoever in their regulations for the sake of effecting an economy which the Treasury desired." Nor, he declared, had the Cabinet brought any pressure to bear upon the Board. The differences between the first and second drafts handed him by the Board were "in an upward direction."¹⁴

In view of the common gossip that the Treasury, motivated by financial considerations, had been primarily in favour of the creation of the Unemployment Assistance Board, the rumour that the Treasury had exerted some kind of influence to have the regulations meet its ideas

¹³ 297 H.C. Debs., cols. 1872-3.

¹⁴ *Ibid.*, cols. 1878-80.

as to public expenditure was not at all surprising. What substance there may have been to the rumour does not here concern us. What is important is the evident confusion on many sides as to the relationship of the Board to the Government. The difference between the Board's status in preparing regulations and in administering them was not understood.

This confusion was well illustrated in the story of the Standstill. At the conclusion of the first day's debate in the House on the Supplementary Estimate for the Unemployment Assistance Board the Parliamentary Secretary to the Ministry of Labour promised only to convey the feelings of the House about the regulations to the Board. On the next evening the Minister closed the debate by informing the House that the Board believed all the difficulties enumerated in the debate could be met by instructions to their officers which would be immediately dispatched. Yet a week later the Standstill decision was announced, and announced as a decision of the Board! Certainly the Standstill was the decision of the Board only in a technical sense. The decision, from such information as can be gleaned, was that of the Government, in which the Board had perforce to acquiesce. It seems that the Board believed that the clamour was temporary only and would soon die down.¹⁵ The tone of the Board's first annual report indicated as much. Unwilling to wait and see, the Government agreed that something should be done at once. With the Government having deserted them the Board had no hopes whatsoever of withstanding the Parliamentary onslaught. The price of resistance

¹⁵ Cf. Ronald Davison, *British Unemployment Policy Since 1930*, p. 67.

would have been the Board's very existence. There was no alternative to agreeing to the Standstill. The Government had accepted the only tenable point of view, that theirs was the responsibility for the regulations. Hence the regulations were abandoned in view of their unpopularity.

It was dire necessity alone, however, which induced the Government to acknowledge their responsibility. When speaking for the Labour Party after the introduction of the Standstill legislation, Mr. Greenwood complained of the Government that "they have never told us exactly what relations existed between the Board and themselves. We can only guess, and if we put a worse interpretation than the truth, then the Government are themselves responsible."¹⁶ The "worse interpretation" which he then proceeded to expound was that the Government were responsible for the regulations. The Minister of Labour, replying later, forthrightly accepted this responsibility.¹⁷

If additional evidence of the Unemployment Assistance Board's status were needed, it is available in the remainder of the Standstill story. The Board were prepared to submit amended regulations in May 1935. The Government were in no such hurry. Before the general election in November 1935 the Government issued the following pledge, which, significantly enough, was included in the Board's first annual report:

The arrangements under the unemployment assistance scheme have received prolonged and anxious consideration by the Government, and, as already stated in Parliament, no alteration will be made in the existing "standstill" arrangements before the next spring at the

¹⁶ 297 H.C. Debs., col. 1793.

¹⁷ See above, p. 67.

earliest. The Government regard it as important to maintain the existing powers of the Unemployment Assistance Board and the general framework of the Unemployment Assistance Act. They will, however, give effect to any recommendations by the Board for improved arrangements, where these may be shown by experience to be desirable. The "standstill" arrangements are, as they were always intended to be, temporary. They must be replaced by permanent arrangements, which must remedy certain abuses and at the same time avoid hardships to applicants. Any action must be gradual, and must be carried out in full association with local opinion, so as to give effect to reasonable differences in the localities.¹⁸

By indicating the lines along which the regulations would be revised the Government openly asserted their control of this phase of assistance administration. The lack of haste is not difficult to understand. This time no steps were to be taken until it was well known just how the Board's applicants would fare under the changes. Local advisory committees must be fully prepared to function. The Board's own machinery must be perfected. In the meantime, if the number of applicants continued to decline, so much the better. Increases to ensure that applicants be no worse off under the new regulations should be no more than necessary to avoid another debacle like that in 1935. The appearance of the Board's first report with its evidence of Standstill anomalies was also awaited. It was seventeen months after the Standstill was announced before revised assistance regulations were presented to Parliament.

¹⁸ *Report of the Unemployment Assistance Board for 1935*, p. 15.

Two weeks before the new regulations were introduced the Minister of Labour in Supply debate admitted: "In the past eighteen months a large number of reports have passed between the Board and myself. The Committee will understand they are confidential, and I cannot undertake to publish them."¹⁹ In promising "adequate time" for the House to consider the regulations before they were debated, Sir John Simon confessed: "It is true that it has taken considerable time for the Government to reach the conclusions that they are ready to present to the House. That is the thing that has taken some time."²⁰ From these statements it was apparent that there had been much communication between the Board and the Minister of Labour, as well as that the Government had given careful consideration to the revised regulations.²¹

More revealing was an admission on July 2, 1936, two days after the announcement that the revised regulations would be introduced on July 14th. In reply to a question why the regulations could not be immediately placed before the House the Minister of Labour said that "while there have been consultations between the Board and myself with regard to the contents of the new regulations," the Board had not yet finally determined upon the draft, which consequently had not been submitted to him.²² The Minister agreed that it was important for the House to know about these consultations, and added

¹⁹ 313 H.C. Debs., col. 1494.

²⁰ 314 H.C. Debs., col. 224.

²¹ After the revised regulations had been approved, a Labour member asked the Prime Minister if he was aware that the means test was breaking up homes contrary to the Government's pledge. Mr. Baldwin answered that the Government had "satisfied themselves" on that point before approving the new regulations. 315 H.C. Debs., col. 1552.

²² 314 H.C. Debs., col. 583.

there was nothing in the Act to prevent them. In fact, he asserted, that in view of the Standstill such consultation was only "common sense." To a pointed inquiry whether the Board was still independent Mr. Brown answered, "Certainly." The next moment he insisted again that the draft regulations had not come to him yet and that he knew of no differences in opinion between the Board and himself.

It was clearly evident that the Minister and the Government had approved the details of the revised regulations in consultation with the Unemployment Assistance Board, who *afterwards* were expected to embody the agreements into final draft form. Perhaps this was legal as the Minister declared, but it certainly was not in accord with the spirit of the legislation, with its provisions for ministerial amendment *after* the regulations had been submitted to him and for official Board comment on any such changes *after* the Minister had made them. The Minister of Labour would have been well advised to have admitted frankly that in framing assistance regulations the Board were not independent, but advisory to the Government.

In moving that the House of Commons approve the revised regulations the Minister of Labour commented upon the relations of the Unemployment Assistance Board to the Ministry in these words:

The fact is that we are experimenting in many regions of government with a new technique—that of the statutory authority or board. . . . I will say only this about it. Technique has its own special difficulties and problems, both for the statutory body on one hand and for the Minister who has to answer in the House on the

other hand. But our history shows that with good will we have a genius for solving such problems. (Hon. Members: Who is he?) The nation has a genius for solving such problems, and in any case the problem of relieving the able-bodied unemployed who have run out of contractual benefit will not be solved merely by adopting the slogan, "Away with the Board!"²³

This kind of defence was a direct invitation to the challenge immediately forthcoming from Mr. Greenwood. Where, the Labour spokesman asked, did the Minister get this power to engage in "close collaboration" with the Board? "The intention of Parliament was perfectly clear; it was to arrange a great, supreme, almost heavenly Board, far removed from the turmoil of politics; which was to sit and consider without let or hindrance regulations to be submitted to the right hon. Gentleman, who was expected to transmit them to the House with his observations upon them."²⁴ Instead there had been coming and going between the Minister and the Board, with the "somewhat sinister figure" of the Chancellor of the Exchequer in the background. Mr. Greenwood insisted that he and the House would like to know more about this "illicit intercourse."

Politically, Mr. Greenwood's challenge was amply justified. But the Parliamentary understanding of the status of the Unemployment Assistance Board had been continually confused. By the time when the revised regulations were submitted it should have been clear that the Board were not free to determine unemployment allowances as they pleased. The Royal Commission on Unemployment Insurance had said, "We do not think it

²³ 315 H.C. Debs., cols. 286-7.

²⁴ *Ibid.*, col. 319.

possible or indeed desirable for Parliament to abrogate its functions so far as to vote a large sum annually to be disbursed to unemployed workers in accordance with standards prescribed by an independent Statutory Commission."²⁵ To these sentiments, we may be sure, the Government fully subscribed. Other factors, detailed in Chapter VII, made it expedient for the Government to attempt to obscure their basic responsibility for the assistance scale. The march of events destroyed the pretences.

Accordingly, we may accept what was more or less implicit in the Unemployment Assistance Act itself: the Board advised the Government, but the Government decided the standard of relief allowances for the able-bodied unemployed. A Minister of Labour might make what he would of that consultative relationship, but because the final responsibilities, political and financial, were so great, no Minister would ever be likely to impose upon himself severe self-limitation. He could not, even if he desired. The Standstill further pointed to how a Government might initiate a change in assistance standards. The Unemployment Assistance Board would be the last to deny the power of the Government over the regulations.

Administrative Control by the Minister of Labour.— Apart from the procedure for establishing assistance standards, the Unemployment Assistance Act specified a number of Board activities which could be exercised only with the consent of the Minister of Labour. First of all, the Board were empowered to make rules on a number

²⁵ *Final Report of the Royal Commission on Unemployment Insurance*, p. 170.

of subjects—conditions of illness and incapacity when an applicant might still be deemed capable of and available for work [Section 36(2)], procedure for demonstrating unemployment and need [Section 38(1)], granting allowances to applicants attending training courses [Section 39(2)], granting allowances to households with more than one applicant [Section 39(3)], effective dates of determinations and for review of determinations [Section 39(6)], procedure in payment of allowances [Section 42(1)], and provision of training allowances for those not in need (Section 43)—as well as authorized generally to make rules to carry the Act into effect [Section 52(1)]. In all cases the rules made by the Board were subject to the approval of the Minister of Labour, who in turn laid them on the table of both Houses of Parliament.

Secondly came the matter of personnel. The Sixth Schedule (Clause 8) to the Unemployment Assistance Act provided that the Board should appoint a secretary and such other officers and servants, and should pay them such salaries and allowances as the Board might determine after consultation with the Minister and with the consent of the Treasury. The nucleus of a staff with which the Board began to function was recruited almost entirely from the Ministry of Labour. This was natural, not only because the chairman of the Board had just been the Minister of Labour, but also because the staff of that department had the closest acquaintance with the problems which the Board faced. While the Unemployment Bill was going through the House of Commons, the Government gave an assurance that the Board when set up would take over much of the personnel of local

authorities recruited to administer transitional payments.²⁶ The Board were of course bound by this pledge.

Originally applications for positions under the Board were confined to the existing personnel of central government departments and of local authorities.²⁷ About one-third of those finally selected came from the Ministry of Labour, another third from other government departments, and the remainder from local authorities. To be sure, the Minister of Labour personally had practically nothing to do with the recruitment, but the procedure was the result of agreement between the Board, the Establishments Officer of the Ministry, and the Establishments Branch of the Treasury. The approval of the Civil Service Commission was required for every permanent appointment under the Board.

What was important about the requirement of consultation with the Minister and the consent of the Treasury in the selection of staff was that the Board was thereby placed on an equal footing with the regular departments of State. The classification of posts and the salary scales were those which applied to Whitehall offices generally. The headquarters office of the Board was composed of Treasury class staff, while the departmental classes of the field staff were arranged with Treasury consent. So far as personnel was concerned the Unemployment Assistance Board enjoyed a status no different from that of a department under a responsible minister.

²⁶ 288 H.C. Debs., col. 1820.

²⁷ The procedure in the selection of staff is described in *Report of the Unemployment Assistance Board for 1935*, Appendix IV, and *Report of the Unemployment Assistance Board for 1936* (Cmd. 5526), Appendix IV.

The composition of appeal tribunals and of advisory committees under the Unemployment Assistance Board was likewise a matter over which the Minister of Labour had some statutory control. In the instance of the Appeal Tribunals, to which an applicant might appeal an unsatisfactory determination by an officer of the Board, the Minister appointed the chairman and nominated a panel of workpeople representatives from among whom the Board designated a second member. The third member of the tribunals was appointed by the Board without restriction as to selection. Over the actual membership of advisory committees for the Board the Minister had no formal power. But in the case of both the Appeal Tribunals and the advisory committees the salary and allowances for members and staff were determined by the Board "after consultation with the Minister and with the consent of the Treasury." Through the purse strings the number of tribunals and committees, as well as their personnel, was subject to external, even if indirect, influence.

Most important were the financial arrangements governing the Board's activities. These were several, and somewhat complicated. However, without too much detail the principal aspects can be noted. All of the expenses of running the Unemployment Assistance Board and of paying allowances were borne by the national Exchequer. It was originally intended, it will be recalled, that the local authorities should pay certain sums to assist the Board's operations after the Second Appointed Day. Actually no such payments were ever made. When the Second Appointed Day was postponed from March 1, 1935, to ultimately April 1, 1937, the first provisions for

local contributions had to be cancelled. Before the latter date the Government agreed to a reduction in the "block grants" payable to local authorities in lieu of a contribution from them for unemployment assistance.²⁸ In consequence, all sums expended by the Board came from the Exchequer. The salaries of the Board members were paid from the Consolidated Fund. The rest of the cost was appropriated by an annual Vote from Parliament which appeared under Class V of the Civil Estimates among the items defended by the Minister of Labour.

In 1935 and 1936 there were two Votes, one for the salaries of the Unemployment Assistance Board's officers and the other for unemployment assistance allowances. From 1937 onwards there was only one Vote, combining these two totals. The part for salaries, which included also allowances for the appeal tribunals and advisory committees, represented a sum which had passed through the Ministry of Labour and had been approved by the Treasury before the liability was originally incurred. That is, in exercising control over the personnel of the Board the Treasury in the first instance regulated the charge for salaries, so that at budget time no particular procedures were required in this connection. The other part, for assistance allowances, was a Treasury contribution to the Unemployment Assistance Fund created by Section 44 of the 1934 legislation. The establishment of this Fund was predicated on the expectation of contributions from the local authorities. As just mentioned, the Fund really had no income save from the Exchequer.

Section 46 of the Unemployment Act prescribed what

²⁸ *Report of the Unemployment Assistance Board for 1937* (Cmd. 5752), pp. 59-60.

expenses were to be defrayed from the Unemployment Assistance Fund and how they were to be determined. The principal items, classified as to methods of control, were: expenses of administration other than personnel charges, accruing liability for superannuation of staff, and allowances for the unemployed applicants to the Board.

As for the first of these, administrative expenses, Section 46(1) provided that the Board should make application each year to the Minister of Labour for determination of the maximum amount of Board expenses, which upon determination by the Minister with the consent of the Treasury could not be exceeded. Subsection (2) directed that there should be paid out of the Fund into the Treasury such sums as the Minister might estimate to be the cost borne by other governmental departments in rendering services for the Unemployment Assistance Board. In practice the procedures were not so complicated as it might seem. The Board could carefully calculate what such objects of expenditure as rent, utilities, and travel would amount to, and the budget officer of the Ministry of Labour accepted these estimates. Furthermore, the Board incurred directly the liability for services rendered by the Post Office, H.M. Office of Works, and H.M. Stationery Office. The Ministry of Labour did not concern itself with these arrangements. There were, however, the costs which the Ministry of Labour bore in paying allowances to the Board's applicants. This was a large and important item. For the calendar year 1937, 56·5 per cent of the total administrative cost of the Unemployment Assistance Board, including all salaries went for services rendered by the

Ministry of Labour.²⁹ The Ministry presented the bill as it calculated it, and the Board had to accept it. There was a feeling prevailing among some of the Board's officers that the Ministry was overcharging them. For the year 1938 the Ministry of Labour's proportion of the total administrative costs was 49 per cent.

In the long run, to be sure, all the money came from the same source, the Exchequer. But if the Board was being overcharged, the result was that its administrative costs were made to appear larger than they should rightfully have been. One definite disadvantage resulted therefrom: the possibility of desirable administrative reforms entailing additional expense was definitely curtailed. Thus, for example, if the Board should desire to increase the wages for the position of investigating clerk in order to attract a higher type of personnel, the Treasury might reply that the Board's administrative costs were already excessive in relation to other services.

The accruing liability for superannuation allowances, another annual charge upon the Unemployment Assistance Fund, was determined by the Treasury, so that the Board had nothing to say about this matter. Thirdly, the sum necessary to pay the unemployment allowances granted by the Board was supposed to be determined by the Minister of Labour with the consent of the Treasury [Section 47(b)]. The calculation was actually made by the Unemployment Assistance Board and not questioned by the Minister.

The financial position of the Board can best be summarized by noting the budget procedure under which

²⁹ *Report of the Unemployment Assistance Board for 1937* (Cmd. 5752), p. 60.

it operated. The Board received directly the customary circular sent out by the Lords of H.M. Treasury in November of each year asking the civil departments to submit their estimates of expenditure for the ensuing fiscal year. Under the direction of the Budget Officer of the Board the principal items were determined—salaries of Board officers including advisory committees and appeal tribunals, expenses of other government departments directly incurred on behalf of the Board, remaining administrative expenses, and the anticipated outlay for assistance allowances. This last presented difficulties in exact calculation, for of the two variables which made up the total—the average grant per case and the total number of eligible applicants—the Board had no control over the second. Careful guess work was the best that could be achieved. The other two items, the accruing liability for superannuation of staff and the charges of the Ministry of Labour, were set down at the figure determined respectively by the Treasury and the Ministry. These estimates were dispatched to the Minister of Labour, whose Budget Officer in turn forwarded them to the Treasury with a qualifying letter under the Minister's direction stating that the figures therein given appeared to meet the probable cost of running the Board. Thereafter, any discussion of these estimates took place directly between the Treasury and the Board.

If the estimated total of assistance allowance was not expended, as happened in the first three years, the balance did not accrue to the mythical Unemployment Assistance Fund, but reverted to the Exchequer. The Fund merely appeared on the Civil Estimates of the annual budget

and as a bookkeeping entry in the Treasury. It had no other reality.³⁰ The Unemployment Assistance Board's budgeting and accounting status was similar to that of a normal government department.

Services Rendered by the Ministry of Labour.—Section 42(1) of the Unemployment Assistance Act required that allowances for the unemployed should be paid at the local offices of the Ministry of Labour, unless the Minister otherwise consented. The payments were to be made by the Board's officers, or by the Ministry's officers with the Minister's approval. In practice the work of disbursement was done entirely by the Employment Exchanges of the Ministry of Labour, the procedure being almost identical with that for claimants to insurance benefit. There were good reasons for this arrangement.

One of the requirements of eligibility for unemployment assistance was that the applicant be "capable of and available for work." The only practical test devised for demonstrating the capability qualification was registration at an Employment Exchange. By signing the register at the exchange, usually three times a week, an applicant indicated that he was without work and that he was capable of filling any job opportunity, suitable to his work history, which might come along. If an appli-

³⁰ The Board's own statement of expenditures was much more simple and logical than the arrangements provided in the 1934 Act. The Board listed two major items: unemployment allowances and administrative expenses. The latter was in turn divided under two headings: of the Board (salaries and other expenses, expenses of other Government departments, superannuation), and of the Ministry of Labour. *Report of the Unemployment Assistance Board for 1937*, Appendix VIII.

cant refused a suitable work opening, he was ineligible for assistance. The same qualification and procedure applied to insurance benefit, and since unemployment assistance was in most cases an extension of benefit, it was logical for it to follow along the same lines. Moreover, the Employment Exchanges had developed machinery for the disbursement of insurance benefit and also transitional payments. They could do the same for unemployment assistance, at a lower cost than would result from setting up some new arrangements.

The local offices of the Unemployment Assistance Board, called Area Offices, decided upon the eligibility of those applying for assistance, either directly or through an Employment Exchange. An investigating clerk then visited a household, noting its composition and inquiring as to family circumstances, including resources. On the basis of the information thus acquired, the Area Office assessed the household need according to the assistance regulations, and, with deductions for resources, determined the appropriate allowance. This determination, for the duration of its validity, was an authorization for the Ministry of Labour's local exchange to pay the applicant the stated sum, less proper amounts for casual earnings, so long as the applicant faithfully signed the unemployed register.

There was one disadvantage to this procedure. The Employment Exchange in making deductions for casual earnings followed the general regulations of the Board as to the extent to which a part thereof should be ignored. The exchange could not exercise discretion in deciding whether special circumstances warranted a greater exemption of the earnings from deduction. The applicant who

felt harshly dealt with had to go to the Board's Area Office in order to obtain redress. Probably many who would have been treated more leniently upon presentation of the facts did not go to the Board's office. Nevertheless, the necessity of tying relief administration to the machinery which knew of job vacancies, as well as the fact that in the Employment Exchanges there existed a system for the disbursement of money to the unemployed, justified the practice whereby the Ministry of Labour performed this service for the Unemployment Assistance Board. In addition, the Ministry, through its Claims and Records Office at Kew, kept statistics as to the payment of assistance allowances and made certain post-payment checks.

While the registration of applicants as unemployed and the disbursement of determined allowances, with ancillary activities arising therefrom, constituted the chief service rendered by the Ministry of Labour to the Unemployment Assistance Board, certain other facilities of the Ministry were also utilized. The Board were authorized by statute to provide, with the Minister's consent, training courses for their applicants, and to make grants to local authorities or other bodies for training purposes. The Board did not at first undertake any such direct responsibilities but relied entirely upon the training centres and instructional centres of the Ministry of Labour, even though in 1938 51 per cent of the enrollees in the first and 88 per cent of the enrollees in the latter (for short time instruction and physical rehabilitation) were applicants to the Board. For a time recruitment for these centres was jointly performed by the Employment Exchanges and the Board's Area Offices, but after 1937

the initiative in sending assistance applicants for training rested solely with the Board's offices. Apart from a maintenance charge collected from an applicant's allowance, the Ministry of Labour bore the cost of providing training facilities and did not include this in its bill to the Board. With the approval of the Minister, the Board in 1937 made small grants to three voluntary bodies affording training opportunities.³¹ In 1938 the Board made arrangements with several local authorities to use their work centres, and in 1939 expected to establish some work centres of their own as a disciplinary measure.³²

In efforts at transference of families from one part of the country to another the Board also relied mainly upon the Ministry. The Board assisted by deciding what families might be moved, and by making special allowances to cover the financial burden of transference. The Ministry provided the guidance as to areas into which it might be feasible to move some of the families living in the depressed industrial sections of the country.

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The above paragraphs have described the relations of the Unemployment Assistance Board to the Ministry of Labour, both according to legal requirements and in practice. Two other aspects of this relationship should be noted. The Minister of Labour and the Parliamentary Secretary to the Ministry answered for the Board in the House of Commons. The Minister presented the annual Vote for the Board and defended the Board's work when

³¹ *Report of the Unemployment Assistance Board for 1937*, p. 34.

³² *Report of the Unemployment Assistance Board for 1938* (Cmd. 6021), p. 48.

attacked in the debate on supply. On any other occasion, including question time, when the Unemployment Assistance Board was the subject of inquiry or criticism, the Minister or the Parliamentary Secretary replied. These two were the Board's spokesmen to the Commons and to the nation.

On the other hand, it is very important to understand the powers which the Minister of Labour did not possess over the Unemployment Assistance Board. For the most part, the internal organization of the Board and the relations among their subordinate offices were solely concerns of the Board. More importantly, the Minister of Labour did not have power to intervene in the determination of an applicant's eligibility to receive an assistance allowance, or in the determination of the actual allowance given him. Of course, the Board scarcely had an entirely free hand in these matters either. But theirs was the responsibility for applying the law and the regulations to individual cases. The Minister did not exercise supervision over or accept responsibility for these decisions.

It must be appreciated that these limitations upon the Minister were as much self-imposed as ordained by statute. True, since the Board was a statutory agency there was a presumption that the Minister did not possess authority to interfere in individual determinations, but the powers of supervision and control which the Minister did have were so pervasive that they could probably have been expanded to include this sphere if the Minister had so desired. The point is that the Ministers of Labour thus far, for good reasons, did not want so to interfere. But a corollary was that the Board had to conduct their

work in such a way that the Minister would not want to interfere.

The Board appreciated this situation. Informal consultation between the Board's officials and those of the Minister were continuous. British administration needs no well-defined machinery for such a purpose, because it possesses an unsurpassed medium for collaboration in the administrative class. With a remarkably uniform background of family and education, distinctly conscious of their position and prestige, the officials of the administrative class have a profound sense of common purpose no matter what department they may serve. In the face of the powers which had to be exercised in conjunction with the Minister of Labour, the officials of the Board maintained very close relations with their counterparts in the Ministry. Informal conversations proceeded all the time, and the Board never embarked upon a particular policy until they were sure that that policy was understood and approved by the Ministry. The reason why the legal supervision entrusted to the Minister could be exercised in a routine fashion lay in the fact that behind that supervision there had already been achieved a common understanding.

It would scarcely be accurate to call the Unemployment Assistance Board a mere unit of the Ministry of Labour. Most certainly the Board could not be rightly termed an "independent" agency. The Board's position lay in some vague, indistinct in-between world.

Chapter V

THE UNEMPLOYMENT ASSISTANCE BOARD AND PARLIAMENT

The creation of the Unemployment Assistance Board as a statutory body unrepresented in the House of Commons implied that in some fashion the ordinary relations existing between Parliament and government departments were to be inapplicable. It was uncertain just what the difference was to be, and to what extent the historic rôle of Parliament in governmental matters was to be impaired. To the disquieting fears voiced in the debate on the Unemployment Bill the Government replied that curtailment of Parliament's power was not one of the innovations intended. Of the many reassurances at various times proffered, one by the Chancellor of the Exchequer, Mr. Neville Chamberlain, is illustrative.

I do not know what hon. Members who sit on those benches would regard as adequate Parliamentary control. I can hardly think that they would desire or expect the Minister to be personally responsible for every individual decision of the Board, but it seems to me that the Parliamentary control which is provided for in the Bill is really of a very exhaustive and complete character short of that. Let me remind the House of one or two items. What is the most important part of the work of this Board? It is the determination and assessment of the needs of each applicant, including the needs of his household, and the taking into account of the resources of the individual and of the members of his household. Before they start upon this most important part of this

work, the Board have, under Clause 51, to make regulations laying down the general principles that will govern their work. Those regulations have to be submitted to the Minister, who may make draft regulations comprising either those which have been submitted to him or regulations modified according to his own view.¹

Following an explanation of the procedure for setting up the standards of assistance, the Chancellor of the Exchequer emphasized that the regulations required the positive approval of Parliament. "That seems to me a very complete Parliamentary control over the general principles which will govern the most important part of the Board's work." Then Mr. Chamberlain spoke of three other means of "Parliamentary control"—the debates on the annual report of the Unemployment Assistance Board, on the annual Vote of money for the Board, and on the annual report of the audit of the Board's finances by the Comptroller and Auditor General.

However carefully calculated this statement may have been, it, and similar ones, did not allay the suspicions disturbing the Opposition. Indeed, the statement added its own confusion, not only because it gave an inaccurate conception of the available opportunities for criticism of the Board, but also because it failed to differentiate between *criticism* and *control*.

This is an all important distinction. Parliament does not rule Great Britain in either a legislative or administrative sense. Legislative decisions, with few and mostly unimportant exceptions, are made by the Cabinet. The administrative services likewise are directed mainly by

¹ 283 H.C. Debs., cols. 1358-9.

ministers who belong or are subordinate to the Cabinet. True, the Government of the Day remain in power only so long as they have the support of a majority of the House of Commons. But thanks to the potency of party organization, a Government to-day who do have such a majority usually continue in office from one general election to another. Apart from disaffection within the ranks of the Government's supporters in the House of Commons—a phenomenon evidently of decreasing significance in British politics—only a shift in electoral sentiment measured in a general election and resulting in a different majority in the House of Commons changes a Government. In essence, Parliamentary control is manifested when the House of Commons has opportunity to change the Government of the Day.

However, *criticism* plays a significant rôle antecedent to *control*. The Opposition cannot control until they become a majority; then they are no longer His Majesty's Loyal Opposition. The Opposition can criticize, can compel the Government to justify, and if the explanation is not satisfactory to the electorate there is always the possibility that the Government can be overthrown at the next general election. Accordingly, an Opposition are concerned always that the opportunities for voicing criticism, for airing grievances, shall not be curtailed, and with them the chances that the Opposition may sometime be the Government.

As long ago as 1860 John Stuart Mill in an oft-quoted passage in his essay on representative government realized and praised what he termed the "proper function of a representative body."

Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable; and, if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors. This is surely ample power and security enough for the liberty of a nation. . . . Nothing but the restriction of the function of representative bodies within these rational limits will enable the benefits of popular control to be enjoyed in conjunction with the no less important requisites (growing ever more important as human affairs increase in scale and complexity) of skilled legislation and administration.²

The committee debate on the Unemployment Bill afforded numerous illustrations of the fact that the rôle of the House of Commons in the sphere of legislation is critical rather than determinative. For example, one member moved that the bill should direct the Unemployment Assistance Board in preparing a scale of allowances to assess the need of a child at not less than three shillings a week.³ The Minister of Labour asked defeat of the amendment on the ground that so specific an instruction might be regarded as a maximum, and in any event it was preferable to let the Board exercise their own judgment on the subject. The decision could be

² John Stuart Mill, *Considerations on Representative Government*, 3rd ed. (London: Longman, Green, Longman, Roberts & Green, 1865), p. 104.

³ 286 H.C. Debs., col. 274.

criticized when the regulations were presented to Parliament.⁴ The amendment was defeated.

There were several specific proposals concerning the extent to which certain household resources should be measured as meeting household needs. The bill included merely the same instruction to the Board as had been incorporated in a law passed in 1932 concerning assessment of outdoor relief by the Public Assistance Committees of local authorities.⁵ The Government introduced the 1932 legislation modifying the destitution or "less eligibility" principle of Poor Law administration in order to meet some of the opposition to the means test after the beginning of transitional payments. The one slight difference between the 1932 law and the Unemployment Bill, relating to wound or disability pensions, can be ignored. The attempts to increase these exemptions from consideration as household resources were successfully resisted by the Government.⁶ The Minister of Labour did accept amendments concerning sick benefits, so that the Act provided that the first five shillings a week of sick pay from a Friendly Society, the first seven shillings and six pence a week of Health Insurance benefit, and all of any maternity benefit were not to be counted as household resources.⁷

In matters of legislation as of administration the House of Commons criticizes, the Government decide. The passage of an amendment to a bill over the expressed disfavour of the Government would be tantamount to a vote of no confidence which would justify the Govern-

⁴ 286 H.C. Debs., col. 306. ⁵ 22 and 23 Geo. V, Chapter 54.

⁶ 286 H.C. Debs., cols. 789 ff.

⁷ Section 38(3) of the Unemployment Assistance Act.

ment in seeking dissolution of the House and a general election. The chances of alteration in a bill introduced by the Government depend upon a member being able to express so cogent an argument in favour of modification that he converts the Government to his way of thinking, or at least convinces the Government that it is expedient to pursue a different tack. Neither is an inconsiderable task.

It is small wonder that the Opposition should have wanted assurances that opportunities for criticism would be amply protected, and that effective criticism should prevail. When a Government alter their course in the face of criticism, it is because they fear that the electorate will enable the House of Commons to set up a different one.

The opportunities for criticizing the Unemployment Assistance Board turned out to be quite numerous. The first of these, as Mr. Chamberlain had said, was upon the presentation to Parliament of the assistance regulations. Inasmuch as the regulations were their responsibility, the Government arranged the legislative time-table to provide occasion for such debate as they thought necessary. In both December 1934 and July 1936 the Government allotted three parliamentary days for discussion of the regulations in the House of Commons.

If the matter of procedure is ignored—the regulations did not pass through a second reading debate, consideration in Committee of the Whole, report and third reading debate—the noteworthy respect which distinguished the regulations from an ordinary measure introduced by the Government was the impossibility of Parliamentary amendment. This probably strengthened

the hand of the Government in resisting pleas for altering certain parts of the regulations, although this is not certain. It is doubtful indeed whether under the rules a member would be in order in moving an increase in the scale of allowances, since only the Government can increase expenditures.⁸ The changes urged in the debate on the regulations had to be so appealing that at a later date the Government would introduce amending provisions.

Interestingly enough, the revised regulations presented in 1936 embodied practically all the particular suggestions for improvement advocated in the Standstill debates. Complaints had been voiced because the local advisory committees had not been set up,⁹ because the reductions from transitional payment levels had not been made in "reasonable stages,"¹⁰ because the rent formula was too drastic in cases of low rent,¹¹ because allowances were too uniform and not varied on a discretionary basis.¹² All these defects were met in some degree in the new regulations. Undoubtedly this fact could be cited to prove that the Government and the Unemployment Assistance Board were amenable to the wishes of the House of Commons. But it should not be forgotten that the circumstances attending the Standstill and the introduction of the revised regulations were anything but ordinary.

Approval of supplementary regulations authorizing the Board to make additions to allowances for winter needs was moved in the House of Commons by the

⁸ Cf. 315 H.C. Debs., cols. 341-2.

⁹ 297 H.C. Debs., col. 221. This and the next three citations are illustrative, not exhaustive.

¹⁰ *Ibid.*, col. 230. ¹¹ *Ibid.*, col. 1003. ¹² *Ibid.*, cols. 1004, 1015.

Minister of Labour after eleven o'clock on the evening of July 18, 1938.¹³ That day in the House had been devoted to a Supply debate on the Votes defended by the Minister of Labour during which considerable attention had been given the Unemployment Assistance Board. The regulations, which had been laid before the House on June 3rd, were not in themselves controversial. After a brief explanation by the Minister and short statements by Opposition spokesmen the motion was passed without a division. The particular evening chosen to move House approval of the regulations was no doubt prompted by the consideration that at that time extended debate could be avoided.

However, debate on the regulations could scarcely be said to have afforded a regular opportunity for Parliamentary criticism of the Unemployment Assistance Board. Regulations were presented whenever the Government desired. Once the regulations necessary for the Board to begin to operate had been approved, a long time might intervene before any other regulations were introduced. If this were the only opportunity for airing grievances against the Board, criticism might long be forestalled. The importance of Parliamentary approval of the regulations should not be overvalued.

Rules of procedure for the Board, as already noted, had also to be laid before Parliament after approval by the Minister of Labour. Within twenty-eight days a prayer of disapproval might be moved against any of these rules by a member, but the motion could only be brought up after eleven o'clock. It is generally so difficult to obtain debate at that time that this procedure has

¹³ 338 H.C. Debs., col. 1943.

often been declared no safeguard at all.¹⁴ Be that as it may, only the rule prayed against, not general considerations pertaining to the Board, could be discussed at that time.

For the sake of completeness it should be noted that any substantive bill affecting the Unemployment Assistance Board which the Government might introduce would of course be the occasion for debate involving the Board. While this contingency would not be apt to occur frequently, the passage of the Standstill legislation was a relevant example which requires that the possibility be mentioned.

At this point it might be made clear that the presentation of an annual report to Parliament, or the presentation of an annual audit of accounts by the Comptroller and Auditor General do not in themselves provide occasion for debate on the Unemployment Assistance Board. The Government have no obligation merely because an annual report has been published to set aside time to talk about the work of the agency making the report. And the Public Accounts Committee of the House of Commons, to whom the Comptroller and Auditor General makes his report, would refer to the House only a matter of financial irregularity in the keeping of a department's accounts. Neither of these two possibilities for debate mentioned by Mr. Chamberlain had any practical importance.

An incident in 1937 substantiated this fact. To a question concerning the Board's report for 1936, asked in the House of Commons on July 22, 1937, the Minister

¹⁴ See *Final Report of the Royal Commission on Unemployment Insurance*, "Minority Report," p. 442; and 289 H.C. Debs., cols. 1290 ff.

of Labour replied that the report would be available the following week.¹⁵ To the second part of the question, whether the House would have an opportunity to discuss the report, the Minister said this was "a matter which does not rest with me." In satisfaction of the complaints that the report was being published too near the time for the summer recess the Minister offered to convey to the Board the House's sentiment that thereafter the report should be ready sooner.

The following October a Liberal Opposition member again asked, this time of the Prime Minister, whether the House would be given an opportunity to discuss the Unemployment Assistance Board report for 1936.¹⁶ Replying for Mr. Chamberlain, Sir John Simon said: "I see no reason for making special arrangements for the discussion of this report." The Liberal member thereupon complained that the report had been made available too short a time before the summer recess to arrange to discuss it on a Supply day and inquired whether the Government's attitude was not destroying "the last vestige of Parliamentary control?" Sir John answered: "As far as I can see the subject can be raised on the debate on the Address, and also when a suitable opportunity arises on a Supply day."

There are certain opportunities when private members might initiate a debate on matters relating to the Unemployment Assistance Board. The Wednesdays of a session from its opening until Easter are reserved by the rules of the House of Commons for private members' motions. Fridays similarly are reserved for private members' bills. The time thus available is allotted among the members

¹⁵ 326 H.C. Debs., col. 2383.

¹⁶ 328 H.C. Debs., col. 227.

by ballot, and a member fortunate enough to obtain a place on the list for these days can indicate any subject he pleases for discussion. Yet even though the number of these Wednesdays and Fridays is limited, the Government often move that the rules be dispensed with, whereupon they use the time for their own bills. And inasmuch as two or three members are the most who can be accommodated on each day, it must be obvious that the opportunity thereby afforded to discuss the Unemployment Assistance Board is limited.¹⁷

In addition to the occasions when a private member may command time in the House of Commons, there are five opportunities for general debate when the Unemployment Assistance Board might be mentioned. These are the debate on the Address of the Crown at the opening of each session, a motion of censure against the Government, the passage of the annual Consolidated Fund (No. 2) Bill, the passage of the annual Civil Estimates, and adjournment time. Since the creation of the Unemployment Assistance Board every one of these occasions has been utilized at some time to raise matters pertaining to that body.

The debate on the Speech from the Throne is ordinarily quite broad in scope, pertaining to matters of Government policy,¹⁸ therein indicated specifically or by omission. The range of discussion is so great that extended mention of any one subject or agency is scarcely possible.

¹⁷ The private members' motions express a general desire on the part of the House and carry no implementation. Labour Party members generally use their places on the list to debate labour subjects, some of which may incidentally concern the Unemployment Assistance Board, as a motion on February 22, 1939, expressing concern about unemployment. 344½ H.C. Debs., col. 463.

The Unemployment Assistance Board was projected into the debate on the Address to the King beginning December 3, 1935, as a result of Mr. Baldwin's statement that sometime after Christmas the revised assistance regulations would be introduced.¹⁸ Subsequent Labour speakers availed themselves of this opening primarily to denounce the means test. In 1936, 1937, and 1938 there was only casual mention of the Board.

From time to time the Opposition leaders may lay down in the House a motion of censure or no confidence because of some act or failure on the part of the Government. Lest they be accused of seeking to avoid an embarrassing issue the Government afford the time to debate these motions, which may number three or four in a session. Thus on February 14, 1935, the day following passage of the Standstill legislation by the House of Commons, the Labour Party through Mr. Lansbury moved no confidence in the Government because they lacked an employment policy and had misled the House on the financial aspects of the assistance regulations.¹⁹ For another day the Unemployment Assistance Board debate continued, although this time less was said about the Board specifically and more about unemployment generally.

While the appropriation bills are pending, the Opposition may indicate any subject they desire to discuss and the relevant Vote is presented to afford the occasion. The Consolidated Fund (No. 2) Bill, although not strictly an appropriation bill, can be used to discuss almost any matter, from Palestine to the European situation. On July 29, 1936, a second reading debate on

¹⁸ 307 H.C. Debs., col. 73.

¹⁹ 297 H.C. Debs., col. 2095.

the bill was the occasion for another discussion of the Government's employment policy.²⁰

The Civil Estimates afford the most important annual opportunity for discussing the Unemployment Assistance Board, since the Board is dependent upon money appropriated by Parliament. It will be remembered that when the House of Commons assembled in January 1935, after the Christmas recess, the Unemployment Assistance Board was brought under immediate attack because there was pending a supplementary estimate for the Board. At the time a Liberal Opposition member remarked: "It is only by the merest accident that we have had an opportunity to discuss the problem in this House."²¹ While the existence of the supplementary estimate was fortuitous, doubtless in its absence the House would shortly have availed itself of another opportunity to voice complaints against the Unemployment Assistance Board.

In the case of the regular estimates, a Vote on Account is passed each March just before the beginning of a new fiscal year on April 1st. Several days at this time are available for debate of various matters. On March 4, 1935, on March 3, 1936, and on March 13, 1939, unemployment was the subject to which a full day's discussion was devoted. On this last date the Unemployment Assistance Board was particularly mentioned, since the subject of how to deal with the younger unemployed who had become "adjusted" to the dole was then much to the fore.²² The completed estimates are before the House of Commons until their final passage, usually in July, pre-

²⁰ 315 H.C. Debs., col. 1557.

²¹ 297 H.C. Debs., col. 1796.

²² 345 H.C. Debs., col. 58.

ceding the summer recess. During this time various opportunities may be arranged for debate.

On June 22, 1936, the Unemployment Assistance Board Vote alone was the subject of discussion for an entire day.²³ The first annual report of the Board had been published a few days before, and since the report's general tenor was defensive and critical of the Standstill it was not surprising that a day should be devoted to these matters. A *pro forma* motion to reduce the Vote by £100 permitted a wide latitude for discussing any phase of the Board which members desired, from the personalities of Board members to the treatment of individual cases.

A year later, July 6, 1937, a different practice was inaugurated. The six Votes for which the Minister of Labour answered—those for the Ministry, the Unemployment Assistance Board, the Commissioner for Special Areas, the Special Areas Fund, Financial Assistance in Special and Other Areas, and Grants in respect of Employment Schemes—were lumped together for common consideration. The chairman of the Committee on Supply ruled that for the convenience of the House the debate might range over all the Votes at once and that a motion to reduce one of them by £100, in order to bring about a division, should not be made until the end of the day.²⁴ A similar procedure was followed again in 1938 and 1939.

Inevitably on these occasions unemployment assistance administration was much to the fore, cases of individual hardship being cited, policies criticized, and appeals made to increase allowances. Thus, in the 1937 debate the

²³ 313 H.C. Debs., col. 1437.

²⁴ 326 H.C. Debs., col. 194.

Minister was urged to request the Board to increase allowances because of the rising cost of living. Such an increase was announced by the Minister the following October 31st. In 1938 three different days were given to the Votes defended by the Minister of Labour. On May 17, 1938, the payment of discretionary allowances and the liquidation of the Standstill were especially mentioned.²⁵ The subject of wages in industry failing to approximate the household needs of large families was emphasized in the debate on June 24th.²⁶ A month later, July 18th, the annual report of the Unemployment Assistance Board, which had just appeared, was drawn upon for discussion of the "wage stop," the level of assistance allowances, and malnutrition.²⁷

Lastly, before the various recesses of each session a day or more is usually given to a general debate on a motion of adjournment. The subject, or subjects, for discussion are ordinarily arranged beforehand. On the Easter adjournment, April 18, 1935, an Opposition Liberal spokesman raised the question of the management of the business of the House, specifically complaining of the fact that only six days intervened between the introduction and the debate of the unemployment assistance regulations the previous December.²⁸ When the House of Commons reassembled in October 1935, after the summer recess, it was known that the Government was going to ask the King to dissolve the House and call a general election. Before the writ of dissolution was actually received, four days of debate on a motion of adjournment took place. The application of sanctions

²⁵ 336 H.C. Debs., col. 247.

²⁷ 338 H.C. Debs., col. 1827.

²⁶ 337 H.C. Debs., col. 1411.

²⁸ 300 H.C. Debs., col. 2032.

because of the Italian invasion of Abyssinia was the issue of the day, but toward the end the Labour Party endeavoured to turn attention to unemployment questions.²⁹ Government speakers insisted upon returning to the discussion of the international situation.

In 1936 before the Easter recess on April 9th and the Whitsun recess on May 29th the delay of the Government in presenting new assistance regulations was brought to the attention of the House.³⁰ Both times Unemployment Assistance Board administration came under fire. A part of the afternoon of December 17, 1936, before the Christmas recess, was given to an appeal for suspension of the reductions occasioned by execution of the revised regulations.³¹ The Minister of Labour, defending the scale of allowances, rejected the appeal. And before the Christmas recess in 1938, on December 22nd, general questions concerning unemployment policy were discussed.³²

All the opportunities thus far mentioned when the House of Commons might criticize the Unemployment Assistance Board have one common attribute—they are selective. That is, these occasions must be utilized for this purpose in preference to discussion of some other topic demanding the House's, and the nation's, attention. There is not time for the debates to range over the entire breadth of governmental activities. In consequence, the degree of political timeliness of a subject, the degree of popular concern, the degree to which grievances have

²⁹ 305 H.C. Debs., col. 368.

³⁰ 310 H.C. Debs., col. 2971; 312 H.C. Debs., col. 2403.

³¹ 318 H.C. Debs., col. 2661.

³² 342 H.C. Debs., col. 3145.

accumulated demanding public ventilation—these factors will influence the choice of items for House of Commons consideration.

Arrangements for debate are made “through the usual channels.” This means that the Opposition Leaders or Whips keep in close touch with the Chief Government Whip, the Parliamentary Secretary to the Treasury, who manages the time table of the House. Mutual accommodation adjusts the available opportunities for debate to the subjects pressing for discussion. Similarly, arrangements are usually made as to the individual members who will “catch the Speaker’s eye” and be given an opportunity to state their opinions to the House. The Labour Party can always be expected to select the Ministry of Labour’s Votes for debate on one or more Supply days. For some time to come, while unemployment questions continue to be a primary political problem, a number of other occasions will be utilized to discuss matters with which the Unemployment Assistance Board is closely concerned.

Parliamentary Questions.—The most useful means of keeping the work of the Unemployment Assistance Board under constant review is through the institution of questions asked in the House of Commons. The first hour of every Parliamentary day except Friday is devoted to answers by Ministers or their Parliamentary Secretaries to questions which have been submitted by members of the House. Supplementary questions may be put orally, although the Speaker may rule out of order any question exceeding the scope of the original, or the Minister may ask for notice of the query. A Minister may give what answer he pleases to a question. As the

Speaker once remarked: "The House is only entitled to get the answers which it does get."³³

There are two resorts for the member who finds an answer especially unsatisfactory. He may at the time give notice that at the "first opportunity" he will raise the matter on adjournment. Then after eleven o'clock in the evening he may bring up the issue concerning which he is dissatisfied. This recourse is infrequently used, as a member can usually obtain satisfaction privately. Or immediately following the question period a member may ask leave of the Speaker to move adjournment of the House on the grounds of a matter of "urgent public importance." The Speaker must be convinced that it is a matter of urgent public importance before he will grant leave to make the motion. On May 25, 1936, a member asked such leave in order to bring up the delay of the Government in introducing the revised assistance regulations. In view of the fact that the Prime Minister that same day had announced he would make a statement on the subject the next day, the Speaker withheld his leave.³⁴

Ministers for the most part preserve an appearance of accommodation to the inquiries made of them. Otherwise their lives would shortly be made miserable by the House. The excuse that an answer cannot be given "in the interest of the State" is limited by custom to defence secrets. But in special circumstances the House may be asked to refrain from putting certain questions. Thus the day after the Standstill was announced a question was on the Order Paper seeking information on the number of Unemployment Assistance Board applicants in a local area whose allowances had been increased and decreased

³³ 309 H.C. Debs., col. 2281.

³⁴ 312 H.C. Debs., col. 1627.

from the transitional payment level. The Parliamentary Secretary to the Ministry of Labour appealed to members not to ask for detailed information when all the Board's staff were going through a difficult period.³⁵ When similar questions were subsequently asked, this appeal was referred to; in all cases it was accepted without objection. It is nevertheless true that experience has demonstrated the wisdom of providing at least the pretence of a frank reply as the best method of avoiding criticism.

No matter how many questions may be on the Order Paper, question time is strictly limited to one hour. Many questions frequently go unanswered orally and appear in the record as written replies. When the ministries are called in the order of their precedence, those near the bottom of the list may not be reached at all. In consequence the practice has been adopted of placing various ministries at the head of the list on different days. On Thursdays questions addressed to the Minister of Labour have been called first, with the result that a large portion of the inquiries concerning labour matters are scheduled for that day.

The questions and answers which appear in the official record of Parliamentary proceedings constitute only a fraction of the inquiries made by members. Many write directly to the Minister or to the Board. As early as February 13, 1935, a member asked the Minister of Labour if he would communicate with the Unemployment Assistance Board for the purpose of obtaining an official at each of the large centres who would reply to questions of members of Parliament about the adminis-

³⁵ 297 H.C. Debs., col. 1137.

tration of the assistance regulations. The Parliamentary Secretary answered that the Board had instructed their local offices to furnish information regarding any individual case in which members might be interested.⁸⁶ The power to ask a formal question in the House itself is the sanction which ensures a reply to informal inquiries.

Some concept of the use and importance of Parliamentary questions can be gleaned from an examination of the questions concerning the Unemployment Assistance Board asked between 1935 and the beginning of 1939. Classification of the variety of questions is not easy, but certain categories can be attempted. The largest number of questions are made up of requests for statistics, which constituted almost half of over eight hundred questions asked about the Unemployment Assistance Board in this period.

Approximately one-third of the statistical requests were for simple statements on the number receiving assistance or the total assistance expenditures at different times. Especially did representatives of the depressed areas ask for such figures—perhaps to keep the Minister aware of their interest; more likely as information for home consumption and utilization. Then there was a wide range of requests for statistics, from the number of cases heard by the appeal tribunals and the number of ex-service men receiving assistance to such questions as the amount of money refunded to applicants because of the Standstill. The advent of the Second Appointed Day on April 1, 1937, led to numerous inquiries as to the extent various local authorities had been relieved of able-bodied unemployed formerly receiving public assistance.

⁸⁶ 297_H.C. Debs., col. 1934.

Some requests for figures had an immediate political purpose. For instance, Opposition members asked a number of questions about the Unemployment Assistance Board costs of administration in comparison with those under the transitional payment scheme. The higher Unemployment Assistance Board costs thus revealed⁸⁷ were then used as further reason for attacking the Government for setting up the Board. Other questions sought to elicit information which would reveal how the means test was operating, such as the number of applicants having resources, the number receiving discretionary additions to the scale allowance rate, and the number receiving allowances greater than their corresponding benefit rate. Several questions concerning the number of persons who were receiving Unemployment Assistance Board supplementation of their insurance benefit were asked for the frank purpose of calling the attention of the unemployed to this right.

On the other hand, Government supporters found occasion to use the same technique defensively. After the revised regulations became effective in November 1936, questions immediately appeared about the number of applicants having increases or decreases in their previous allowances. Inasmuch as all increases were operative at once, while decreases were made over a period of time, in most cases not beginning until the spring of 1937, it soon became evident that the Minister could report so many increases and no decreases. The number of these questions then became so noticeable, that on February 18, 1937, the Minister was twitted about it. Rather testily the Minister replied: "The hon. Member and his friends

⁸⁷ See, for instance, 313 H.C. Debs., col. 361.

are constantly asking for information about decreases, and there is no reason why my hon. Friend should not ask about the increases.”³⁸

A few days later an Independent Labour Party member pointedly said to the Minister: “Will the right hon. Gentleman inform Conservative Headquarters that they are just a little too previous with their questions on these matters?”³⁹ But as time revealed that the increases did far outnumber the decreases and that the average allowance under the revised regulations was greater than before,⁴⁰ the questions continued. Moreover, in the winter of 1937–8, some thirty questions were asked about the number receiving increases due to the season and the higher cost of living in order to demonstrate how the unemployed were benefiting from this concession by the Unemployment Assistance Board and the Government.

Some questions could scarcely have been expected to receive an answer from the Minister of Labour. On at least ten occasions the Minister was asked what would be the cost to the Treasury in paying unemployment allowances if the means test were abolished. The reply was that there were no figures available on which to base an estimate.⁴¹ To other requests for statistics the Minister replied that no figures were readily available and that it would scarcely be worth while to extract them. Such an answer was given to inquiries of the number of cases where savings were a household resource; the number of applicants who were actors, actresses, musicians, and stagehands; the number of applicants in a locality in each of the age groups, 60, 61, 62, 63, and 64 years.

³⁸ 320 H.C. Debs., col. 1333.

³⁹ *Ibid.*, col. 2157.

⁴⁰ Cf. 322 H.C. Debs., col. 1150. ⁴¹ 314 H.C. Debs., col. 1663.

Apart from the statistical requests, a wide variety of questions was asked by the House of Commons. Between the time of the Standstill and July 1936, no fewer than sixty questions inquired about the date of presentation of the revised regulations or when the advisory committees would be set up. After the advisory committees were constituted came inquiries as to their personnel, remuneration, and meetings, as well as about their rent recommendations. Other questions embraced such far-flung concerns as the ability of the staff in Wales to speak Welsh, complaints of delay in payments, and charges of overcrowding in Unemployment Assistance Board premises, to queries whether the Minister would abolish the means test, increase the scale of allowances, or initiate an investigation of the relationship of wage levels, insurance benefit, and assistance allowances. Almost every aspect of Unemployment Assistance Board administration was the subject of at least one question.

Although not many in number, a few types of questions deserve more than passing implication of their existence. One such category was made up of queries seeking elucidation of the Board's policy. These inquiries served the dual purpose of calling attention to matters which needed clarifying and of informing the public of Board decisions. For example, an early question related to the treatment of applicants who cultivated group holdings or other plots. The Parliamentary Secretary replied that produce grown for individual consumption would not be counted as a household resource, while the net income after the first six months from group holdings would be treated as any other income.⁴² Another inquiry

⁴² 298 H.C. Debs., col. 759.

concerned whether a person receiving Unemployment Assistance Board allowance after the First Appointed Day would be held ineligible for assistance if he earned small sums in non-insurable employment. The reply was that as a general policy such a person would not be considered ineligible for assistance.⁴³ In February 1938, a question was raised whether a rent reduction in dwellings of a local council would bring about reductions in Unemployment Assistance Board allowances. At the time the Minister said the matter was under consideration; on March 17th he announced that rent rebates by local authorities would not be considered reason for reducing applicants' allowances. The Board would readjust the cases where reductions had been made for this cause.⁴⁴ Including repetitions, there were about fifty questions of this kind between 1935 and the end of 1938.

A different category of question might be labelled as exerting pressure to increase allowances. Would the Minister direct the Unemployment Assistance Board to pay coal allowances to applicants? To this particular request the Minister replied that this was a matter for the Board, who "informed" him that allowances took in account the varying needs of each individual case.⁴⁵ To a question whether applicants would receive an extra allowance for clothes and travel while away from home looking for a job, the Minister answered that the Board would consider the matter.⁴⁶ To a complaint that applicants were not enabled to travel to a hospital to see their wives or children came the assurance that the Board would regard this as "exceptional circumstances" warranting

⁴³ 302 H.C. Debs., col. 2018.

⁴⁴ 333 H.C. Debs., cols. 562-3.

⁴⁵ 307 H.C. Debs., col. 274.

⁴⁶ 314 H.C. Debs., col. 1219.

an increase in the allowance.⁴⁷ From Government supporters came constant pressure to have army reservists' pay and service pensions entirely omitted from consideration as a household resource. Finally, after many promises to consider, the Minister on May 12, 1938, announced a substantial change whereby these resources would be treated more favourably than before. To forestall continued pressure, he said that the new practice had been "settled after full consultation with the Service Departments."⁴⁸

On two occasions general increases in allowances were forthcoming. On November 19, 1936, the Minister was asked for the first time if there would be a special payment to the unemployed in celebration of the Coronation. This possibility was promised consideration.⁴⁹ Subsequent inquiries received similar replies, until on February 25, 1937, the Minister announced to the House that the Unemployment Assistance Board proposed to pay as a Coronation gift two shillings and six pence to each unemployed applicant as of the week ending May 8th next, plus one shilling for each dependent child.⁵⁰ On April 8, 1937, to a question whether allowances would be increased because of the rising cost of food and materials, the Minister said: "I do not consider that any circumstances have arisen which would justify the action necessary for increasing the rates of unemployment benefit and the basic rates of unemployment assistance."⁵¹ This answer implied that when the Minister thought that the circumstances warranted, steps would be taken to

⁴⁷ 301 H.C. Debs., col. 369.

⁴⁸ 335 H.C. Debs., col. 1682.

⁴⁹ 317 H.C. Debs., col. 1898.

⁵⁰ 203 H.C. Debs., col. 2161.

⁵¹ 322 H.C. Debs., col. 325.

increase allowances. In the Supply debate on July 6, 1937, the Minister announced that he was initiating an investigation into family budgets and the cost of living.⁵²

When the House of Commons reassembled the following October after the summer recess, the Minister in response to two questions stated:

Any proposals for the amendment of the unemployment assistance regulations must be made in the first instance by the Unemployment Assistance Board. The Board inform me that they have had under consideration the fact that changes in the price of some commodities together with the coming of the winter months may create circumstances which need to be specially taken into account. They have, therefore, decided to make use of their existing powers in order to issue instructions at once which will authorize their officers to deal with any cases of hardship that may arise in these circumstances. I will place a copy of these instructions in the Library as soon as they are issued.⁵³

The Minister denied that the regulations needed formal amendment to effect this increase, saying that the Board thought they could act within "their existing powers." The following summer supplementary regulations were submitted and approved by Parliament which provided winter increases in allowances as a regular practice.

Altogether there were likewise about fifty questions of this kind asked in the House of Commons between 1935 and 1939. There were times when a measure of responsiveness to pressure was the only effective deterrent to its continued exertion. Moreover, occasional con-

⁵² 326 H.C. Debs., col. 201.

⁵³ 327 H.C. Debs., cols. 3-4.

cessions not only won immediate popular support, but also permitted successful resistance at other times.

In a limited number of cases, about twenty in all, questions in the House of Commons alleged malpractice on the part of the Board's officers. On one occasion the Minister of Labour said that he had no reason to believe that the terms of the Standstill were not being observed in Glasgow and that any aggrieved individuals should appeal their cases.⁵⁴ To several specific charges—that a funeral policy was included as a family resource,⁵⁵ that army pensions were being included as family income,⁵⁶ that officers were investigating families by making inquiries of their neighbours⁵⁷—the Minister replied that the Board was unaware of the practices and would make careful inquiry if the members would supply details of their charges.

An illustrative incident took place on May 26, 1938. Five questions were put down relating to cases in which Unemployment Assistance Board applicants had been asked about their private lives and political views. In one case a man had been described as holding "extremist views" and as a type who should not be encouraged. The Minister in answer explained that the Board's officers were instructed to investigate and report upon such circumstances of an applicant and his household as were relevant to the assessment of need under the Act and the regulations. Because of certain recent cases where "irrelevant matter" had been introduced on the reports, the Board had issued express instructions ordering that religious and political views were not to be included on reports.

⁵⁴ 307 H.C. Debs., cols. 269-70.

⁵⁵ 317 H.C. Debs., col. 1892.

⁵⁶ 326 H.C. Debs., col. 535.

⁵⁷ 314 H.C. Debs., col. 1218.

He thanked the member who had first brought this to his attention, and assured the House that such a breach would not occur again.⁵⁸

Lastly, in about twenty-five instances Parliamentary questions cited reductions in the allowance of specified individuals and asked for an explanation. In a few of these the Minister responded that the cuts were due to changes in household circumstances. In others he announced that inquiries were being made and that the Board would communicate directly with the member. In one case the facts cited were that following receipt by a daughter of a bonus of twenty-four shillings for good work the father's assistance allowance was reduced five shillings for four weeks. After first promising an inquiry the Minister on February 17, 1938, explained that it was the Board's practice to allow such a sum entirely for the personal needs of the recipient. The area officer had not understood that the sum involved was a bonus, but when his attention was called to this fact the cut had been cancelled and the past reduction restored.⁵⁹

Undoubtedly most of the questions relating to individual cases were addressed informally to the Minister or to the Board. Indeed, on December 20, 1935, in a written reply the Minister of Labour asked that members wishing to inquire into individual cases should communicate with him.⁶⁰ But there have been instances of individual cases brought up at question time in the House of Commons.

On six occasions issues involving the Unemployment

⁵⁸ 336 H.C. Debs., cols. 1357-60.

⁵⁹ 331 H.C. Debs., col. 2040.

⁶⁰ 307 H.C. Debs., col. 2165.

Assistance Board were raised at adjournment time at the end of the Parliamentary day. In each instance members utilized this expedient to protest what they regarded as unsatisfactory answers at question time. On August 1, 1935, a Government supporter brought up for consideration the subject of treating school meals for children as a household resource justifying a reduction in allowance. Certain words Mr. Bailey used in his protest are worth quoting:

We all regret that politics has been allowed to creep in, and the appointment of the Unemployment Assistance Board was an effort to take it out of politics, but if they continue a practice of this kind it will mean that no self-respecting party can continue to support their existence. I say that frankly, and I hope that the Unemployment Assistance Board will take heed in time. . . . I appeal to the right hon. Gentleman who is the head of the Department, and to the hon. and gallant Gentleman his Parliamentary Secretary, to use their good offices with the Unemployment Assistance Board. I know it is an independent Board, and it may be that that is the answer which the Minister is to give to me, but nothing can divest members of Parliament of their responsibility to the people.⁶¹

Mr. Bailey's statement was remarkable for its significant implications: that the Board could stay out of "politics" only by avoiding controversial actions, that the Government could and should influence the Board to pursue a certain course, and that however "independent" was the Board the member of Parliament still had unimpaired his electoral obligations.

⁶¹ 304 H.C. Debs., cols. 2967-8.

In reply the Parliamentary Secretary recounted the Board's instructions, especially elaborating upon the instances in which school meals were disregarded as a household resource. He described reductions in allowances for this reason as "inconsiderable." He could not promise more, however, than that the subject was being carefully considered. He added: "Naturally, the Department for which I speak is watching the matter with a great deal of interest, as it must watch any matter connected with the actions of the Board."⁶² Later the Board decided to ignore entirely school meals as a family resource.

On the evening of February 12, 1936, the question was briefly raised why no advisory committees had yet been appointed.⁶³ The Minister assured the House that there was "no desire on the part of the Unemployment Assistance Board or of the Government not to set up these advisory committees." He explained that the Standstill had interrupted the administration of the Unemployment Assistance Act and that the question of committees was part of the broader subject of revising the regulations. At the end of the following month the delay of the Government in presenting revised regulations was brought up at adjournment time. Following an enunciation of the principles guiding the Government in the revision of the regulations the Minister promised: "The hon. Member . . . will not now, nor will the House, have long to wait before the Government will be able to tell the House fully when they intend to produce the precise regulations in the precise form."⁶⁴

⁶² 304 H.C. Debs., col. 2978.

⁶³ 308 H.C. Debs., col. 1094.

⁶⁴ 310 H.C. Debs., col. 1957.

The length of the wait, nevertheless, was better than three months.

The House of Commons before adjournment on November 18, 1937, listened to a charge that assistance allowances were too low in view of the rising cost of living. The Parliamentary Secretary defended the recently announced discretionary increases in allowances, which he said would amount to two or three shillings per week for the average family and would be adequate to meet the situation.⁶⁵

On the evening of December 15, 1938, a complaint about a reduction in a family's allowance because a son receiving unemployment benefit had joined the household was brought up again as reason for an attack upon the adverse effect of the means test on family life.⁶⁶ The Parliamentary Secretary to the Ministry of Labour not only justified the action in this particular case but maintained generally that the Unemployment Assistance Board local offices were exercising discretion in special circumstances by increasing the income exempt from inclusion as a household resource. He cited a sample survey in South Wales which had revealed that in 28 per cent of the cases having earned income the amount not included as family means was greater than that set down in the assistance regulations.⁶⁷

The sixth of the adjournment time discussions will be noted below.

Nothing has been said about the part played by the House of Lords in relation to the Unemployment

⁶⁵ 329 H.C. Debs., col. 720.

⁶⁶ 342 H.C. Debs., col. 2320.

⁶⁷ *Ibid.*, col. 2341.

Assistance Board for a very simple reason. The House of Lords was little interested in unemployment matters. Apart from the perfunctory consideration of the assistance regulations, there is no record of that House having taken up any subjects pertaining to the Unemployment Assistance Board between 1935 and 1938. In February 1939 the House did listen to a brief analysis by Lord Rushcliffe of the problem of the younger unemployed. In March 1939 Lord Addison initiated a short debate on the Government's employment policies. These occasions constituted the extent of the Lords' manifestation of interest in unemployment subjects.

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Two conclusions about the relations of the Unemployment Assistance Board to the House of Commons are obvious. First, not only were there ample opportunities for the members of the House to discuss and criticize the administration of the Board, but also these opportunities were frequently and continually exercised. Secondly, the opportunities for criticism and the extent of their use differed in nowise from those available where a regular ministry of State was involved.

How then was the "independence" of the Unemployment Assistance Board evidenced? For one thing the Board could not answer directly in the House for their administration, but depended upon the voice of the Minister of Labour and the Parliamentary Secretary to the Ministry. The customary formula was for the Minister or Parliamentary Secretary to preface his reply with the words, "I am informed by the Board" or "The Board inform me." The Minister of Labour was careful to

preserve the appearance that he acted as a go-between for the Board and the House without any power personally to interfere with the Board. For example, on an occasion when a complaint was voiced about counting army reservists' pay as a household resource the Minister answered: "I would remind my hon. Friend that the responsibility for dealing with individual cases rests with the Unemployment Assistance Board, subject to statutory rights of appeal."⁶⁸

On April 28, 1936, when the Minister was pressed to give some assurance that a recent special increase in wages for miners would not be treated like ordinary income, the following colloquy took place:

Mr. Shinwell: When the right hon. Gentleman states that he is always willing to consider any special case, does he mean that is irrespective of the administrative powers of the Unemployment Assistance Board?

Mr. Brown: Not at all; I mean, of course, within the law.

Mr. Shinwell: Then are we to understand that the right hon. Gentleman cannot deal with any special case?

Mr. Brown: I can do what I always do, and that is ask the Board to examine it, and see whether the case has been handled as it should have been.⁶⁹

In debate on Supply the same attitude was maintained. When the House was considering the Votes defended by the Minister of Labour in 1937, Mr. Brown began his remarks about the Unemployment Assistance Board with the words: "Then there is the Unemployment Assistance Board, for which the Minister answers in the House but

⁶⁸ 303 H.C. Debs., col. 357.

⁶⁹ 311 H.C. Debs., col. 729.

which is a statutory body bearing its own responsibility.”⁷⁰ No matter what criticisms were voiced in the House, the Minister never undertook to do more than convey to the Board the sentiments of the House, or to promise that a matter would be given further consideration.

Another incident in this connection should be noticed. At adjournment time on the evening of December 5, 1935, Mr. Buchanan took up his charge expressed previously at question time that the terms of the Standstill were not being observed in Glasgow. The Parliamentary Secretary replied again that aggrieved individuals should make use of the appeal machinery and repudiated the idea that appeals should be addressed to the Minister of Labour before statutory rights and procedures had been exhausted. He added that “if it were found in a number of cases that the appeal tribunal was interpreting the Act in a sense different from what Parliament intended, it would be within the competence of the Minister to bring fresh proposals before Parliament.”⁷¹

Immediately an Opposition Liberal member vigorously reasserted the right of members to bring individual cases to the attention of the House regardless of the Appeal Tribunals. To this the Parliamentary Secretary answered by explaining that the Board’s officers were given the power to act as they thought best according to the terms of the law, and that there was no reason to believe that officers were not so acting. He added, “When the House evolves a new technique, as under the Unemployment Assistance Act, giving within certain limits a wide discretion, it should realize the necessity of giving a chance

⁷⁰ 326 H.C. Debs., col. 193.

⁷¹ 307 H.C. Debs., col. 439.

for this new technique to operate freely, and it must be prepared to stand by the result in the individual cases in which it is applied." In view of the outcry greeting this declaration, the Parliamentary Secretary modified his stand to the extent of saying that members had not been deprived of their right to raise individual cases, but that the only "legal and common-sense" way to handle these matters was through the usual procedure.

The attitude of the Parliamentary Secretary was in keeping with the general effort of the Ministry of Labour to distinguish between its responsibility and that of the Unemployment Assistance Board. But the fatal loophole had also been acknowledged. The Minister did have the power to modify any undesirable results produced in the administration of the organic act by introducing amending legislation, regardless of the status of the administrative agency. A failure to take action could only be interpreted as acquiescence in any particular situation. This much was admitted in July 1936 during the debate on the revised regulations. Sir John Simon told the House that in addition to the Appeal Tribunals an applicant for unemployment assistance had a second security (that the regulations be faithfully executed) "as important as the first." "If a practice grew up under which harsher measures were applied in the exercise of discretion than Parliament intended and we have explained, there is an effective remedy in the form of Parliamentary question, debate, and challenge."⁷²

Why then did the Minister of Labour desire to preserve the appearance that he could not interfere with the Board? The reason was primarily that he found in this

⁷² 315 H.C. Debs., col. 849.

fiction a defensive bulwark strengthening his conviction that the decisions of the Board were satisfactory. As it was, the Minister as frequently as he denied responsibility for an individual decision defended some other allowance in a given case as just and reasonable. At no time did the Minister or the Government feel able resolutely to deny the right of the House to criticize the Board or to bring up individual cases. The Minister found it best to accommodate the widespread interest of the House in unemployment assistance matters.

A member of Parliament has written that "there is no machinery, either of parliamentary procedure or of legislation, which can define once and for all the meaning of ministerial responsibility, which can draw a clear line between policy and administrative detail, or which can provide an impartial and authoritative arbiter" of these questions.⁷³ He has continued that while the "independence" of any agency is provided in the words of the statute, "the meaning to be put upon them will be determined by parliamentary custom, and that will represent not so much a logical construction of the words of the instrument as the general wish of Parliament as expressed through the conflict of private members, Ministers, and the Speaker." These words were peculiarly applicable to the relations of the Unemployment Assistance Board and Parliament.

Members of the House of Commons little cared what was the status of the Board, or what might be the Minister's powers over the Board, so long as the particular interest they had in assistance matters—whether

⁷³ Hugh Molson, "Parliament and the Independent Boards," 123 *Nineteenth Century* (January 1938) 78, p. 91.

the complaint of an individual, the inclusion of school meals as a household resource, or the treatment of reservists' pay—was in some way satisfied. The Minister of Labour did not find it expedient to push the contention of the Board's "independence" too far. The Board's status could not be used as an excuse for inaction in situations where considerable feeling had been, or might be, aroused. The House of Commons made its demands; those demands which seemed likely to command more than casual support were usually accommodated. And the House appreciated the results, not any attempted distinctions as to the responsibility for those results. The fact that the Unemployment Assistance Board could not speak directly to the House did not diminish either the need or the occasion to speak in justification of their actions. The difference was that the Minister and the Board had to construct a joint defence.

The Board's status was supposed to prevent the individual members of the Board from being criticized in the House of Commons, although their actions as a board were not so protected. The ruling on this matter was illuminating. During the Standstill debate Sir Stafford Cripps asked whether members of the Board could be attacked in the House. The Deputy Speaker then in the chair ruled that the personalities of the Board could not be criticized in the House except on a substantive motion. The regulations, he said, could be attacked because under the Act the Government accepted responsibility for them. He finally added that the actions of the Board might also be criticized.⁷⁴

At the beginning of the debate on the following day,

⁷⁴ 297 H.C. Debs., col. 1804.

February 13, 1935, a more formal ruling on the subject was sought from the Speaker. Thereupon he said:

Of course, the point which has been raised with regard to the Unemployment Assistance Board and the members of which it is composed creates, as far as this House is concerned, rather a new situation. It is quite true that the salaries of the members of that Board are chargeable on the Consolidated Fund. That being so, their salaries do not appear on the Votes. It is for that reason that through their salaries they cannot be criticized in discussion on Votes of Supply; nor could they be criticized in discussions on the Consolidated Fund Bill, because that Bill only contains the items which appear on the Votes, and which alone can be discussed. But the mere fact that the salaries of the Board are chargeable on the Consolidated Fund does not put them in any special position in this House, for which particular reason they cannot be criticized.

The hon. Member is probably as well aware as I am of the paragraph in Erskine May which includes a considerable list of persons who cannot be criticized in this House, not because their salaries are charged to the Consolidated Fund, but because, quite correctly I think, casual criticism of those persons would be very unseemly, and would not be the proper thing to do. Those particular persons on that list can only be criticized on a substantive vote in this House, that is to say, a motion on the Paper by which the attention of the House would be directed to that particular question, and that particular question only. I do not think that it would be a good thing that the list to which I have referred should be added to, unless there were very good reasons for it. It comes to this, that the members of this Board cannot

be criticized in this House for their actions, because they do not act individually, but as a board. Their responsibility is not an individual responsibility; it is a responsibility of the Board as a whole, and the actions of the Board, as is clearly laid down, can be criticized in this House because the Government are responsible for the Board, and through them the Board can be criticized.⁷⁵

If the House of Commons were permitted to attack individual members of the Board, efforts to single out certain persons upon whom to lay the blame for unpopular actions would be encouraged. This would scarcely have been fair, since there was no official indication how individual Board members stood upon any particular question. As it was there were occasional references in the House to Board personalities.⁷⁶ What was especially striking about the Speaker's ruling was its implication that the Government must collectively accept responsibility for the administration of the Unemployment Assistance Board. Would so much have been said in circumstances other than those of the Standstill? In any event, the limitation that the House could not criticize individual members of the Board was not very important.

Lastly, there was a crucial aspect of the Board's relations to the House of Commons which will be discussed later. If the Unemployment Assistance Board had

⁷⁵ 297 H.C. Debs., cols. 1950-1.

⁷⁶ For example, in Supply debate on June 22, 1936, Mr. Buchanan said of the chairman, Lord Rushcliffe, "He is a very decent man, but he is not so awfully clever"; while of another he said, "There is one from Glasgow, Mr. Reynard, who made his reputation by defying the law. This man becomes offensive." 313 H.C. Debs., col. 1468.

been an agency under a responsible minister, it would have received no more criticism than it did. But what can be said about the element of control? Suppose that a change in the party complexion of the House of Commons should result in a Government not altogether willing to defend decisions of the Board. Would, indeed could, a Minister of Labour say to the House: "I have taken this matter up with the Unemployment Assistance Board, who have decided. . . . I do not agree with the Board, but I cannot interfere"? British constitutional practice recognizes the right of a responsible minister to change any policy or decision in his department. Thus can a change in party domination of the House bring about a peaceful revolution in administration. Yet can modifications in Board practice be achieved only by statutory direction, or failing that, by abolition of the Board? The status of the Unemployment Assistance Board left the critical powers of the House of Commons unimpaired. The power of control was left shrouded in nebulous uncertainty.

Chapter VI

THE DISCRETION OF THE UNEMPLOYMENT ASSISTANCE BOARD

If some concept of the curiously hybrid status of the Unemployment Assistance Board has thus far been afforded, consideration of the motives which prompted this peculiar arrangement becomes immediately relevant. A number of reasons which have been used to justify the impairment of ministerial responsibility in certain instances can be quickly dismissed as inapplicable in the case of the Unemployment Assistance Board.

At times it has been argued that some function in administration was so technical in character that only the expert could make a decision, and in consequence the responsibility should be placed squarely on experts and the lay politician relieved from having to answer for the experts' advice. To be sure, it might well be pointed out that all administration involves certain aspects in which the advice of specialized technicians, including experienced organizers and administrators, is vital, and that a minister's task after all is selective, deciding in view of Governmental objectives and possible public reaction what course shall be pursued. Be this as it may, the claim that unemployment assistance was a technical problem, or that the Unemployment Assistance Board was to be composed of peculiarly qualified experts was never put forward by any of the advocates of the 1934 legislation.

On many sides the idea that unemployment assistance was a complicated task which should be entrusted to

experts was rejected. During the debate on the Unemployment Bill a member of Parliament declared that any six members picked at random from the House of Commons would be as capable of framing the assistance regulations as any board the Government might select.¹ The Government declined to answer this challenge. Professor A. M. Carr-Saunders has written: "When we come to the granting of discretionary payments to the unemployed, we find that it is not at any point an expert matter; it is not a task which, like the management of docks or of electrical generation, requires the service of highly trained men belonging to a specialized profession. It is a straightforward job which, however, raises social and political issues that are of immediate and continuous interest to the community at large. They are precisely the kind of issue which in a democratic country the elected representatives of the people must themselves face and determine."²

Any attempted analogy between the Unemployment Assistance Board and the Board of Control is foredoomed to failure. The verdict rendered on the Prison Commissioners of the Home Office—"They cannot shelter behind the cloak of professional or scientific knowledge, for there is no profound mystery about prison administration as it exists to-day"³—might equally well be pronounced upon the Unemployment Assistance Board.

Another reason for the creation of boards of an "independent" status has been in order to bring together

¹ 283 H.C. Debs., col. 1153.

² A. M. Carr-Saunders, "The Unemployment Assistance Board,"
⁷ *The Political Quarterly* (1936) 538, p. 547.

³ T. S. Simey, *Principles of Social Administration*, p. 77.

the various interests involved in the administration of some service. Thereby, it is hoped, a community of viewpoint can be achieved, or failing that, at least a compromise can be arranged which will prevent serious disaffection. To some extent one finds a body comparable to this concept in the Port of London Authority.⁴ While such a point of view has been heavily attacked,⁵ obviously the Unemployment Assistance Board had nothing to do with the subject. The only definable interest group concerned with unemployment assistance was made up of the recipients themselves, and even the individuals in this group varied from time to time. Other interests, including that of the taxpayer, were partial, confused, indirect, making up that vague, indefinable "public interest" which it is supposed to be the peculiar province of the politician to interpret. The composition of the membership of the Unemployment Assistance Board revealed that no specific interest was represented, unless one would so designate the appearance of a high Treasury official among the original members. This tactical blunder was not repeated when Sir Ernest Strohenger retired.

Neither did those twins so dear in American public practice, the exercise of "quasi-legislative" and "quasi-judicial" functions, serve to justify the Unemployment Assistance Board's status. True, the Board was empowered to frame assistance regulations, but as already noted, this was an advisory duty, the final decision resting with a responsible minister. In the opinion of the Committee on Ministers' Powers, the power to make regula-

⁴ Cf. Lincoln Gordon, "The Port of London Authority" in *Public Enterprise*, p. 13.

⁵ Cf. Herbert Morrison, *Socialisation and Transport*, pp. 181-8.

tions which require the positive assent of both Houses of Parliament does not constitute delegation of legislative authority to an administrative agency.⁶ Nor was the Board an administrative tribunal. The members did not sit to hear appeals from aggrieved applicants for assistance. The Appeal Tribunals set up under the Unemployment Assistance Act performed this function.

Upon what foundation then did the case for the Unemployment Assistance Board rest? Two principal arguments were brought forward to justify the position conferred upon the Board. These arguments will be examined in this and the following chapter.

The first contention was based upon the point of view that a service providing for the needs of individuals ought to have very wide discretionary powers in order to cope with the great variety of circumstances which would be encountered. For example, the chairman of one of the areas for the London County Council Public Assistance Committee wrote in a memorandum to the Royal Commission on Unemployment Insurance a strong denunciation of fixed scales for assistance.

Such scales are disastrous, in my experience, to good administration, destructive to constructive thought on the part of administrators both paid and unpaid, and have a bad psychological effect on those seeking assistance. Relief, in fact, in such circumstances becomes more a matter of arithmetical calculation than the result of carefully considered individual decisions. The absence of a scale does not prevent the use of a basis on which to assess payments in money or in kind, but this is entirely different from scales officially and centrally

⁶ *Report of the Committee on Ministers' Powers*, p. 25.

sanctioned which, in addition to the drawbacks mentioned above, might become the subject of political considerations.⁷

The Royal Commission in their final report observed that there were two alternatives upon which a relief service might predicate its basic principles. One was a "system of payments of defined amount, but subject to deductions under general rules, made as of quasi-legal right, to unemployed workers who satisfy certain statutory conditions." The other was a "system whereby payments are made at discretion and adjusted individually to the needs of the applicant."⁸ While acknowledging the advantages in simplicity of administration, the Royal Commission dismissed the first system as opening the way to "serious exploitation" and "extravagant expenditure."

It is, in our view, impossible by any system of statutory rules, judicially administered, to effect a proper discrimination between (a) unemployed workers to whom a rigid system of fixed payments might properly be applied and (b) those who, by reason of their personal circumstances, ought not to be brought within the scope of its operations. Such discrimination can be made only by an individual judgment of the particular circumstances in each case. In other words, it is a matter for the discretion of an administering authority and not one for judicial determination.⁹

Two interpretations of this argument were possible. Discretion might be exercised so as to increase a fixed

⁷ Memorandum by Miss C. Fullard, *Appendices to Minutes of Evidence*, p. 509.

⁸ *Final Report of the Royal Commission on Unemployment Insurance*, p. 131.

⁹ *Ibid.*, pp. 131-2.

scale of allowances because of the peculiar circumstances of a given family. Or a reduction from the scale might be effected because of certain conditions. Of course it was very likely that any system of assistance based on a means test would provide for stated deductions from the scale allowance due to specific household resources. Additional reductions, however, might be called for. Even provision for discretionary increases might have its advantages to the public treasury, for with this safeguard against actual hardship the basic scale need not be so generous. The words of the Royal Commission scarcely suggested that discretionary adjustment of the scale was to be a general practice in order to make allowances larger—and the consequent cost to the Treasury greater.

Some such calculations must have appealed to the Government of the Day, for a discretionary service was destined to become the basis of unemployment assistance. This decision brought to the fore the question of machinery to exercise discretion. The Royal Commission rejected the possibility of entrusting the function to a department headed by a responsible minister for two reasons. Discretion ought to be exercised by a local body in the area where the applicant's circumstances were observed. And "discretion would speedily become unreal if the Minister were responsible or were held responsible for every individual decision, and if he were subject to constant Parliamentary questioning on individual cases. Real discretion implies that the body exercising it must have a substantial degree of independence."¹⁰ In thus

¹⁰ *Final Report of the Royal Commission on Unemployment Insurance*, pp. 135-6.

arguing the Commission were preparing the way for their proposal of local-central co-operation in assistance administration. This possibility, as we have seen, was unacceptable to the Government, or more particularly to the Treasury.

On the other hand, the Government accepted the thesis that discretion in handling relief applicants ought not to be entrusted to officials under the control of the Minister of Labour. During the debate on the Unemployment Bill the Lord Chancellor, Viscount Sankey, told the House of Lords: "It is generally accepted that any system of assistance according to need can only be operated on the basis of discretion exercised by an authority in close contact with the personal circumstances of the applicant and the local background. That is what you have to provide. The existence of such a discretion is irreconcilable with direct ministerial responsibility for every decision, carrying with it the liability to constant Parliamentary questioning in individual cases. Of course the noble Lord will see the impossibility of such a thing as that, and as a practical man he will not desire it."¹¹

Actually political considerations more than concern for the exercise of discretion in assisting relief applicants seem to have prompted the premise that ministerial responsibility was undesirable. Nevertheless, the point of view that discretionary differentiation among the recipients of assistance was incompatible with ministerial responsibility must be examined.

Many years before the creation of the Unemployment Assistance Board a prominent civil servant had written:

¹¹ 92 H.L. Debs., col. 896.

“Central decisions mean uniformity; and that, in public administration, and especially in that important sphere the remuneration of the individual, has come to be regarded as the highest good, not because it corresponds in any way with the facts of life, but because it is found to expose the least target to criticism.”¹² Here it was being suggested that departments under responsible ministers tended to mete out uniform treatment in all manner of cases because when actions were challenged it was easier to defend uniformity than diversity.

Implied in Sir Charles Harris’s declaration as well as in the argument of the Royal Commission was the belief that uniform payments to individuals did not really constitute uniformity of treatment because circumstances varied. Some should receive less, others more, to the end that all would enjoy comparable circumstances. It cannot be supposed that either were for one moment advancing the thesis that the State should discriminate in its assistance upon some frivolous basis—the height or weight of beneficiaries, how they voted at the last election, or the personal relations they enjoyed with the officials entrusted with dispensing State funds.

The Royal Commission on Unemployment Insurance elaborated their case for discretionary machinery by declaring that a scheme of assistance allowances could not be set up with centrally fixed provisions for measuring family needs and family means. There was, for instance, the question of what persons should constitute the household which was to be the unit of assessment. Said the Commission, “Any rigid definition of the household

¹² Sir Charles Harris, “Decentralization,” 3 *Public Administration* (1925) 117, p. 120.

must result in anomalies and hardships to the individual claimant."¹³

We find, therefore, that an inquiry, which is to be effective and is to avoid extravagance on the one hand, and anomalies and hardship on the other, must be an inquiry into the circumstances of the individual case in its ordinary environment, without too precise a definition of the limits of the family or the household. The inquiry must be regulated. But it is one thing to lay down general principles or even, on clearly defined items of income, to make definite rules; it is another to fix principles covering every type of case. The whole appearance of simplicity of a scheme based upon definite rules is delusive. The facts of family association are so diverse and variable that it is impossible in any statute to restrict the "family" to which an applicant is assumed to belong, or to define all the considerations that are relevant to a fair assessment of means in every individual case. Central prescription at the best could do only rough and ready justice, and we have been unable to find a rule which is satisfactory.¹⁴

At this point, then, the argument on the subject of discretion can be readily summarized. Remember that after an unemployed worker had exhausted insurance benefit, paid to him upon a theory of contractual right and for a limited duration, the State undertook to relieve family destitution resulting from unemployment. The argument then began: In relieving destitution all applicants should be afforded a relatively similar treatment. Accordingly

¹³ *Final Report of the Royal Commission on Unemployment Insurance*, p. 133.

¹⁴ *Ibid.*, p. 134.

there must be discrimination among the applicants in respect to the size of their household and the extent of their need. But size of a household and extent of need are not readily definable. A superior officer, especially one not on the immediate scene, cannot lay down rules of guidance which will apply equitably in all circumstances. Consequently, discretion must be exercised in following the rules. In a department headed by a responsible minister, that minister cannot permit deviation from rules centrally laid down under his direction, because to do so may bring attack in the House of Commons. The propositions which produce this inference deserve careful attention.

First of all, a word must be said about the meaning of discretion in administration. The concept is quite comprehensive. However, discretion is definable only in terms of an objective. Discretion, properly understood, involves the exercise of judgment in the accomplishment of a purpose more or less well defined by the supreme power of the State. The legislative authority entrusts its will to administrative agencies. The power it confers may be permissive, to be exercised only in case of necessity, and the judgment of when that necessity arises left to administrative determination. That is one kind of discretion. Another consists in the power to decide what means shall be used in accomplishing a defined objective. A third type is contained in an authorization to modify the standards set up if these standards seem incompatible with the realization of the desired objective. A fourth arises when an administrative official may impose additional standards to those set up by law. Thus far the field of administrative discretion coincides with the scope

of what is commonly called "delegated legislation."¹⁵ There is lastly the discretion which is the very essence of all administrative action, decision as to when prescribed directions apply to a given individual, object, or circumstance. The police constable must decide what constitutes violation of the traffic regulations, or whether an infraction may best be dealt with by an immediate reprimand or a court citation. The customs inspector must decide under which classification of articles any particular imported goods must pay duty. The Home Office inspector must decide whether the conditions in a factory meet the required standards of safety.

In unemployment assistance administration, as visualized by the Royal Commission, some provision had to be made for the modification of the relief standard. The objective was to afford assistance to destitution arising from unemployment. For the accomplishment of this objective certain standards were required—the Commission called them "general principles." The relief of destitution required measurement of the extent of need. In consequence there must be some concept of the sum required for the sustenance of a given family. That was one standard. Another standard must relate to the matter of family resources which could fairly be counted as available to meet their need. But in applying these "general principles" to individual cases adjustment would have to be made. The Royal Commission advocated that a committee of the local authorities exercise this discretion.

The Government decided on a central statutory agency, headed by a board, under whose direction individual decisions would be made without any inter-

¹⁵ See *Report of the Committee on Ministers' Powers*, Section II.

ference by a responsible minister. This device, so it was said, would be conducive to the exercise of the requisite degree of discretion.

The proposition that ministerial responsibility discourages the use of discretion does not at all mean that departments under responsible heads do not possess very broad discretionary powers. A few examples will bear this out.¹⁶ The Minister of Agriculture and Fisheries is authorized to issue whatever orders he thinks necessary to prevent the spread of disease among animals. The Secretary of State for Home Affairs may make special orders prescribing standards of health and safety for workers in factories and workshops in dangerous and unhealthy industries. The Minister of Health may prescribe standards for obtaining cleanliness in milk stores, and standards governing the process of production and distribution of milk. The Secretary of State for Air may determine the qualifications for obtaining civil aviation licences. The Treasury, upon the advice of the Import Duties Advisory Committee, may exempt goods from duty or impose higher duties. On the recommendation of the Secretary of State the Treasury may give preferences or outright exemption to products imported from the Dominions or from India. Every type of discretion is here indicated—determination of when a condition exists, such as a dangerous disease among animals; the determination of standards to accomplish an avowed objective, such as a pure milk supply or safety in the air; authority to modify or impose additional standards, such as the Treasury enjoys over tariff duties.

¹⁶ Cf. Committee on Ministers' Powers, "Memoranda by Government Departments," *Minutes of Evidence*, vol. i.

The discretion conferred upon the Unemployment Assistance Board embodied no departure in principle from the discretionary authority enjoyed by departments of State under ministers responsible to Parliament. The officials of the Board would be the very first to maintain the validity of this statement. Not the possession of discretionary power, but some special circumstance in the exercise of discretion had to be the basis of the claim that the Unemployment Assistance Board deserved a peculiar position. The Royal Commission on Unemployment Insurance said that there was a special circumstance: the necessity that discretion be exercised *locally*.

A memorandum to the Royal Commission had pointed out that local officials of the central government were apt to be strangers in an area and unacquainted with local circumstances, while a number of officers of local authorities, such as the sanitary inspector, the district nurse, the school attendance officer, already enjoyed the right of entry into private homes. On the basis of this local knowledge a complete record of family circumstances could be compiled. In consequence officers of the local authorities were better able to assess a family's needs.¹⁷ The Royal Commission in turn argued that ministerial responsibility would prevent local officers of a central department from exercising discretion so as to take into adequate account the varying conditions of different applicants. The Government's reply in establishing the Unemployment Assistance Board was that the Board's "independence" would permit its local officers to exercise discretion. Before this assumption is

¹⁷ Memorandum by William A. Robson, *Appendices to Minutes of Evidence*, p. 560.

examined the scope of the Board's discretion must be understood. In this connection the provisions of the Unemployment Assistance Act were not as important as the provisions of the Unemployment Assistance Regulations.

There were several questions of fact which had to be determined in the application of the Act. For one thing there was the matter of eligibility for assistance. The requirement of age, sixteen to sixty-five years, was explicit enough. The requirement of status as a worker presented few difficulties if the applicant had at some time been employed in an occupation insured under the unemployment scheme or under the Widows', Orphans', and Old Age Contributory Pensions Acts. But a person who "might reasonably have expected" that his employment would have been in one of these occupations "but for the industrial circumstances of the district in which he resides" was also eligible. Determination of the satisfaction of this qualification involved some degree of discretion. The third requirement, that a person be "capable of and available for work," had already assumed definite meaning, since it was one of the statutory conditions for receipt of unemployment insurance benefit. Accordingly, the Board accepted registration at an employment exchange as fulfilment of this requirement. The fact of eligibility was decided by the Board's officers, subject to certain rights of appeal.

Apart from eligibility, there was the question of an applicant's household, for under the Act an applicant's need was to be determined and his resources measured in terms of the household of which he was a member, not according to his individual circumstance. The regula-

tions provided that a household should include persons who were "dependent on or ordinarily supported by" the applicant, except those individually eligible to apply for unemployment assistance. This was the extent of the definition approved by Parliament; its application was left to the Board's officers, subject to appeal to the Appeal Tribunals. Up to this point the elements of discretion involved in the Board's work presented no unusual or complicated aspects. Here was no ground for special concern about ministerial responsibility.

It was in connection with the scale of need and the measurement of resources that the crux of the Board's discretion lay. The original regulations set forth a definite and fixed scale of allowances supposed to be adequate to sustain an individual and his family. As a final provision, in Part VI of the original regulations appeared the words, "a final assessment may in any case where *special circumstances* exist be adjusted by way of increase or reduction to meet such special circumstances," and also, "a final assessment may be increased to provide for *needs of an exceptional character* by such amount as is *reasonable*." (My italics.) The measurement of household resources was likewise specifically provided for, except that in this respect too, "where special circumstances" existed, adjustments might be made to allow more for personal requirements than the regulations set forth.

These discretionary provisions in the regulations were emphasized by both the Unemployment Assistance Board and the Minister of Labour when presenting the regulations to Parliament in December 1934. Complaints that the scale of need was inadequate were countered by referring the critics to the discretionary parts of the

regulations; it was implied that the scale was only a general guide from which there would be frequent departures. The regulations were approved, put into execution, and there followed the deluge which brought on the Standstill.

In casting about for explanations of the disaster it was widely said that the Board's officers had failed to exercise their discretion. A National Labour peer, Lord Elton, told the House of Lords that he had based his "very excessive optimism" as to what the regulations would accomplish "upon the presence in the bill of a discretionary power which I thought—wrongly as it proves—would be so important that I actually went so far as to say I understood it was an expert opinion that the number of families dealt with under the discretionary clause would come to be more numerous than those dealt with under the regulations. In that I was completely wrong. That forecast has been falsified. *It was probably wrong to expect civil servants, especially civil servants of a minor grade, to make full use of discretionary authority.*"¹⁸

Observers outside Parliament commented in similar vein. Writing immediately after the Standstill, Mr. Ronald Davison criticized by implication the methods of the Unemployment Assistance Board.

When it comes to a basic service like the Poor Law, providing for all the needs of the man and his family, then no conceivable code of instructions, in no matter how many volumes can cover all the infinite variations of circumstance that will have to be catered for. . . . The mechanistic factor should be sparingly used and

¹⁸ 95 H.L. Debs., col. 955. (Italics mine.)

should leave scope for the human factor and questions of personality. But the methods of the comptometer leave no room for personality.¹⁹

Another commentator later wrote: "But in all forms of social work nothing can be truer than that each case presents its own human or psychological problems superimposed on or integrally associated with those of mere financial need. The average needs of a collection of individuals can do no more than serve as a guide for the treatment of individual cases, and it may even be true that an almost negligible number of individual cases actually conform to the statistical average."²⁰ He then continued to the effect that a subtle discretion was needed in applying relief regulations, and that such discretion could not be expected from a host of officials, especially when new at the job. He asserted that the Standstill had proven the failure of uniformity in assistance administration and the impossibility of a "bureaucracy" exercising discretion.

Behold what had happened! Because unemployment assistance demanded discretionary administration, the Government had set up an "independent" agency which, since it was not subject to ministerial direction, would exercise the necessary discretion. Within a month after the Board had begun to function the statements explaining the need for discretionary assistance administration were renewed. Only this time the Unemployment Assistance

¹⁹ Ronald Davison, "Unemployment Assistance: The Crisis and the Way Out," 117 *Nineteenth Century* (April 1935) 431, p. 434.

²⁰ J. Q. Henriques, *A Citizen's Guide to Social Service* (London: George Allen & Unwin, 1938), p. 180.

Board was denounced as unable to provide the need. Some place there had been a *non sequitur* in the process of inference. An "independent" board did not necessarily mean the exercise of local discretion.

The Standstill was variously described from the mild "a stain on our administration" to the superlative "the greatest fiasco in the whole history of social administration in England."²¹ Certainly it is important to realize what happened administratively to induce the Standstill. The Unemployment Assistance Board, aware as they were of the Government's desires and in nowise able to act contrariwise, brought forward assistance regulations which it was thought would provide a minimum subsistence scale for the able-bodied unemployed and at the same time cost the Exchequer no more than was absolutely necessary. Even had immediate Treasury considerations been absent, which they were not, there were two other factors which depressed the scale of allowances. One was the belief that unemployment assistance should not be more generous than unemployment insurance benefit; rather it should be less. Unemployment benefit amounted to seventeen shillings a week, with an additional nine shillings for wife or husband. Unemployment assistance for man and wife was fixed at twenty-four shillings, two shillings less. The other factor was an assumption that an applicant should not receive more as unemployment assistance than he would receive in private employment. Else what incentive would there be to work when and if work were available? The discretionary clauses were added to the regulations as a safety valve,

²¹ Ronald C. Davison, *op. cit.*, p. 433; A. M. Carr-Saunders, "The Unemployment Assistance Board," *op. cit.*, p. 538.

as a means of helping the more extreme cases where it was obvious that the scale was inadequate. Moreover, the discretionary clauses could be pointed to as in continuance of the tradition of the Public Assistance Committees, and could be used as a talking point in defending the regulations in Parliament and before the public.

It is immaterial whether it was intended that Unemployment Assistance Board applicants should receive more or less than they did as recipients of transitional payments. It is unlikely that the Board had much detailed information how the regulations would affect the some 700,000 applicants they took over on the First Appointed Day. In any event, such information as had been gathered by the Royal Commission on Unemployment Insurance indicated that the Board's proposed allowances were, if anything, more generous than the relief scales of most Public Assistance authorities.²² Principally it was the rigorous assessment of household means which produced the deductions restored by the Standstill.

What is of supreme importance is this: Was there any intention that the local offices of the Board should exercise widely the discretionary powers provided in the assistance regulations? If there was such an intention, then the administration of the regulations was deservedly labelled a "fiasco." The Board and their highest officials should have understood that the exercise of discretion is one of the most subtle phases of administration, requiring practices and procedures encouraging and fostering its growth like that of a delicate plant. Was it not appreciated that central control and local discretion are

²² Cf. "Written Evidence Submitted with regard to Tests of Need," *Appendices to Minutes of Evidence*, Part VII.

inherently incompatible unless positive steps are taken to achieve mutual accommodation? Even more, could a significant innovation in British administration be realized shortly in an organization hastily recruited and not yet too well acquainted with its tasks?

It is preposterous to believe that the local offices of the Unemployment Assistance Board were expected to exercise discretion as they pleased in dealing with applicants. Any such attempt would have been repudiated instantly from many quarters. Too much authority would thereby have been lodged in subordinate officials. Gone would have been the purpose of providing a more uniform treatment of the unemployed. Equally lost would have been the sense of obligation to the Exchequer. Furthermore, a staff recruited from local and central government services was not prepared to undertake a broad exercise of discretion, accustomed as they had been by training, experience, and tradition to accept guidance from above. It must be obvious that whatever discretion was exercised locally was subject to central direction and control.

The very nature of hierarchical organization means that final decisions and responsibility must remain lodged at the apex, unless definite and effective steps are taken to decentralize authority. The structure established for the administration of unemployment assistance, *because it was a nationalized central structure*, was hostile to any widespread exercise of local discretion. Ministerial responsibility, or freedom from it, was but a secondary influence. The Unemployment Assistance Board had to indicate what they would regard as a reasonable exercise of discretion, in what types of cases and in what kind

of circumstances additional allowances were to be granted. Local officers of the Board were dependent upon that guidance. They could not, they dared not, move far in advance of those central instructions.

Even had they so desired, the Board could scarcely have delegated very wide discretion to their subordinate offices. Had there not been a Treasury man on the Board, they still could not have long forgotten the ominous, omnipresent watchfulness of the Treasury. Moreover, while the Board was not represented by a responsible minister in Parliament, the Board could hardly free themselves from responsibility to the Government of the Day. The Minister of Labour might forgo interference in individual decisions, but the Government were not apt to be indifferent to the effect produced by the sum total of those decisions. The Government had created the Unemployment Assistance Board; they might decide to undo their handiwork. Ironically enough, the Government had been especially concerned about the financial effect of the sum total of the Board's actions; the circumstances surrounding the Standstill compelled them to think in terms of the *political* effect.

There is no conclusion which can logically be maintained except that the Board's discretion had fetters, and that any assumption that the discretion would be widely exercised was born in hopes which had no legitimate basis for expectation.

The regulations themselves spoke of "special circumstances" and "needs of an exceptional character." Any implication that these words were not to be taken literally was very faint indeed in the early instructions of the Board. True, the general directions warned, "It must

not be assumed, therefore, that the allowances under the scales and rules are necessarily appropriate to individual cases. It is the duty of officers not only to satisfy themselves that the facts are fully recorded and the calculations correctly made, but also that in the light of the circumstances of the case the payment of the ascertained sum is fair and reasonable." But then the instructions went on to declare that the sum as calculated under the regulations would be the appropriate sum in the majority of cases.

At the same time, officers must realize that the exercise of discretion is the most important as well as the most difficult part of their duty and that vigilance is necessary to ensure that in the circumstances of the case the calculated allowance does not call for adjustment in either an upward or downward direction. While care must be taken not to depart from the normal standard without sufficient cause, it is equally important that administration shall not become mechanized and routine with the result that public money is expended in excess of what is useful and necessary or that real need is inadequately met.²³

The discretion mentioned here tried to face two ways—towards increases and decreases in scale allowances. Is it any wonder the local offices decided to play safe and stick to the scale? The scale was objective. It could be calculated with mathematical precision. Discretion was subjective, and the officers were confused as to just what was its purpose or how they were expected to proceed. The local officials of the Unemployment Assistance Board

²³ Unemployment Assistance Board Instructions, A 3-34.

can be entirely absolved from any responsibility for the situation which necessitated the Standstill. They had no reason to believe that they were not expected to follow their instructions faithfully.

It should be said again, its importance is so great, that not until the Standstill intervened could the Board be certain how far or in what direction their discretionary powers should be used. Only then could they impart an understanding of intention to their local officers. Where confusion had once reigned, catastrophe pointed the way. Generosity became more important than the Treasury. Knowing this, the Board was able to take positive steps, beyond mere words on paper, to make the exercise of discretion a real factor in dealing with individual assistance applicants.

The revised regulations approved in July 1936, to become effective on November 16, 1936, increased certain scale rates and liberalized the provisions as to resources which should be disregarded in calculating a family's means. The discretionary clauses relating to "special circumstance" and "needs of an exceptional character" were retained. By this time, however, the Board were prepared to furnish guidance to their local offices.

The discretion exercised by the Unemployment Assistance Board was unique because a decision whether a discretionary addition to the allowance was warranted or not had to be made in every individual case. The burden of the case load, in 1939 still over half a million applicants, was such that in order to be effective this discretion had to be exercised locally. The Royal Commission foresaw this situation accurately enough. The Unemployment Assistance Board, therefore, had to pro-

duce a machinery, and more importantly an atmosphere, whereby this local discretion could be exercised under central influence and guidance. The methods used to achieve this result have great significance.

In the first place, there were of course the instructions which the Board continuously sent to local offices, elaborating and illustrating how discretionary powers were to be utilized. Some definiteness was thus provided the general and vague phrases of the regulations. The instructions concerning eligibility for assistance and defining a household can be passed over. More important were the four principal respects in which the scale of allowances might be adjusted, usually upwards.

The item of rent was one possible cause for adjustment. It will be recalled that the original regulations provided for an adjustment between the "basic rent" for a household—calculated on a sliding scale but averaging about one-quarter of the total allowance—and the actual rent paid by a household. If the actual rent was less than the basic rent, there was to be a reduction in the total allowance, and if more there might be an increase up to one-third more than the basic rent. There was little room here for discretion. The revised regulations made the basic rent a straight one-quarter of the total scale allowance for a household, repealed the automatic adjustment requirements, and provided instead for such adjustment as appeared "reasonable" to an officer of the Board. The local officer was to be guided by advice on this subject from the local advisory committees, when that advice had been accepted by the Board. The Board intimated what advice they were prepared to accept, and the local committees then made detailed recommenda-

tions.²⁴ In general, one-third increases in basic rents because of high rent were suggested; it was recommended that varying amounts from one to three shillings be ignored when the rent was under the basic figures. The local office had to apply these instructions to individual cases as it saw fit, but the instructions were fairly definite.

Another possible adjustment lay in increasing the amount of earnings of an individual exempt from calculation as available for household needs on the ground of personal requirements. The Second Schedule of the revised regulations provided that in addition to the exemptions therein authorized further exemption might be made in special circumstances. Board instructions indicated as special circumstances of personal requirements such items as fares to and from work, meals away from home, the clothes required by a teacher, extra wear and tear on clothes used in work, and debt under a court order.

In addition, the total scale allowance for a household might be increased or decreased in special circumstances. The Board indicated that increases might be made for "specific and definable" needs apart from ordinary needs, such as dietary requirements arising from sickness, or where the rent was higher than the allowance made provision for, but the accommodation was reasonable under the circumstances. If the allowance as finally calculated still might cause hardship for a family it might

²⁴ The Board indicated their idea of "reasonable" advice on the rent question in the Memorandum submitted to Parliament to accompany the revised regulations (Cmd. 5229), pp. 17-18. The detailed recommendations accepted are set forth in *Report of the Unemployment Assistance Board for 1936*, Appendix IX. Need it be added that the correlation is marked?

be increased. Deductions for special circumstances applied specifically to cases in which an applicant was living in cheap and undesirable quarters in order to spend more on "non-essentials." Also deductions were made for applicants living in rural areas where the cost of living was lower than in urban centres. Adjustment because of residence in rural areas was another matter referred to the advisory committees. In some areas it was recommended that the rent rule be modified so as to cause reductions in allowances; in others it was suggested that a flat percentage, 5 to 10 per cent, be cut from the total allowance; while still elsewhere a maximum allowance was proposed. Altogether only some 12,000 cases were affected by the rural area adjustment in accordance with the advice of the local committees.²⁵

Furthermore, adjustment in the total allowance might be made in cases where "need of an exceptional character" arose. The local office was told to apply two tests—was the need exceptional, and could the applicant have been reasonably expected to meet the requirement himself. Exceptional need was of an occasional or non-recurrent type, such as replacement of house furnishings; this clause in the regulations was popularly referred to as the "pots and pans" provision. If for two years an applicant's total income had been less than the Board's scales, he was *prima facie* unable to meet an "exceptional" need. For such costs as those of industrial transference or of seeking a job in another area extra allowance might be made in co-operation with the Ministry of Labour.

In the autumn of 1937 the Board instructed their local offices to make adjustments in allowances because of the

²⁵ *Report of the Unemployment Assistance Board for 1937*, pp. 11-13.

advent of winter and the increase in the cost of living. Particular attention was to be given to cases where at least half a household's income came from the Board. An addition of two or three shillings per week was indicated as a normal increase for an "average" family. With the approval by Parliament of supplementary regulations in July 1938, winter adjustments became a regular practice. The instructions for the period between November 14, 1938, and April 15, 1939, were similar to those for the preceding year. But an even more specific guide was laid down; such as a two shillings a week increase for a man, wife, and one child; two shillings and sixpence for man, wife, and two or three children; and three shillings for a family with more than three children. During that period some 50 per cent of the Board's applicants received this increase.²⁶

All efforts to amplify the Board's intentions concerning discretionary increases through instructions contained a warning that the details cited were illustrative. Mention of how to treat certain circumstances arose from practice; it took time to separate them from other cases for comment. In the meantime the work of the local office had to go on; the destitute unemployed were to be relieved. The detailed instructions issued when the revised regulations became effective in 1936 stated: "The Board desires again to remind officers with all due emphasis that it rests upon them to bring a sense of fairness and reason to bear upon all cases coming before them," and concluded, "but as has already been stated, the variety of circumstances by which officers are faced in dealing with individual cases is so great that the general principles

²⁶ *Report of the Unemployment Assistance Board for 1938*, p. 19.

or rules laid down above should not be regarded as exhaustive. Cases may remain which cannot be properly or completely dealt with under any definite rule and in which, therefore, an officer must rely upon his own judgment."²⁷

Instructions were but a beginning toward developing the use of discretion. They were not in themselves either sufficient incentive or adequate control. To foster initiative in the use of the discretionary powers the Board took several positive steps with the object of building up an *esprit de corps*, a morale, within the organization favourable to the exercise of discretion. Increased attention was given to personnel, to obtaining persons of broad, humanitarian sympathies to handle relief cases. The more unsatisfactory personnel originally selected was weeded out, and greater care taken in the recruitment of staff. Frequent conferences of staff were held in order to afford local officers a personal idea of the Board's desires. Social occasions were also utilized. High headquarters officials as well as members of the Board themselves frequently visited various parts of the country to meet the local officers.

Moreover, the Board appointed some half-dozen regional officers, who were neither supervisors nor inspectors. Their duty was to visit local offices both to explain headquarters' intentions and to discover what were the problems troubling local officials. These regional officers did a great deal to knit the entire organization together. And finally, as a deliberate matter of policy, guidance, not criticism, was the attitude of the Board's headquarters staff toward local officers. The Area Officers

²⁷ Unemployment Assistance Board Instructions, A 49-36.

were made to understand that only in the most patently excessive cases would any allowance of theirs to an applicant be questioned. The Board consciously cultivated a sense of responsibility on the part of their local officers, and then avoided stunting its growth by central high-handedness.

To be sure, discretion was exercised locally within limits, under certain central controls. Between the more than two hundred Area Offices and the Board's central office in London were some twenty-eight District Offices. One of the principal functions of these offices was consideration of cases in which discretionary additions to allowances were necessary. Area Offices were instructed to refer to the District Offices cases where more than a certain sum seemed desirable to relieve the needs of an applicant. Thus an increase of more than two shillings and six pence in the exempted income for personal requirements had to be referred to the District Office. So it was also with cases of special circumstance where the need was more than five shillings, where the alleviation of hardship demanded more than two shillings and six pence addition to the allowance, or where the rent was more than one-third higher than the basic rent. The District Offices made their own arrangements with the Area Offices as to the types of cases of exceptional need which should be referred to them. The District Offices, more closely in touch with headquarters than the Area Offices, were not subject to any formal limits upon the discretionary increases they might authorize in individual cases. The District Offices did all they could likewise to encourage the local officers to exercise their discretionary power.

Lastly, headquarters had a staff of auditors who periodically visited the Area Offices to check computations in determining allowances for applicants. The auditors did not question the discretionary grants, unless patently excessive; neither did the Comptroller and Auditor General question these additional increases in allowances. But frequently the auditors had occasion to intimate to an Area Office that they thought in a particular case the allowance might have been more generous. It is significant commentary upon British administration that headquarters found many cases where they felt discretion had not been amply exercised, very few where they felt the increase had been unduly large.

The Unemployment Assistance Board called the procedure in relation to the work of the local offices "controlled discretion." This fact should be clearly understood; while discretion was exercised locally, it was subject to central direction and control. On many sides one is told that here is to be found the greatest innovation in British administrative practice since the World War upset so many niceties. High officials of the Board, with that objectivity of which the administrative class is justly proud, admit that they had their doubts whether the system would work, whether civil servants of clerical grade could be pried loose from "addition and subtraction" and entrusted with the exercise of judgment. From time to time there have been criticisms in the House of Commons that local officers were not exercising discretion but sticking too close to the scale.²⁸ Nevertheless, by 1939 the experiment was demonstrating its potentialities of success.

²⁸ Cf. 338 H.C. Debs., col. 1922.

Was there any feature of "controlled discretion" as it developed under the Unemployment Assistance Board which was not equally applicable to any government department? More specifically, did the key to the Board's success lie in that one respect in which the Board differed from the ordinary department of State, the absence of a responsible minister in the House of Commons? The answer is clearly in the negative. Briefly the evidence in refutation may be reviewed.

A necessity in assistance administration was the exercise of discretion locally to adjust allowances to fit the circumstances of each individual case. The question whether discretionary additions were desirable or not arose continually in all cases, not sporadically. When creating machinery for assistance administration the decision to set up a single *central* agency was far more influential upon the subject of making discretionary allowances than the matter of representation of that agency in the House of Commons. While the Royal Commission foresaw this when they advocated that the determination of individual allowances be entrusted to local authorities, they assumed that ample statutory controls would be sufficient safeguard to the central government. On the contrary, even though the Exchequer was to bear the overwhelming part of the cost, Whitehall distrusted its ability to supervise effectively the local authorities in determining assistance allowances.

The central machinery set up consequently had to be made capable of exercising local discretion. This involved instructing officers in the field how to proceed and encouraging them to use the discretion entrusted to them. The traditions of British administration had to be coun-

teracted in the process. But was the Unemployment Assistance Board actually free from the factors which had built a highly centralized tradition? Sir Charles Harris noted that the "conditions under which the Civil Servant works continually press him toward centralization, and particularly the two very wholesome institutions of Parliamentary questions and Treasury control."²⁹

The Board was not free from Treasury control, and could not be inasmuch as all the Board's resources from which allowances were paid came from the Treasury. Remember that the discretion exercised was *financial*; it consisted of adding to the basic scale of allowances. The Treasury wanted some assurances on the size of the discretionary commitment, and the Board had to exercise control to keep discretionary additions within the limits tacitly imposed. So that one exceedingly important centralizing factor incompatible with an extensive exercise of local discretion was certainly operative, whatever was the supposed status of the Board.

The matter of Parliamentary questions raises more far-reaching considerations. We cannot be certain what were the original intentions as to answering questions in the House of Commons about the work of the Unemployment Assistance Board. Circumstances resulted in practically no limits being imposed upon the type or extent of queries addressed directly or indirectly to the Board. But the House of Commons was never inclined to question the discretionary additions to allowances. Rather the complaint was that treatment of the unemployed was not sufficiently lenient. If discretion had been used to decrease allowances, undoubtedly the reaction would have been

²⁹ Sir Charles Harris, "Decentralization," *op. cit.*, p. 120.

different. Parliamentary questions in themselves may be favourable or unfavourable to the exercise of administrative discretion, depending upon the result. In other words, it is not fair to say that the House of Commons will not permit local officers to exercise discretion. In the case of the Unemployment Assistance Board members of the House preferred to see more discretion exercised.

The argument that ministerial responsibility discourages the local exercise of discretion must be limited in applicability to the instances which cause protest from the individuals affected. The real issue, in consequence, is the power of defence. Because a decision is made by an officer of the administrative class rather than by an officer of the executive class in the field, is that decision easier to defend? Of course not. An unpopular decision made by someone close to the Minister is not for that reason made more acceptable. Even if administrative class officers can better write the answer "which turneth away wrath," their power of reason ought to be available whoever makes the decision.

It is time to point once again to the nature of discretion. Its exercise is supposed to be directed toward the accomplishment of defined objectives. First Parliament and then a responsible minister are expected to set those objectives. Thus are democratic intentions realized. If a minister makes his objectives understood he may facilitate their accomplishment by giving considerable discretion to officers down the line. It is where a minister does not have a very clear conception of his desires that the exercise of discretion is hampered. Then questions are referred to the head office, to persons who can ask the minister what should be done and can advise the

minister the reasons for and against. This causes centralization. Under the circumstances how can it be avoided? It is surely not desirable that permanent officials, especially the numerous ones in the field, should frame objectives. Parliamentary questions serve to guarantee that policy has been determined, that defence is possible. Later comes the decision whether the defence was compelling.

At this point a revealing incident may be interpolated. In the distraction of events producing the Standstill the Minister of Labour was so rattled that in the House of Commons he blamed the officials of the Unemployment Assistance Board for the unsatisfactory results, accusing them of timidity and of failure to exercise their discretionary authority.³⁰ A few days later the Civil Service Clerical Association sent a vigorous letter of protest to Mr. Stanley, declaring that the breakdown was no fault of the staff but was due to the regulations themselves. Especially in the Ministry of Labour and among the personnel of the Unemployment Assistance Board was resentment keen. A Minister had violated one of the cardinal understandings of British government, that a minister always accepts responsibility for whatever the permanent staff does and never attempts to distinguish between his own wishes and the action of the civil service. If such a differentiation were permitted, the permanence of the civil service would be at once jeopardized. Mr. Stanley evidently took the Board's "independence" literally and disavowed responsibility for what the Board's staff had done. While Mr. Stanley tried to make later amends for his breach, his usefulness at the Ministry of

³⁰ 297 H.C. Debs., cols. 44-5.

Labour was impaired and in a subsequent Cabinet re-shuffling in May 1935, he went to the Board of Education. The rancour in the breasts of civil servants remained after his departure.

This story permits a moral. Discretion will not be exercised by permanent civil servants in a democracy unless they are protected by a responsible minister! The civil servant must be guided and defended. Otherwise, in order to avoid attack, his circumspection may be so pronounced as to hinder all work. The members of the Unemployment Assistance Board, and behind them the Minister of Labour, made it understood that they would support the local officers and that they would assume responsibility for their actions.

The Unemployment Assistance Board not only encouraged their local officers to use their judgment, but also made the exercise of discretion possible by defining clearly the objectives. "Independence" of Parliament had nothing to do with this ability. The Board did have to defend individual decisions in the House of Commons, albeit indirectly. The Board could permit their local officers to exercise discretion because the results were politically defensible. Decriers of Parliamentary questions on the grounds that questions discourage the exercise of administrative discretion would be well advised to re-examine their argument. Is it not political unpopularity resulting from the exercise of discretion which they wish to circumvent?

The argument that ministerial responsibility discourages the exercise of discretion and prevents decentralization—factors which are closely interrelated—needs to be recast. There are important qualifications which

ought to be introduced. Apart from the general influence which the attitude of the administrative class may have, a high degree of centralization is especially apt to characterize a department which either has not troubled to define its objectives, or for one reason or another finds itself unable to do so. Defining objectives means more than sending detailed instructions to local officers; it means imbuing subordinate officials with spirit of purpose and vision of a goal. It is quite true that no set of instructions can possibly cover every conceivable circumstance with which a local officer may be confronted. Moreover, instructions intended for universal applicability are worse than unjust in certain cases; they breed red tape. As said already, a department interested in the efficient performance of its duties would find such methods as those of the Unemployment Assistance Board worthy of emulation.

The confusion and uncertainty of a department unable to define its objectives often, indeed usually, may be traced to politically timorous leadership. Decentralization and the exercise of discretion are made impossible, for the very good reason that a particular line of action independently pursued by a subordinate official may bring on attack which a minister does not care to face. Parliamentary questions have the very salutary effect of insuring that there is political defence for administrative action. And the experience of the Unemployment Assistance Board demonstrated that reasons of political defence might encourage the exercise of local discretion when a more satisfactory alleviation of destitution thereby resulted.

The suspicion arises that more than desirable adminis-

trative reforms may be sought when freedom from Parliamentary questions and control is advocated for an individual governmental service. Considerations of high politics may be at stake: how to accomplish politically unpopular ends without suffering from the political consequences thereof. Especially is such a suspicion justified in the case of the Unemployment Assistance Board.

Chapter VII

“TAKING RELIEF OUT OF POLITICS”

The second and more important consideration which motivated the decision to create an “independent” Unemployment Assistance Board was often described as a desire “to take relief out of politics.” True, no spokesman for the Government ever used exactly this expression in defending the Unemployment Bill. While Minister of Labour, Sir Henry Betterton did say that to make the Minister responsible for discretionary payments to individuals would be to transfer “the whole question . . . into national politics in a most acute form.”¹ But later he denied that the Government believed it possible or had any intention of “taking relief out of politics.” The Government stated their case in terms of the undesirability of making the Minister of Labour responsible for individual decisions. This subtle circumlocution was never honoured by observance on the part of the opponents of the bill, whose more colourful expression of Government intention gained popular currency.

In his testimony before the Royal Commission on Unemployment Insurance, Sir William Beveridge had pictured the situation which he felt ought to be avoided in setting up a national machinery to provide assistance to the unemployed.

You cannot remove any public service—you ought not to try to remove any public service—from Parliamentary control. But, equally clearly, it is impossible

¹ 283 H.C. Debs., col. 1093.

for the Minister of Labour to decide, personally, the exact rate of benefit to be given to everybody, or in individual cases, all over the country. In other words, he must not be liable to some such question in Parliament as this: "Will you give this person 15s. a week instead of 14s., or 23s. instead of 22s.?" and he must not be called upon to say "I will" or "I will consider it." All those things are a waste of his time and a waste of the time of Parliament and are altogether wrong. That is why I suggested that the decision of individual cases would have to be given to some investigating body, with whose decisions he could not interfere.²

Sir Henry Betterton in moving the second reading of the Unemployment Bill had defended the establishment of the Unemployment Assistance Board in like words, saying that members would agree it was undesirable to make the Minister responsible for the amounts given in individual cases. Over two years later even a critic of the Board could write: "This is a powerful argument; it is not desirable that a Cabinet Minister should become the chief relieving officer for the country and that Parliament should be reduced to the position of a Board of Guardians for the nation."³

Wherein lay the undesirability of making the Minister of Labour responsible to Parliament for individual decisions on such a matter as unemployment assistance? Why should an effort to avoid this responsibility be described as "taking relief out of politics"? The answer involves

² Royal Commission on Unemployment Insurance, *Minutes of Evidence*, Nineteenth Day (March 31, 1931), p. 736.

³ A. M. Carr-Saunders, "The Unemployment Assistance Board," *The Political Quarterly* (1936) 538 p. 542.

the very foundations and tenets of a society democratically governed.

At the outset, however, one thing must be made clear. “Taking relief out of politics” did not refer to any practice of differentiating among the recipients of State beneficence on a basis merely of how they voted at election time. More particularly, neither the jobs involved in dispensing relief nor a favoured status in the receipt of relief went to build a political machine. While so emphatic a statement would have to be modified for a few local governments, it is generally true. The reason is important. A general tradition against the manipulation of jobs or benefits has been seriously cultivated for at least four generations. Whatever faults one may find with the civil service of the British central government, it can be safely said that since the days of the Trevelyan-Northcote reforms civil servants have achieved a standard of personal integrity which would satisfy the exactness required of Caesar’s wife. Since it was not common to make the administrative positions *for any function* subject to political considerations, there was little question about so using the positions in relief administration. The battle against the “spoils principle” in choosing office holders must be waged and won on a wide front.

Nor has it been customary in England to make political affiliations a reason for differentiation within any group legally entitled to some State assistance. Administrators selected on the basis of their ability and expecting to remain in government service regardless of the party in power are careful to be impartial in the execution of the responsibilities entrusted to them. The phase of ministerial responsibility which enables departmental critics of

to-day to be the masters of to-morrow guarantees circumspection. The Unemployment Assistance Board was not given an "independent" status in order to insure that Conservatives, Liberals, Socialists, and Communists were given equal treatment when eligible for relief. A more significant factor was at stake.

How is a large body of recipients of State beneficence to be restrained from pressing for ever more generous treatment? Secondly, once the claims of a particular group have been recognized, how are other groups to be prevented from presenting their demands? In the competing desires of various parts of the electorate for State benefit, modern democracy has found one of its most crucial difficulties. There is no universal principle upon which a citizenry can rely as guide among these competing demands. To be sure, one may be told that the satisfaction of a particular demand will result in general good; but suppose the remote beneficiaries prefer more direct reward? Besides, not one but many groups insist that State assistance to them will confer benefits far beyond their own limits. How is it to be known which claims are valid, or in what order and to what extent they should be satisfied? Lacking conclusive answers to these questions, democratic governments have rendered their decisions according to the fortunes of electoral strength.

If an understanding is sought of how democracy—the system of rule in which the fate of a Government depends ultimately upon the exercise of a franchise accorded to manhood generally—happened in England, it may be found in the growth of the modern economic State. Democracy was a by-product of the struggle of new kinds of enterprise, first commercial and then industrial,

to free themselves from the shackles imposed by a State dominated by and run in the interests of guild merchants and a landed aristocracy. Professor Laski has epitomized an epoch when he wrote: “Let the business man but free himself, and, thereby, he frees mankind. But to free himself he must possess himself of the State.”⁴

Once possessed of the power of the State, the business man was not content merely to shed the restrictions which had confined him. The authority of the State was now his to use to promote his own interests. Self-denial ever came with difficulty to those in the seat of power. While the struggle continued to prevent the landed interests from regaining control, the business man found that he was united with his fellows only on the score of common grievance. When he undertook positive action he encountered conflicting claims. And in the nineteenth century battles between landed, commercial, and industrial groups, with their many quarrelsome satellites, electoral reforms and extension of the suffrage played their part. But the movement in the direction of democracy was not undertaken without ample prediction of dire results.⁵ Gladstone in 1895 observed that “democracy was going to prove a very costly mistress,” although one wonders if even he appreciated the literal exactness of his profound prediction.

To further the interests to which they were devoted, as well as their own political careers, politicians made

⁴ Harold J. Laski, *The Rise of European Liberalism* (London: George Allen & Unwin, 1936), p. 182.

⁵ Cf. Benjamin A. Lippincott, *Victorian Critics of Democracy* (Minneapolis: University of Minnesota Press, 1938).

ever a broader and more deferential appeal. And as consciousness of political power grew among more and more people, they did those who conferred the suffrage upon them the honour of emulation. More and more specific became the demands for the benevolent assistance of the State, especially for the fostering qualities of the public purse. The quintessence of this development came when a Labour Party sought to promote a community of view point among workers generally that they might wrest the State from its present possessors and use its powers for their own good. The numbers thereby to benefit afforded ample democratic justification. To the workers might quickly have gone the victory unless the economic rulers wooed their favour with concessions, sowed among them the strife of dissension, or abrogated the democratic procedures to which they had had previous resort. If concessions became the generally preferred course, who shall gainsay the advantages which have resulted? To-day, the economic difficulties of society labelled depression have posed the vital issue whether any further concessions can be made.

So cursory an analysis must necessarily forego qualifications. Yet the broad outlines of this historical development are essential to an understanding of the practical problem which the Government sought to solve in creating the Unemployment Assistance Board. There is ample evidence of the validity of this interpretation. In July 1931 the May Committee on National Expenditure wrote in their report:

After the heavy sacrifices of the war large sections of the nation looked to the post-war period with the natural expectation of a general improvement in the old

conditions of life. The disappointment of many hopes in the economic sphere seemed to intensify demands for improvements from political action and all parties have felt the insistent pressure for promises of "reforms" as the price of support, such "reforms" being mostly of the nature of privileges or benefits for particular classes at the cost of the general taxpayer. The results of this pressure are to be seen not only in the lavish promises contained in the election addresses of the period since the war but in the undertakings freely given by individual Parliamentary candidates to sections of the electorate. At election times those desiring increased expenditure on particular objects are usually far better organized, far more active and vocal than those who favour the vague and uninspiring course of strict economy; and as a result candidates not infrequently find themselves returned to Parliament committed, on a one-sided presentation of the case, to a course which on fuller knowledge they see to be opposed to the national interests. Especially serious is this danger at the present time when the mass of the electorate still does not appreciate the true economic position of the country and its problems.⁶

It was significant that in analysing the figures of national expenditure the Committee found that the great increase between 1924 and 1931 had been in the field of the social services; defence, debt service, war pensions, and other government services showed a decline in the same period.⁷ It was the finances of the unemployment insurance scheme which brought on the Cabinet crisis of August 1931 and the formation of a National Govern-

⁶ *Report of the Committee on National Expenditure*, pp. 12-13.

⁷ *Ibid.*, p. 17.

ment to save the existing economic structure of the country. Concessions of the past—a stable rate of contribution by workers and employers, increases in benefit, extensions in the period of benefit—were for the time abandoned. The process of the preceding years was at least halted, if not reversed.

The memorandum of the National Confederation of Employers' Organizations submitted to the Royal Commission on Unemployment Insurance complained: "The outstanding feature of the past ten years has been the extent to which the whole subject of Unemployment Insurance, in principle and in detail, has been dominated by political considerations."⁸ In their report in 1932 the Royal Commission accepted the same point of view, although their identification of the "political considerations" which had dominated the subject of unemployment insurance was very mild.

The unjustified optimism with which the level of unemployment was regarded is not sufficient by itself to explain why the principles of insurance were "temporarily" suspended. At least equal weight must be attributed to the consideration that, throughout the currency of the Unemployment Insurance scheme, the only alternative form of assistance for able-bodied unemployed workers has been the Poor Law, which imposes upon local authorities the cost of relieving distress due to unemployment. Unemployment has been so unevenly distributed that, in areas which were severely hit by the decline of local industries, the burden upon Local Authorities would have been intolerable if all the unemployed workers who had exhausted their

⁸ *Minutes of Evidence*, p. 1010.

title to insurance benefit had been relieved out of local funds unaided by the Exchequer.⁹

The unemployment insurance scheme of the central government was not alone in feeling the pressure of "political considerations." Similar forces were equally operative in the domain of local government. Especially in the depressed areas where unemployment was quite common did demands become most insistent for generous standards of Public Assistance. The response had been such that in Durham and Rotherham, as we have noted, the Minister of Labour superseded the local Public Assistance Committees with his own specially appointed commissioners to assess need for transitional payments. In November 1934 a report to the Minister of Labour spoke thus of the difficulties in Durham:

The present administration of outdoor relief is considered by the Minister of Health to be unduly extravagant and by no means free from abuse. The scales of relief are among the highest in the country and for certain classes of recipients are held to be excessive.

Circumstances peculiar to the County add to the difficulties always inherent in this particular service. In the first place, the large proportion of people who live rent free in colliery houses, upon which the colliery owners also pay the rates, can hardly be expected to concern themselves with the expenditure of the County Council, except as potential beneficiaries. Secondly, intensive industrialization followed by prolonged depression has left the County without its proper share

⁹ *Final Report of the Royal Commission on Unemployment Insurance*, pp. 116-17.

of people of independent means, with the result that the members of Relief Committees are drawn in many cases exclusively from the same walk of life as applicants for relief, and find themselves confronted with the invidious task of adjudicating upon the claims of relatives, friends, and neighbours. It cannot, moreover, be overlooked that in view of the large proportion of local government electors who may be applicants for Public Assistance, the Relief Committees are subjected to an additional temptation which might at any time become irresistible.¹⁰

Of conditions in yet another depressed area a Royal Commission in 1935 wrote:

When, as in Merthyr Tydfil, something like half the electorate is dependent upon Unemployment Assistance or Public Assistance, it is not to be expected that those who distribute the assistance will risk offending their constituents by adopting a strictly judicial attitude in estimating the needs of applicants. Nor, indeed, would it be practicable to maintain such an attitude in dealing with a mass of applications in a few hours devoted to the work once a fortnight.¹¹

Distrust of local government because of its responsiveness to such pressure prompted the Government to disregard the recommendations of the Royal Commission on Unemployment Insurance in constructing a scheme for the assistance of the able-bodied unemployed outside

¹⁰ *Reports of Investigations into the Industrial Conditions in Certain Depressed Areas* (Cmd. 4728), pp. 90-1.

¹¹ *Report of the Royal Commission on Merthyr Tydfil* (Cmd. 5039), p. 65.

unemployment insurance. But how were these same pressures to be sidetracked at the national level? The Government thought they saw the answer in the Unemployment Assistance Board, a "corporate body" to be set up apart from the structure of the normal government departments. This practice had recently attracted attention in the case of agencies like the British Broadcasting Corporation and the London Passenger Transport Board, and on the whole these "independent" boards had fulfilled their purpose and had been popularly approved. The Unemployment Assistance Board should frame regulations embodying a scale of need (with Government approval), and then should apply the regulations to individual cases. The Minister of Labour would then be able to say in the House of Commons in reply to questions that he was not responsible for the sum of money received by an individual as assistance allowance.

At this point it is necessary once again to appreciate the rôle which members of the House of Commons play in British government. Twin developments in the past few decades have conspired to alter the relation of a member of Parliament to his constituency. On the one hand, expansion of the electorate through democratization of the suffrage has propelled representatives to cultivate the good will of their constituents in every possible way. Not only has this meant promises to advocate government action immediately benefiting the district in one way or another. It has also meant airing any constituent's grievance against the government. Complaints reaching a member of Parliament are regularly passed along, by private correspondence or question in the House of Commons, to the department involved. The

member by his action does not necessarily imply agreement with his constituent's case. But if he can say that he has taken the complaint up with the responsible officials, and can send along their reply, then he has done his duty to his constituents and cannot be accused of neglecting their welfare.

On the other hand, there has been in this same period a steady accretion of the power of the Cabinet over the House of Commons, with the result that the individual member of Parliament can play little rôle in the process of government except indicate his interest on behalf of his constituents. Questions of policy are determined by the Cabinet, and with rare exceptions only legislation introduced by the Government ever reaches the statute book. Cabinets are intolerant of opposition within the ranks of their supporters, and thanks to their control of the party machinery and their power to order a general election at any time they can command allegiance from the individual member. Indeed, it has been the extension of the franchise which has made the party machinery so powerful, for the machine almost alone has the resources required not only to tell the mass of citizens how to vote—to explain the issues of the day—but also to get the citizen actually to the polls, if necessary by physically transporting him there. To be sure, Governments cannot pursue any course they please, for they must be wary of electoral reaction. But pressures on a Government come from the press and from organized groups of the electorate; the individual member of the House is listened to only if he represents the desires of influential or substantial elements within the electorate.

These considerations apply equally to all political

parties in Great Britain. A supporter of the National Government remarked in the course of the Standstill debate: "My experience is that members of the House, irrespective of party, look after their constituents very well."¹²

While Governments have little compunction in disregarding the point of view of the individual member of the House, they do find it embarrassing to turn a deaf ear to demands emanating from constituents. A single case or two left unsatisfied makes little difference; the cumulative effect of hostility or indifference affects the fate of Governments. Thus in the case of unemployment assistance, to a question why doesn't A receive thirty shillings a week rather than twenty-five, the Minister of Labour might reply that this was all A was entitled to under the law. But a continued series of such questions and answers might imply that the Minister and his Government were being niggardly, desired to oppress the poor, or were not interested in the welfare of the masses. Not even a Conservative Government relishes such an impression. In consequence, the National Government in 1933 sought some device, some buffer, which would obscure their responsibility for the scale of unemployment allowances as well as for the individual determination. The Government wanted to say in reply to questions: "This is a matter for the Unemployment Assistance Board over which we have no control."

The motivation for this desire was almost solely financial. A British student has observed that "paradoxically enough" it is in the field of the social services "that political faiths and theories lie farthest apart, and, at the

¹² 297 H.C. Debs., col. 88.

same time, the humane sympathies of politicians incline them to common agreement as to the justice of awarding assistance to this or that individual."¹⁸ Broadly this statement is true. A Conservative Government to-day cannot logically decry the use of the State's power to promote certain interests. Yet since such a Government interfere with private property and the profit motive only with reluctance; they cannot observe without trepidation an increase in Treasury expenditures, particularly if the necessitated increase in taxes falls mainly on the wealthy citizens of the State. Especially is this concern about expenditure and taxation magnified in time of depression. The humane instincts which assist the Conservative Party in obtaining votes and remaining in power are in continual conflict with certain basic tenets, that is, the interests of the groups which the Party has essentially represented. The concern of the Government in 1933 to check the demands upon the Treasury was evidenced in the Unemployment Bill by the proposal for an Unemployment Insurance Statutory Committee to guard the finances of the insurance scheme from "political consideration," by retention of the means test as qualification for unemployment assistance, and by the provision for the Unemployment Assistance Board.

Any attempted argument that the Board was designed to save Parliamentary time does not withstand close scrutiny. No matter how many questions members may want to ask, the oral question time in the House of Commons lasts one hour. And the Government's control of the time table of the House is so strict that they can accomplish whatever business they determine to put

¹⁸ T. S. Simey, *Principles of Social Administration*, p. 66.

through. Were all reference to individual cases barred from Parliamentary debate, there is no reason to believe that the urge to speak, and to speak at some length, would undergo appreciable diminution. Not Parliamentary time but national finances was the object of succour when the Unemployment Assistance Board was created.

So much was certainly directly hinted if not forthrightly declared in the debates on the Unemployment Bill. Replying to a Conservative speaker, a Labour member, Mr. Bevan, said: "May I point out to the hon. Member that it is that portion of the electorate which has the greatest power and the greatest knowledge of its own self-interest that gets its majority here to look after its interests, and all democratic representation is a tug-of-war, where coat-tail pulling goes on, either by the poor or by the Income Tax payer."¹⁴ He need scarcely have added his protestation that there was no "humbug" in his definition.

On an earlier occasion Lord Eustace Percy had warned the House of Commons:

Democracy always breaks down when it forgets its necessary limitations. If there is one constitutional principle which the experience of democracy has demonstrated, it is the danger of allowing elected persons to exercise personal patronage. It has been the experience of every democracy, notably that of the United States of America, that personal patronage exercised by elected persons is the source of the worst corruption that civilized government has known. It is true that in this country, with our supreme illogicality, we have succeeded for a short period only, in having elected local

¹⁴ 286 H.C. Debs., col. 82.

authorities which have exercised, and still exercise to-day, large patronage without any great evil results. Any of us, however, who know the local authorities know that that system is always trembling on the verge of undesirable influence. Let us realize that public assistance—the Poor Law—has always been in that position.¹⁵

To this philosophical declaration Mr. Buchanan of the Independent Labour Party replied by pointing out the patronage the Cabinet possessed—judgeships, governorships, boards, and commissions. Because this was high patronage was it to be ignored, and patronage called evil only when it amounted to 15s. 3d. a week?¹⁶ Mr. Bevan this time added:

The status of a recipient of public assistance is that he is entitled to go to a local relieving officer and ask for assistance. He is entitled under the law to receive assistance, and if he disapproves of the assistance he has received he is entitled to go to an elected person and lodge a complaint. If the elected person does not satisfy him he is entitled as a citizen to proselytize, to agitate, to organize, to canvass, to publish leaflets, to organize political parties, to argue that that person is an undesirable person to represent him and ought to be removed. That is his present status. The setting up of the board will destroy that one right.¹⁷

Referring to Lord Eustace Percy's statement, Mr. Bevan called it the "first candid admission" of the intention of the Unemployment Bill, which was to prevent

¹⁵ 285 H.C. Debs., cols. 1869-70.

¹⁶ *Ibid.*, col. 1877.

¹⁷ *Ibid.*, col. 1891.

a recipient of relief from saying to his elected representative: "If you do not increase my allowance, I will not vote for you."¹⁸ He asked if the income tax payers did not say the same thing: "Reduce taxes or I will not vote for you."

More noteworthy than the complaints from Opposition benches was the concern of Government supporters lest the establishment of the Unemployment Assistance Board restrict the questions they might ask about the treatment of constituents. These members appreciated only too well the importance of "mending the fences back home." One statement by a Government supporter, Mr. William Nunn, deserves quotation at length, because it cannot be surpassed as a presentation of the function of the members of the House of Commons.

It is commonly recognized that one of the chief duties of a member of Parliament is to act as guide, philosopher, and friend for his constituents. Some of us would be only too glad to have a little less of that work upon our shoulders and to spend less time writing letters inquiring into grievances. I am sure that the Parliamentary Secretary to the Ministry of Labour would be very glad, too, if he did not receive quite so many letters from me.

It seems that unless the Minister can make some arrangements by which he may be able to approach the Unemployment Assistance Board, we may be depriving our people of a very large help. Our electors are very largely ordinary working people, who do not understand the intricate ins and outs of regulations and who are very often bemused and muddled when they get up against a government official. They get the greatest

¹⁸ 286 H.C. Debs., col. 30.

possible assistance, as I know from experience, from the officials in the Employment Exchanges, but they are very often puzzled to know what they ought to do, and it sometimes happens that the results of their inquiries through the officials are not satisfactory. Those people have got into the habit of coming to their Member for help, and I think it is the duty of the Member to give the help. Personally, one never thinks, nor does one's agents, of inquiring into the politics of the applicant. If a man comes in with a complaint, we inquire into it, and if it is about unemployment insurance, it lands on the shoulders of the unfortunate hon. Member in front of me. That possibility of getting assistance will be taken away from our constituents, as I see it, and I am not sure that it is a good thing, because it often happens that through no desire on the part of the Ministry to do the wrong thing, when the political head of the Department gets to work and looks into a matter in his own Ministry, he finds that there is something which enables him to pass a case which has previously been refused. If we cannot go on doing this valuable work for our constituents, while I feel, first of all, that we shall be relieved of a lot of hard work, I feel also that our constituents may perhaps suffer.¹⁹

This exposition is dispassionate and fair, except that it makes light of the political advantages which may be reaped from such "cultivation of the constituency."

From the tone of this and similar statements made during the debate on the Unemployment Bill it would seem that many members thought that the purpose of the Unemployment Assistance Board was to prevent them from asking questions about individual cases. The inci-

¹⁹ 283 H.C. Debs., col. 1400.

dent involving the special commissioners in Durham and Rotherham should have warned the Government that some arrangement would have to be made to take care of inquiries about cases from members of the House.²⁰ But the Government at no time during the course of passage of the Unemployment Bill ever intimated how questions concerning individual cases would be handled. Perhaps their attitude was that of the perennial politician: “sufficient unto to-morrow the evils thereof.” And to-morrow brought an unexpected surprise.

At the beginning of the debate on the Unemployment Bill a Conservative member had told the Government: “This question cannot be taken out of politics. There is no use trying to do it. Everyone of us knows that we must answer for every detail of the regulations that are passed, whether we voted upon those details or not. That is the nature of things.”²¹ Even Sir Henry Betterton, the Minister of Labour, admitted: “I entirely agree with the remark which fell from my hon. Friend the member from Stockton when he said that the regulations when framed—I think I took it down correctly—must carry the moral support of the people themselves. I believe that to be profoundly true. Where you are dealing with, it may be, 1,000,000 persons, or at any rate with many hundreds of thousands, I do not think that regulations which do not carry the moral support of the great mass of the people themselves will be effective.”²²

The dilemma which confronted the Government after the creation of the Unemployment Assistance Board was accurately foreseen by Mr. Ronald Davison. Before the

²⁰ See above, pp. 31-2.

²¹ 283 H.C. Debs., col. 1152.

²² 289 H.C. Debs., col. 1211.

original regulations were introduced in the House of Commons he wrote that if the scale of Board allowances was generous, the cost to the Treasury would be "enormous"; while if the scale was more strict than the practice of the more generous Public Assistance Committees, "there will be another political uproar. Public opinion, in its present mood about poverty, will swing violently against the Government and all its works."²³ For financial reasons the Government could not permit the Unemployment Assistance Board to fix the scale of allowances at any level they might wish. Once the scale was fixed, for political reasons, the Government abandoned the Board and arranged the Standstill.

The Unemployment Assistance Board revealed their attitude toward the circumstances which produced the Standstill in their first annual report.

The rate of expenditure on allowances in the early weeks of the Board's work fell short of the estimates which had been made when the regulations were approved by Parliament and the number of reductions that took place was somewhat larger than had been estimated. The Board's estimates were based on the facts as known to them in the summer of 1934. The differences between estimates and results were due in part to a fuller disclosure of resources under the Board's administration than had been made under the administration of transitional payments, in part to an increase in earnings due to improving trade after the estimates were made, and in part to transitional payments being higher in some cases than had been anticipated owing to the deteriora-

²³ Ronald C. Davison, "The New Scheme of Unemployment Relief," 5 *The Political Quarterly* (1934) 376, p. 380.

tion of the local administration in the late months of 1934. The field over which these factors operated was so wide that they were bound to affect the original estimate. But, even if these unexpected differences had not arisen, the distribution of public money in accordance with need as assessed under the regulations rather than with the past practices of Local Authorities was bound to lead to reductions as well as increases. It was natural that more expression should be given in the House of Commons and in the country to discontent about the former than to appreciation of the latter.²⁴

To the storm in the House of Commons, reflecting the storm gathering in the country, the Government decided to capitulate at once. A Government supporter told the House: “Frankly, I say now that when I went to my constituency and saw how the regulations worked, I felt like a director who had signed a fraudulent prospectus.”²⁵ The Government thought it the better part of wisdom to make restitution for the “fraud.” It was nearing the time for the next quinquennial general election, and the Government did not care to jeopardize their chances by waiting for the protests to subside of their own accord. The Government felt that it was useless to try to deny their responsibility for the regulations.

On all sides the Standstill was hailed as demonstrating that relief could not be “taken out of politics.” The Government had not wanted to make the Minister of Labour responsible for individual decisions, because the cumulative effect of refusal to adjust allowances might embarrass the Government. Yet the execution of the

²⁴ *Report of the Unemployment Assistance Board for 1935*, p. 14.

²⁵ 297 H.C. Debs., col. 1047.

original regulations produced the very circumstances they had wanted to avoid. The individual complaints were so numerous, and more importantly, with a single agency, these complaints were so canalized, that their reaction upon the Government of the Day necessitated a hasty retreat.

Among other things, the Standstill revealed an aspect of the Unemployment Assistance Board which the creators of that agency might well have pondered. Inasmuch as it is electoral reaction, as distinct from House of Commons reaction, with which a Government must be concerned, it was vital to inquire whether the electorate would appreciate the "independence" of the Unemployment Assistance Board. Perhaps over a period of time the Government might have been able to persuade the electorate that the determination of the size of unemployment allowances was a province outside their legal capacity to act. But one doubts if this could have been done. Results, not subtleties of administrative organization and relationship, matter to the average elector. And if an Opposition capitalized on prevailing discontent by campaigning on a pledge to abolish the Unemployment Assistance Board, the Government would have had to defend the Board or take the desired action first. Wasn't this foreseen in 1933 and 1934?

In any event, the time of the Standstill was not propitious for the Minister of Labour to refuse to answer questions about individual decisions. Once begun, no halt was ever attempted. As already mentioned, there is no record of the Minister of Labour having refused to obtain an answer for a member's question, and some questions referred to the size of the assistance allowance

for a specified individual. The “independence” of the Board was compromised by the fact that the questions asked in the House of Commons were as numerous as those pertaining to any department of State, and by the fact that the Government’s defence, implicitly, rested upon general satisfaction with the results being obtained.

The incident of the Standstill certainly must have imparted considerable political wisdom to both the Government and the Unemployment Assistance Board. The essence of one lesson was that the Board definitely had not been freed from the necessity of proceeding circumspectly and of cultivating all available sources of support. The history of the Board after the debacle of February 1935 revealed how well that lesson was taken to heart.

One evidence of the new wisdom was the decision to effect whatever cuts were necessitated by the revised regulations over a period of eighteen months, rather than all at once. During the early months of 1937 only some three thousand applicants had their allowances cut. For one group of applicants, persons over fifty-five living in lodgings and having no resources, the Board had promised that there would be no reductions whatsoever. For approximately one hundred thousand others who had a Standstill excess various plans were approved which effected the required reductions in allowances from the spring of 1937 to April, 1938.²⁶ The liquidation of the Standstill was in sharp contrast with the political ineptitude which featured the execution of the original regulations.

²⁶ *Report of the Unemployment Assistance Board for 1937*, pp. 13-17; *Report of the Unemployment Assistance Board for 1938*, pp. 7-8.

Another evidence was the use the Board made of local advisory committees. In the first annual report the Unemployment Assistance Board admitted: "It is a matter of regret that pressure of work in the early months of the Board's existence made it impossible to set up the committees before the First Appointed Day."²⁷ The revised regulations were not presented to Parliament until the personnel of the advisory committees had been selected. The duties given these committees were important—advice on rent adjustments, adjustments in rural areas, and procedure in reduction of Standstill excess allowances; as well as consideration of cases of special difficulty and contact with local and voluntary welfare services. The Board found it most convenient to be able to point to the collaboration of these committees in reaching their decisions. The Board acknowledged this when commenting upon the reductions made under the revised regulations. "The fact, of which applicants were aware, that the adjustments were being made in accordance with a local plan recommended by local persons of standing of all shades of opinion and that every facility was afforded for appeals to the Appeal Tribunals undoubtedly helped to reconcile applicants to the reductions."²⁸

The advisory committees served as a technique for acquainting influential persons in various communities with the problems which the Unemployment Assistance Board faced. In 1936 the Board set up 126 of these local advisory committees. Advice on their membership was sought from local authorities and from Local Employ-

²⁷ *Report of the Unemployment Assistance Board for 1935*, p. 16.

²⁸ *Report of the Unemployment Assistance Board for 1937*, p. 16.

ment Committees of the Ministry of Labour. More than one thousand persons were appointed to serve on the committees. These persons became valuable spokesmen for the Board throughout the country.

In 1937 the Board utilized the committees in initiating a study of the personal causes of unemployment, particularly among applicants under thirty years of age. One of the vexatious problems of the Board was how to deal with the "work-shy," especially with the younger unemployed growing up on the dole and seemingly reluctant to seek employment. In 1939 this problem was brought to public notice in speeches by the Prime Minister and the Minister of Labour. The creation of work camps where the "work-shy" would have to undergo training or be disqualified for assistance was forecast. As they prepared to take steps to meet this problem, the Board knew that they would have the solid support of the advisory committees as a result of the experience and impressions they had gained from interviewing the younger unemployed.²⁹

The Board had to utilize to the fullest whatever means were available to gain understanding and support for their difficulties. For no matter how unsubstantial might be the pretences that the Board were "independent" and "non-political," those pretences yet had to be honoured. The Board's official spokesman to the public was the Minister of Labour; Board members themselves were expected to avoid discussion of controversial matters. On November 5, 1936, two questions in the House of Commons called attention to a talk delivered by Professor

²⁹ See *Report of the Unemployment Assistance Board for 1938*, pp. 44-52.

Hallsworth at a meeting of the Junior Imperial League, a Conservative organization, at Durham, and it was asked whether members of the Unemployment Assistance Board were "staying out of politics." The Minister of Labour replied that the speech had dealt solely with an explanation of the assistance regulations. "As a member of the Board, Mr. Hallsworth was not speaking in any political capacity, and I do not feel that the matter is one in which any action is called for."³⁰ This incident provided at least warning of how carefully Board members had to act and talk.

The chairman of the Board, Lord Rushcliffe, did make use of the House of Lords in February, 1939, to recount certain figures and other results of the Board's investigation of the younger unemployed. But he presented merely an analysis of the problem; he studiously avoided precipitating any controversy by suggesting how the Board proposed to proceed. Annually, in their report which was laid before Parliament, the Board had their principal opportunity of expressing their points of view. The fact that the Board felt handicapped because they could not use the means available to a minister to gain public appreciation of their difficulties testified to both the political consciousness of the Board and the political nature of their responsibilities.

The contention that the "independence" of the Unemployment Assistance Board was justified because the Minister of Labour ought not to be made responsible for individual decisions had its ironical aspects. There was available another type of protection to which the Board themselves had recourse. The Board did not accept final

³⁰ 317 H.C. Debs., col. 211.

responsibility for the determination of the appropriate allowance in a specific case. Instead, Appeal Tribunals stood as the final protection to the Board and to the applicant. These administrative courts were similar to the Courts of Referees under the unemployment insurance scheme.

When questions arose as to the eligibility of a claimant for unemployment insurance, or as to the facts of his household, the local insurance officer of the Ministry of Labour might make the decision, or refer the case to a local Court of Referees. The Court of Referees alone was competent to decide certain disputed questions: whether a man was capable of and available for work, whether a man had refused suitable employment, whether a man had lost his job through misconduct, whether a man was justified in refusing to go to a training centre, and whether a man was subject to the anomaly orders. If the local insurance officer made a decision adverse to a claimant, the latter might appeal to the Court. Composed of three persons, one from a panel of representatives of employers, one from a panel representing the insured contributors, and an impartial chairman named by the Minister of Labour, the Courts of Referees were statutory bodies with whose decision the Minister could not interfere. The Minister answered for the general policies of the insurance scheme; he did not assume responsibility for individual decisions.

This fact was emphasized in the report of the Royal Commission on Unemployment Insurance.

The Minister must be held responsible for the efficiency of the machine which he controls, and for the appointments he makes in accordance with his powers

under the Acts. It is right and proper that he should be answerable to Parliament for the work of his Department, and that any defects in the general administration of the unemployment insurance scheme should be brought to the notice of the Minister and of Parliament. It should, however, be realized that one of the chief features of the scheme is that the decisions on individual claims are given by independent statutory authorities by a judicial process and it is not within the power of the Minister of Labour to question these decisions. We consider that it is essential to maintain this position and to protect the Minister from political or other influences in the day-to-day administration of a scheme providing monetary payments to a large number of individuals.³¹

Provision for administrative courts similar to the Courts of Referees was included in the Unemployment Assistance Act. The method of appointing the Appeal Tribunals has already been mentioned. Their number was left to the judgment of the Unemployment Assistance Board, who set up 138 tribunals prior to the First Appointed Day in January 1935. The Board's representative on the Appeal Tribunals was not a Board official, as some feared might be the case, but a person named by the Board having a "good local standing, a reputation for freedom from political bias, and a knowledge of local conditions."³² The procedure of the appeal tribunals is not of importance here.³³

The significance of the Appeal Tribunals lay in the

³¹ *Final Report of the Royal Commission on Unemployment Insurance*, p. 267.

³² *Report of the Unemployment Assistance Board for 1935*, p. 49.

³³ Cf. *Ibid.*, pp. 50-6.

part they played in the determination of allowances for individuals. Any applicant might appeal against the decision of an area office of the Unemployment Assistance Board on either the ground of his eligibility for assistance or the ground that his allowance was not all to which he was entitled. Ordinarily leave to appeal had to be granted in the first instance by the chairman of the tribunal, but after the first year when the refusals of chairmen amounted to 17 per cent of the appeals lodged, consent was denied in only a negligible proportion of the cases, 5 per cent or less. The Board indicated that unless obviously frivolous a desire to appeal should be granted. Most of the cases of appeal involved the allowance determination. The year 1937 was exceptional because with the advent of the Second Appointed Day local authorities took numerous appeals in an effort to establish the eligibility of many receiving public assistance in the hope of relieving their own burden. In that year 38 per cent of the appeals concerned scope of the Unemployment Assistance Act. But obviously the Unemployment Assistance Board applicant was most interested in the size of the allowance granted him.

Two principal claims were made by the aggrieved applicants, either that household resources had been placed too high, or that there were circumstances which justified a discretionary addition to the scale allowance. The Appeal Tribunal had to consider whether they believed the allowance adequate for the applicant and his household according to the instructions of the Board. This consideration necessarily involved review of how the area office had exercised the discretion it possessed. The Appeal Tribunals hence were another means for en-

couraging discretionary additions to allowances, and the Board made good use of the tribunals for this purpose. Board officials kept in close touch with all the tribunals, and conferences of the chairmen were held periodically in order to acquaint them more fully with the Board's views. The close collaboration of the Board and the Appeal Tribunals counteracted the failure of the Unemployment Assistance Act to provide a central judicial organ, like the Umpire of the insurance scheme, to co-ordinate decisions. The Board favoured the absence of a central court of review, because they did not desire a case law built upon precedents to feature their administration. Rather they wanted every case on appeal to be considered strictly on its merits in accordance with the known wishes and intentions of the Board. In 1935, 1936, 1937, and 1938 reconsideration of allowances by the Appeal Tribunals led to increases in about one-fourth of the cases brought before them.

Formally the Appeal Tribunals might be justified as a protection to the individual applicant for assistance, as a guarantee that his case had been adequately considered and that he had not had to rely solely on the decision of a local official of the central government. But the Unemployment Assistance Board well appreciated that these tribunals were even more a protection to themselves. Here was at hand another agency, composed of citizens of the community giving part-time to the work, through which a system of discretionary increases in allowances could be made feasible. Secondly, when challenged in Parliament or elsewhere, the Board could and did point to the Appeal Tribunals as recourse to the aggrieved individual or as justification for the determination finally

awarded. In other words, the Board found it convenient, even essential, to have a protective device, despite the fact that they were not directly responsible to the House of Commons for their decisions.

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It should not be difficult to perceive why unemployment assistance could not be "taken out of politics," especially by a trick of administrative organization. For one thing the question of unemployment and the methods for its reduction or alleviation are to-day one of the most important subjects upon which men in any State may differ. And in a democracy no device of any kind can, or should, relegate these matters to one side as "taboo," or as best left to "expert" solution. It is probably unfair to say that the Government in 1933 believed such a course desirable or possible.

The Government did evidently think that the creation of an "independent" administrative board would be a convenient counter for the pressures to increase unemployment allowances, especially as these pressures were exerted in the guise of Parliamentary questions why such and such an individual did not receive more. This type of pressure the politician finds most embarrassing to resist. But in their eagerness to dam a political current the Government brought on a flood. The execution of the original regulations produced such a storm of individual protests that the Government dared not resist but capitulated before the torrent. If the regulations were not too severe, at least the administrative steps for their execution were undertaken too precipitately, before the discretionary leavening could be made effective.

The revised regulations increased certain allowances and liberalized the earnings rules. And by that time the administration had learned how to function more satisfactorily.

One cannot help speculating what might have happened if there had not been considerable economic recovery between 1934 and 1936. When the decision to establish the Unemployment Assistance Board was made, the Government was still acutely aware of the financial difficulties of 1931. Steps were necessary to relieve the demands upon the Exchequer. The "independent" board was regarded as a means of exercising close control over an important social service and still of avoiding political reprisal upon the Government of the Day. When the events of 1935 revealed the miscalculation of these designs, the close control formerly so highly regarded was no longer vital. There had been some degree of business recovery, the numbers of the unemployed had declined, the income of the Exchequer had risen. In consequence the Government's decision to arrange the Standstill did not have serious financial repercussions. While the average individual assistance allowance went up, the total cost of unemployment went down.

The coming of another depression would constitute a real testing whether the status of the Unemployment Assistance Board would be advantageous in effecting unpopular steps. It is more likely that some such counter-offensive as that of 1931—when the preservation of the nation's existence through self-sacrifice was loudly preached—would have to be launched on a large and successful scale before reductions could be made without seriously damaging, if not wrecking, the Government of

the Day. The “independence” of the Unemployment Assistance Board would have very little to do with the situation.

If there was no recurrence of such an incident as the Standstill between 1935 and 1939, that did not mean that the Unemployment Assistance Board had succeeded in taking unemployment assistance “out of politics.” Rather it signified the exact reverse. For the time being there was general satisfaction with the allowances which the unemployed were receiving. Indeed by 1937 one of the Board’s chief concerns was the approximation of assistance allowances to the level of prevailing wages in the country.³⁴ If dissatisfaction were to become widespread, no Government could find effective shelter behind the Unemployment Assistance Board. As it was, the Board became simply another agency keeping the Government company in maintaining alert watch over the popular reaction to unemployment policy and administration. “Politics” had been neither hamstrung nor banished.

³⁴ *Report of the Unemployment Assistance Board for 1937*, p. 20.

Chapter VIII

PORTENT FOR THE FUTURE?

A discussion of the meaning of the Unemployment Assistance Board's "independence" has an interest beyond its concern with the problems of administering relief to the unemployed. More broadly we may ask what shall we conclude from this evidence as to the concept of administrative autonomy generally? Is the device of the Unemployment Assistance Board such that it might profitably be extended in the field of the social services, not to mention the possibility of other governmental spheres? Is the Unemployment Assistance Board a portent for the future?

An attempted answer to these questions necessarily requires as a beginning reference again to the dissatisfaction with the system of ministerial responsibility, with political leadership of government departments. Certain defects commonly attributed to ministerial responsibility—rigidity of central control and the lack of sufficient decentralization—have been noticed before, and the question asked whether an undoubted evil has been altogether ascribed to the proper causes.¹

If Parliamentary questions produce over-centralization, then the logic of this argument would demand that the Minister of Labour assert full control over the Unemployment Assistance Board and that the Board's method of encouraging local officers to exercise discretion be abandoned. In the face of continual bombardment of

¹ See above, pp. 89-92.

questions, the Minister of Labour and the Government only once felt in such jeopardy that they asserted full control over the Board. Undoubtedly there were a few other occasions when the Minister indicated to the Board a desirable course, as in the matters of Coronation payments and winter allowances. But the Minister felt able on other occasions to withstand Parliamentary pressures. To be sure, it will be said that the Board's status as buffer was protection to the Minister in resisting criticisms and appeals. But the Board's status did not prevent the pressures from being exerted, nor the necessity of replying to them and even sometimes meeting them.

The issue is whether Parliamentary questions compel centralization. The affirmative argument rests upon the proposition that the necessity of Parliamentary defence causes all important decisions to be made close to the Minister and requires uniformity of decision. While in the case of the Unemployment Assistance Board policy was centrally indicated by the Board and their headquarters' staff, considerable discretion in policy execution remained with the Board's local officers. The requirement of Parliamentary defence did not prevent this development, *where there was the will to effect it*. By carefully informing local officers of their wishes, and then encouraging them by all possible means to use their judgment in realizing those objectives, the Board achieved a remarkable degree of decentralization. Their methods deserve very careful study, and might well be emulated by many government departments *under responsible ministers*.² Furthermore, in the case of the Unem-

² Cf. May L. Dhonau, *Decentralization in Government Departments* (London: Institute of Public Administration, 1938).

ployment Assistance Board political defence required some diversity of treatment of the unemployed in accordance with their different needs and varying local opinion.

Can it be said that the difference whereby the Board defence in the House of Commons was conducted indirectly by an agent constituted the whole explanation why this development was possible? So facile a claim would not be very satisfactory. The Minister of Labour had to be given as strong a position to defend as possible. And the very theory of the Board's status meant that the nature of the defence ought to appeal to the sentiments of most members, rather than rely upon the support of the party whips. The essence of the matter was that the Board did have to defend themselves in the House of Commons through the Minister of Labour, who at the same time had to defend himself, since the Government possessed the legislative power capable of changing an unsatisfactory condition. This situation did not prevent the Unemployment Assistance Board from carrying through a large measure of decentralized administration. In consequence, it is at least not unreasonable to believe that Parliamentary questions and defence are not wholly incompatible with administrative decentralization.

However, this is only one aspect of the case against ministerial responsibility. Departments under political heads, we are sometimes told, tend to be too timid; discourage initiative and the desire to better conditions; do not afford sufficient opportunity for self-expression and the use of peculiar skills; do not supply a "moral inducement to do well" in contrast to the mere fear of losing

office.³ Mr. T. S. Simey has summed up the case by speaking of "the problem of reconciling political control with administrative courage and efficiency."⁴ Positively, the advantages of "official independence" are claimed to be the creation of confidence and, by being disassociated from a particular political party, the avoidance of the hostility of opposing parties; secondly, permanence with its resultant experience; and thirdly, security against corruption.⁵

The defects attributed to the system of ministerial responsibility may have some justification, but those who think that these difficulties may be surmounted by a general use of the device of administrative autonomy must be prepared to defend themselves from the charge that they are basing their argument upon two startling assumptions.

The first of these assumptions obviously is that the structure of organization and the relationship of administrative agencies impart desired qualities of personality to those entrusted with the operation of these agencies. This is patently so untrue that it will be said rather that independence encourages the growth of the qualities of initiative and confidence, or that independence makes possible the fruition of these qualities.

Independence in the sense here used must refer to the degree of superior control. Internally, within any organization, the independence of an individual depends upon

³ Robert M. Dawson, *The Principle of Official Independence*, p. 7. See also Lindsay Rogers in the foreword to Robert H. Connery, *The Administration of an N.R.A. Code* (Chicago: Public Administration Service, 1938), p. xiv.

⁴ T. S. Simey, *Principles of Social Administration*, p. 33.

⁵ R. M. Dawson, *op. cit.*, pp. 10-11.

his relationship to others. In an hierarchical structure the lines of authority will inevitably be fairly definite, responsibilities will be made clear, the degree of individual independence or discretion will be fixed. Any group of persons working together for a common end where this is not the case would scarcely deserve to be called an organization. The resultant confusion, the diverse and perchance mutually conflicting efforts might be magnificent for the production of individual initiative and confidence. But such chaos would definitely not be conducive to the accomplishment of a positive, constructive objective.

Administrative independence, or autonomy, refers to the relationship of an agency to the general hierarchy of governmental authority. The individual qualities which are desired by independence must accordingly be confined to the heads of such an agency. These qualities will accrue in subordinates only to the extent which the heads permit. How far jealousies, "cantankerousness," and other personal qualities among men working together affect a given individual's capabilities is anything but insignificant. Yet this factor need not concern us here. From the standpoint of organization, the one factor which operates to discourage the capabilities of the heads of an agency is the degree and effectiveness of external opposition. The advocates of autonomy would admit this, for otherwise ministerial responsibility would not be the object of their attack.

Here then is posed the second assumption which those who uphold administrative autonomy must defend. The assumption is that men isolated from political attack, or any way free from the possibility of political control,

are better able to direct the administration of the law of the land. This assumption contains at least one element of truth which to any discerning person must be unassailable. It is that the degree of discretion in executing a law, in interpreting its objectives and in applying its provisions to individual circumstances, is so great that the executor's concept of a desirable end must influence the result. In other words, the administration of a law, as much if not more than the law itself, may give rise to controversy. If this were not so, why should administrative autonomy have any advantages over ministerial responsibility?

Professor Lindsay Rogers has written: "Democracies are slow in learning that public popular control rests on two pillars: terms of reference precisely defined—in other words, the clear formulation of policy; and vigilant and tireless scrutiny of implementation—in other words, judgment of results."⁶ We may pass over whether "judgment of results," if unfavourable, can be given ample effect by a change of statute without a change in administrator, although one doubts if Professor Rogers really thinks that. The first "pillar," "the clear formulation of policy," is the more important, because it is even less likely of realization under democratic conditions. The divisions of interest are so many, so complex, so deep within our society that legislatures inevitably find refuge in proclaiming broadly desirable objectives while leaving the details to administrative settlement. Some measure of agreement on broad principles is possible among legislators where any attempt at precise definition would result in interminable wrangle and disagreement.

⁶ Lindsay Rogers in R. H. Connery, *op. cit.*, p. xvi.

For instance, Parliament by law may provide that auditors of the central government shall examine the financial accounts of local authorities for their legality. Does this simply mean that money must be spent in accordance with proper authorization, with the proper accounts kept? Or does legality also refer to the "reasonableness" of payments, to whether payments have been "excessive" or not? Specifically, does the establishment of a minimum wage by a local council which is higher than the prevailing wage for certain jobs constitute illegal expenditure? Imagine what would happen if Parliament were to endeavour to make clear by precise definition the standards of legality for local expenditure. While the effort could be made, no definition would cover all contingencies. And the consideration of the details of definition might well consume much Parliamentary time and reveal many divergent points of view.

Or, if an example may be borrowed from the United States, Congress may agree that "combinations in restraint of trade" should be illegal. But what is a "combination in restraint of trade"? Is a price maintenance agreement among competitors a combination in restraint of trade? Is a price maintenance agreement between manufacturer and the seller of his products a combination in restraint of trade? The determination of such questions as these was left to the administrators of the law, guided by anything but precise definition. Inevitably the administration of broadly worded laws, by giving meaning to a policy, involves deciding what that policy is.

Mr. Simey has praised particularly the efforts of three

nineteenth-century administrators of social services in England—Sir Edwin Chadwick, Sir James Kay-Shuttleworth, and Sir John Simon.⁷ Unquestionably the record of performance by these men was notable. But Mr. Simey's emphasis upon the fact that each of these men could not work under political direction and ultimately had to retire from the public service for that reason does more than underline their individual far-sightedness. It reveals that in being "ahead of their time" they pioneered fields which the public as represented by the parties of the day was not yet prepared to approve or support.

At this point, parenthetically, it might be observed that hesitancy and indecisive action on the part of political officials usually reflects the same uncertainty existing throughout large sections of the electorate. One might comment at length upon the phenomenon of the coincidence of weak political leaders with a "spirit of the times" which seemed to want just that kind of leadership, and vice versa.

Is it preferable to entrust the execution of broadly conceived policy to certain men who are told to exercise their own judgment and who are not bound by the criticisms of the moment arising out of the democratic process? Are the vocal elements in a democracy, with which the wishes of the "people" are so often confused for want of better indication, not to be trusted to know what is the best for even themselves in the long run? The temptation is great to reply affirmatively. The critical student of government can find many examples to cite in substantiation of such a point of view. And his answer then is: Let us have administrators free to

⁷ T. S. Simey, *op. cit.*, p. 32.

develop their initiative and capacity in dealing with vexatious problems.

The chairman of the Unemployment Assistance Board saw their functioning in this very light, and at the same time saw the two principal conflicting interests between which they had to steer their course.

In a discretionary service of need for very large numbers of persons suffering from long unemployment, the Act is the letter but the administration is the spirit. Subject to the general standards laid down from them by Parliament, the Board and its officers must on individual cases try to do what responsible public opinion at the time would wish them to do. The Board is, in this respect, a trustee for the public conscience on the matter. It is also a trustee for the taxpayer, including workpeople in employment.⁸

The difficulty with this point of view is obvious. How is the Board to determine the "responsible public opinion" of the time? Furthermore, the trusteeship principle is the antithesis of democratic ideals. It implies that a people are not capable of deciding public questions through democratic processes. It negates all the democratic assumptions. It elevates the leadership principle, with all its corresponding assumptions. Any attempt to assess the relative merits of democratic principles versus leadership principles would be far beyond the scope of the present essay. The leadership principles may be more valid, or perhaps inevitable. But the advocates of administrative autonomy ought not to be unaware of what they are advocating. They cannot expect to want "to eat their cake and have it too" without being challenged.

⁸ *Report of the Unemployment Assistance Board for 1935*, p. 19.

An Australian student and former public official has asked some highly significant questions about the creation of the government corporations, although his musings are susceptible of wider applicability. First, Mr. Bland asked, does resort to the statutory corporation imply that government can be efficient only if it ceases to be popular? Secondly, do our methods of creating statutory corporations imply the existence of inconsistent political ideas? Thirdly, is the existing system of creating statutory corporations a means of deluding the people? Fourthly, is it possible or desirable to create statutory corporations which are autonomous?⁹ These are not questions which can be lightly cast aside by the advocates of administrative autonomy. They are challenges which must be accepted and answered. Mr. Bland points to the very heart of the subject when he says that we shall have to develop a technique for reconciling the management of public undertakings with a theory of popular control. The problem of relationship, he points out, has not yet been solved. This fact is admitted by one of the leading apologists for the government corporation.¹⁰

It must not be supposed that the present writer is unalterably opposed to the concept of administrative autonomy. Such is not the case. But he believes that there are two primary prerequisites which must be fulfilled before any administrative agency should be, or can be, freed from the ordinary methods of enforcing political responsibility. The first prerequisite is financial: can the administrative agency by itself raise the necessary

⁹ F. A. Bland, "Some Implications of the Statutory Corporation," 15 *Public Administration* (1937) 393, pp. 397-8.

¹⁰ See above, p. 102.

funds for its operation? In other words, what are the prospects of self-contained finance?

Probably more than any other reason the compelling motive behind the creation of statutory corporations to conduct State enterprise has been the desire to free them from dependence upon annual appropriation of the legislature and all the concomitant financial safeguards with which the expenditure of public funds has been hedged. This end is what the protagonists of the government corporation have in mind when they say they desire an agency with a "sufficient degree of freedom with which to undertake experiments, adjust to changing circumstances, and make the best use of the undertaking's personnel and management assets."¹¹ This interpretation is attested by Professor Dimock's further statement: "Financial freedom is at the centre of every other freedom"; and by his warning: "There is no reason for using the corporate device unless a high degree of autonomy and flexibility is required for the function under consideration. This is another way of saying that the public corporation should be confined to trading activities and that it should not be employed indiscriminately, needlessly. . . . An old, established rule of statecraft is that *ad hoc* agencies should be kept at a minimum."¹²

One of the earliest American students of the corporate device pointed to three criteria which he said should govern its use. One was whether an agency was to be in intimate business contact with individuals and companies, rendering them goods or services for which unit pay-

¹¹ Marshall E. Dimock in the Introduction to John McDiarmid, *Government Corporations and Federal Funds*, p. x. ¹² *Ibid.*, pp. xi, xv.

ment (not taxes) was made. The second criterion was that of self-liquidation, whether an agency's income and outgo would be in approximate balance. Thirdly, the corporate device was wholly desirable where an agency would be in direct or indirect competition with private businesses, especially on a "yardstick" basis.¹³ All of these criteria added up to saying that financial aspects were an important element in deciding whether immediate political responsibility could be dispensed with in order to place an agency on a similar footing, so far as flexibility of management was concerned, with private enterprise.

That independent financial resources will largely determine the possibility of administrative freedom has been too generally observed to need extended comment. But there is a second and in some ways an even more compelling prerequisite governing administrative freedom. This we may identify as the degree of public interest in the work of an administrative agency. This is not the same thing as the extent of the numbers affected, although this factor may have some influence. Rather the degree of public interest is governed by how great is the *common acceptance* of the objectives involved in the work of an administrative agency. If there are fundamental divisions of opinion as to objectives and methods for attaining those objectives, then no matter what may be the pretence of administrative independence, political means will be found to affect the agency involved. So profound a truth should not be slighted by those who speak freely of administrative autonomy.

This consideration is certainly not absent from the

¹³ Harold Van Dorn, *Government Owned Corporations*, p. 209.

government corporation. For example, the principal objective of the London Passenger Transport Board is to supply a convenient, satisfactory means of transport to the public at as low a *self-supporting* cost as possible. Of course there are conflicting interests among which the Board must warily tread their way in meeting this objective. There are the claims of the staff for generous working conditions and remuneration; there are the claims of capital, some of which were carefully inserted in the basic law so that they couldn't be overlooked; and there are the claims of the riding public who want both *good* and *cheap* transportation. The London Passenger Transport Board appreciated that should any of the interests be outraged, the Board's administrative status would be scant protection to the abuse and demands which would quickly collect about them. So long as the compromises found and effected by the Board aroused little controversy, the Board found their status workable.

The statutory corporation which has been the centre of most public discussion in England well bears out the point advanced here. The British Broadcasting Corporation fulfilled the requirement of self-contained finance, inasmuch as it had to operate within the limits of its part of the wireless licence receipts. But the second condition has been the source of difficulty. Not only were there divergent tastes among listeners as to what they wished to hear, but also there was the more fundamental question of what elements in society should benefit by control of so important a medium as the wireless for the dissemination of points of view.

The lowest ebb in the British Broadcasting Corporation's history seems to have come after the 1931 general

election, when the Labour Party charged that their side of the issues of the day had had scant opportunity for expression over the wireless, in marked contrast with the facilities given the National Government. Thereafter a strict adherence to an impartial policy in political broadcasting, especially during the general election of 1935, did much to rehabilitate the corporation's reputation. The aftermath of the period of vigorous criticism was the appointment in April 1935 of a committee to consider the constitution, control, and finances of the broadcasting service. But there was nothing in the report of the Ullswater Committee¹⁴ which dissipated the *common agreement* that increased political responsibility for the British Broadcasting Corporation would scarcely advance the solution to the problem of "non-political," that is, impartial, administration.¹⁵

This point must be made clear. There is for the time being widespread allegiance to the belief that broadcasting facilities should not be used to favour any one group or any one political party within the nation. While that hypothesis is subscribed to and given reality in practice the status of the British Broadcasting Corporation is secure. But only for that long. A Conservative member of Parliament said as much when he wrote, with clear insight; "Public opinion inside the House (of Commons) and outside will insist on discussing the administration of any matters about which it is deeply moved, and so the independence of quasi-public bodies

¹⁴ *Report of the Broadcasting Committee* (Cmd. 5091), presented to Parliament in February 1936.

¹⁵ For a general discussion of the British Broadcasting Corporation, see Lincoln Gordon, *The Public Corporation in Great Britain*, Chapter IV.

is preserved in the last resort only with the concurrence of public opinion."¹⁶

The fact that the government corporations have for the most part administered technical services has been important simply because such matters have not caused widespread differences of opinion. The citizenry generally has been willing to leave these technical questions to expert solution, but upon the basic qualification that the decisions shall not arouse bitter public controversy. It is when the latter does happen that the necessity for retaining ample safeguards for popular control becomes evident. Thus when one British student says that there is small danger of undue Parliamentary interference with the independent public service boards as long as the boards show themselves "properly accountable" to the public, he must evidently mean that the real secret of success lies in avoiding controversy. His emphasis upon the need for "able men" upon the boards and upon the importance of developing public relations techniques substantiates this interpretation.¹⁷

As said previously, the apologists for the public corporation base their case upon the argument that the trading characteristics of the work performed warrant financial and personnel arrangements different from those of ordinary State services. But Dr. Robson has warned that in the eagerness to achieve these desirable ends the means of popular control should not be entirely sacrificed. He has proposed that the problem of control be met, not

¹⁶ Hugh Molson, "Parliament and the Independent Boards," 123 *Nineteenth Century* (January 1938), 78, p. 92.

¹⁷ Terence H. O'Brien, *British Experiments in Public Ownership and Control*, pp. 297-9.

through ministerial responsibility, but through other means. He has advocated that Parliament should have a "full dress debate at least once a year on each of these socialized services," and also an Audit Commission should be created to inquire regularly into all aspects of the efficiency of the work. In addition, he has suggested that the powers of a minister over a recalcitrant board should be made certain.¹⁸ Dr. Robson has not contemplated the establishment of boards which are not amenable to political direction when the occasion so demands.

A double justification for the agricultural marketing boards can be put forth—their trading functions, and also the convenience of the device in giving the direct interests involved a consultative, even a determinative, voice in fixing policies. But this last aspect emphatically demands that the ministerial controls retained be real and sharply defined. As for the professional bodies, technical together with self-governing considerations have been relied upon to warrant their particular constitution. But here again the importance of adequate governmental controls, mentioned in Chapter III, must be re-emphasized. Independence for all of these agencies, as Mr. Molson implied, means that the political elements which dominate the State are willing to accept their policies.

Autonomy for administrative tribunals is easily defensible, as will be brought out below. Even the Civil Service Commission, the Auditor and Comptroller-General, the Registrar of Friendly Societies, and other such agencies could be likened to administrative tribunals. Their particular status was for the purpose of emphasizing

¹⁸ William A. Robson, *Public Enterprise*, pp. 379-82.

that in their fact-finding activities they were not influenced by political considerations. These bodies did not determine important policies.

Already has the answer been suggested to the question whether the Unemployment Assistance Board was, or possibly could be, an autonomous administrative agency. First and foremost among the reasons why the Board could not be independent was their dependence upon an annual appropriation from Parliament. The exercise of a discretionary authority which resulted in increased outgo from the Treasury was certainly the very kind of discretion which no political power could permit untrammelled scope. The Unemployment Assistance Board spent; the Government raised the necessary funds. Were those who provided the money to be barred from some say as to its expenditure? The entire course of English constitutional history affords a resounding negative.

One commentator, observing the "independent" position of the Board and the huge sums annually expended by it, has written: "It is surprising that so little comment has been made on this unprecedented departure from the accepted principle of no taxation without representation, and on the handing over of the control of the expenditure of vast sums of public money to a non-elective bureaucratic authority, operating a machine manned by thousands of enthusiastic officials working empirically on social problems of which not a few had had no previous experience."¹⁹

The failure of particular comment on this aspect of the Board may not have been so surprising after all.

¹⁹ J. Q. Henriques, *A Citizen's Guide to Social Service*, p. 189 (George Allen & Unwin Ltd.).

Only those persons who seriously supposed that the Board was autonomous in *practice* could make such an observation. That degree of credulity was evidently not widespread. As pointed out above, the Unemployment Assistance Board adopted no policy of any importance without previous close consultation with the Ministry of Labour and without assurances that the necessary money would be forthcoming.

Certainly the second condition for administrative autonomy, general agreement as to objective and the methods of realizing that objective, was lacking in the instance of the Unemployment Assistance Board. Was the objective relief of destitution or State compensation for the lack of employment? And what was an adequate scale of allowances for the relief of destitution? These were issues upon which there was fundamental divergence of opinion with Great Britain. Little fault can be found with Dr. Jennings's conclusion: "The provision of assistance to the unemployed and of houses for the working classes are not services which can be divorced from politics; they relate to the essential bases of political controversy. No technical device will exclude them from Parliamentary debate. Responsibility to Parliament is necessary because Parliament, or at least a section of it, wants, and will continue to want, to criticize their administration."²⁰

If the Unemployment Assistance Board were independent, they should have enjoyed all those qualities of freedom from excess caution and of liberty to exert their initiative which the advocates of autonomy are so certain

²⁰ W. Ivor Jennings, "Central Control" in *A Century of Municipal Progress, 1835-1935*, p. 453.

exude from that status. One incident suggestive of the contrary may be cited. The problem confronting the Board in 1939 of disciplining the work-shy among assistance recipients has been referred to several times previously. The Minister of Labour was inclined to feel that certain definite steps should be immediately taken to combat this growing social difficulty. The Board were hesitant, fearful of producing another outburst like that of 1935. A debate in the House of Commons on March 13, 1939, revealed that the Labour Party not only did not admit the existence of the problem but also would not take kindly to any proposed disciplinary action. With evident caution the Board announced in their 1938 report, published in May 1939, the intention to set up a few work centres at which attendance of the "work-shy" would be required as a condition for the receipt of an assistance allowance.

The hesitancy of the Board in this matter was increased by their "independence." In view of the popular feeling which might be aroused by the imposition of more strict conditions for the receipt of unemployment assistance, the Board thought it advisable to proceed with circumspection. In other words, the Board was highly conscious that because of political antagonisms they were not free to do as they thought best. But the very simulation of independence made them even more cautious than a responsible minister need have been, for they were distrustful of their own resources for defence.

Not even personnel needs provided any justification for the status of the Unemployment Assistance Board. It has been pointed out that since the statutory corporations administered mainly technical services like transport

and electricity transmission their freedom from the ordinary civil service structure of government departments was advantageous. There is a real issue to-day whether the superior status of the administrative class, primarily recruited from university graduates, is compatible with the increased importance of professional and technical competence. The public corporations placed experts in high administrative positions. But the Unemployment Assistance Board had the same type of personnel organization, classification, and salary scale as the Ministry of Labour. The Board's staff needs were comparable to those of the Ministry, and the interests of fairness and a free transfer of personnel demanded a like structure. Even in the realm of internal staffing was the Board's affinity to the Ministry of Labour emphasized.

Students of the British social services have been almost unanimous in agreeing that the status of the Unemployment Assistance Board was unsatisfactory. At the end of 1937 Sir Ronald Davison concluded: "Its semi-independent status had not yet proved a political success; the Board could not, if they would, pursue any course other than that which Ministers thought prudent and were willing to pay for."²¹ The survey undertaken by Political and Economic Planning came to much the same point of view.

Nor has the political setting of the semi-independent Board proved very satisfactory. Inevitably the attempt to "take the dole out of politics" has failed. Two years of experience has amply proved that if the care of the able-bodied unemployed is centralized, then Parliament

²¹ Ronald C. Davison, *British Unemployment Policy Since 1930*, p. 86.

will insist upon more direct control of the service than is consistent with the full devolution of authority contemplated in the 1934 Act. It follows that the Minister of Labour is on the horns of a dilemma; he must in practice answer for the administration of the Board and accept responsibilities which, under the Statute, he has no power to discharge. Obviously the Government cannot divest itself of responsibility, and the hoped-for analogy between the Unemployment Assistance Board and the other statutory corporations (e.g. the British Broadcasting Corporation) proves to be a fiction.²²

One other conclusion may be cited. Having noted the close alliance commonly reputed between the Unemployment Assistance Board and the Ministry of Labour, Mr. Simey wrote: "The probability is that the Minister of Labour will be forced, sooner or later, to accept full responsibility for the Board's actions."²³ Of the "independent" board generally in the administration of social services, he decided:

Careful consideration of these examples shows that there is little justification for the argument that the problems of controlling a social service can be met by handing them over to an independent or semi-independent "expert" body for solution. Even where the service involves the application of a highly specialized technique, as in the case of mental treatment, the pressure of circumstances has forced the Minister concerned to accept an overriding responsibility for its administration. Where abstruse questions of this kind do not arise, as

²² Political and Economic Planning, *Report on the British Social Services* (London: P.E.P., 1937), p. 155.

²³ T. S. Simey, *op. cit.*, p. 68, n. 2.

in unemployment assistance, the authority of the semi-independent body is weakened still further, for it can only rely on the strength it derives from the political astuteness of its members; the alternative sources of political prestige, the approval of the electorate and the mysterious knowledge of the expert, are barred *ex hypothesi*. If this is so, it may be concluded that the "semi-independent board" will either be absorbed in the long run into the conventional system of departmental organization, or will collapse under parliamentary attacks. Alternatively, it may manage to preserve a somewhat inglorious existence by avoiding courses of action which provoke opposition, trimming its sails to the winds of popular feeling, though it is hardly to be expected that a service can be efficiently administered under these conditions.²⁴

While the independence of the Unemployment Assistance Board was illusory, it cannot be denied that the Board brought certain advantages to the administration of relief. Two were commonly pointed to and deserve some consideration. One of these was the value of the Board as a buffer, as protection for the Minister of Labour.

In the House of Commons the Minister or the Parliamentary Secretary took care to use the circumlocution "I am informed by the Board" before giving the reply to a question. In addition, the Minister often emphasized that he answered for the Board, but that the Board bore their own responsibility. Unquestionably the Minister of Labour felt that he could rely on the status of the Board as a defence in the House against some of the grievances

²⁴ T. S. Simey, *op. cit.*, pp. 77-8.

or pressures exerted by members. He found the Board a convenient "dodge," as the necessary element which permitted the occasional appearance of being sympathetic with the individual member but unable to do anything about his complaint. If the Minister did actually feel that there was any justification for a grievance, he could hint as much to the Board. A hint was sufficient. The complaints which went unsatisfied because of the Board's status were complaints which probably would have gone unsatisfied whether there was an Unemployment Assistance Board or not. Be that as it may, it was handy to have the Board as an excuse for inaction.

The Board's usefulness as a buffer, however, could be easily exaggerated. Their supposed "independence" was no protection in the face of widespread hostility or dissatisfaction, as the Standstill amply demonstrated. There could be no relaxation on the part of the Minister, in consultation with the Board, of the necessity for selecting what pressures it was expedient to meet. Nor did the Minister ever go so far as the Postmaster-General did on certain occasions, when he refused to give the House of Commons any answer at all to certain petty questions involving complaints against the British Broadcasting Corporation.²⁵

The explanation why Ministers of Labour were so accommodating in reply to questions pertaining to the Unemployment Assistance Board is contained in the words of a member of Parliament. "It is clear," Mr. Molson wrote, "that it rests largely with the Minister himself to decide how far he will answer parliamentary

²⁵ Cf. John Thurston, *Government Proprietary Corporations in the English-Speaking Countries*, p. 246.

criticism. This is not as unsatisfactory as it appears. A Minister whose interpretation of his responsibility differed from that of most members would quickly become aware of his isolation, and, if he persisted in his attitude, would find himself removed from his office whenever an opportunity presented itself."²⁶ This observation supports the contention that the degree of public interest in a subject will determine the real position of an administrative body.

There is yet another aspect to the protection of a minister from Parliamentary complaints. The writer readily admits that the doctrine of ministerial responsibility can be "pressed too far." If a minister attempted personally to assume responsibility for all individual decisions made by his department, administrative work would shortly break down. There is justification for Mr. Simey's declaration that officials must be given considerable discretion in the execution of their duties.²⁷ But too little attention has been given to the importance of such bodies as the Courts of Referees in unemployment insurance administration, the referees under the widows', orphans', and old-age contributory pension schemes, to the local pension committees under the non-contributory old-age pension provisions, and the local insurance committees under the health insurance scheme. These furnish all the protection against the dangers of ministerial responsibility which a minister needs, or can legitimately expect.

The significance of such administrative tribunals as the Courts of Referees is simply this. Here was a local body, whose decision was not controlled by a responsible

²⁶ Hugh Molson, "Parliament and the Independent Boards," *op. cit.*, pp. 82-3.

²⁷ T. S. Simey, *op. cit.*, p. 78.

minister, with the duty of listening in person to the complaint of an aggrieved individual who believed that he had not received his due under the law from an administrative official. The procedure was informal, with little or no cost to the complainant. The laymen members of the tribunal considered whether the administrative official had correctly followed his instructions or acted reasonably. The safeguard afforded the individual was reinforced by his awareness that his case had been reviewed by fellow citizens of his own locality. It would be difficult to exaggerate the contribution made by these courts to the administration of unemployment insurance.²⁸ The preceding chapter has pointed out that the Unemployment Assistance Board, even though the Board were not directly responsible to Parliament, found the Appeal Tribunals of inestimable value as protection.

Autonomy for a Court of Referees or an Appeal Tribunal is as attainable and as defensible as is independence for the ordinary law court of the land. While administrative tribunals are not self-supporting financially their expenses are confined to their own maintenance. And there is common acceptance of their decisions. Two facts so permit. Administrative tribunals generally do not exercise discretion or determine policy in the first instance; they review the exercise of discretion by administrative officials. They do not initiate a point of view; they decide whether a particular point of view is reasonable according to legislative and ministerial inten-

²⁸ "The machinery of adjudication and appeal has been extraordinarily successful. Devoid of any artificial pomp or unnecessary formality, the procedure nevertheless manages to preserve the essential elements of justice and equity." W. A. Robson, "A Human Court," *The Times*, February 16, 1934, p. 16.

tion. Hereupon the second fact plays its part. Any decision by an administrative tribunal, or a court for that matter, must not be too difficult of alteration by the political power if it disagrees with the result.

Americans have had good cause to appreciate the importance of this requirement. It took four years of bloody civil strife to reverse one decision by the Supreme Court; circumstances suspiciously suggestive of court "packing" ensured that greenbacks were legal tender; twenty years of agitation finally brought about amendment of the Constitution permitting the Federal Government to levy an income tax; and a bitter political controversy in 1937 brought a "new light" to the same august body. How much simpler it is in England to reverse a decision of court or administrative tribunal! The Government have only to introduce amending legislation; their dominance of the House of Commons ensures its passage.

The Minister of Labour often used the decisions of the Courts of Referees and the Umpire as justification for his own point of view. Thus when the question arose whether men participating in a march of the unemployed should be considered as fulfilling the benefit requirement of being available for work, a local Court of Referees, sustained by the Umpire, ruled in the negative.²⁹ The Minister of Labour then pointed to this decision when refusing to take any steps to change such an interpretation of the statutory requirement. The Courts of Referees made ministerial responsibility in unemployment insurance administration workable. Why would not the Appeal Tribunals have done the same if the Minister had

²⁹ See 317 H.C. Debs., cols. 1024 and 1895.

acknowledged his responsibility for unemployment assistance administration?

To the extent that the Unemployment Assistance Board served as a buffer for the Minister of Labour it fulfilled the dictum of Jeremy Bentham that a board is a screen. A different verdict, commonly ascribed to General Goethals, builder of the Panama Canal, and dear to most United States Army engineers, is that a board is long, narrow, and wooden. Such an aphorism was not applicable to the Unemployment Assistance Board. As a collegial body the Board did make some contribution to the administration of unemployment assistance.

The Board met frequently, on an average of about once every ten days.³⁰ An agenda was carefully prepared beforehand, containing the principal items which the chairman and the secretary thought needed board consideration. Important questions of policy continually arose, from such general subjects as the training and transference of applicants to more specific matters such as how the Board should divide up its responsibility with local authorities for the care of expectant mothers. Because the secretary to the Board, the chief administrative officer, was a civil servant, he was accustomed to consult with the lay element before making any important decisions. The chairman of the Board, a former

³⁰ In reply to a question in the House of Commons on November 12, 1936, the Minister of Labour said: "I am informed that formal meetings of the Board were held on 64 days in 1935 and on 35 days up to date in 1936, the duration of the meetings being usually about four hours. I should add that the chairman and deputy-chairman give whole-time attendance, and that the other members devote a good deal of time to administrative work apart from the formal meetings of the board." 317 H.C. Debs., cols. 1013-14.

Minister of Labour, was in close touch with the general administration.

The members of the Unemployment Assistance Board were individuals with considerable experience in matters of social welfare. In addition to the chairman and the first deputy chairman, who had been a Treasury official, one member came from academic surroundings, one was head of an organization for women's training, one a local public assistance officer, and the remaining member, although a former deputy secretary to the Cabinet, had long been associated with social research. The lay element in numbers predominated. The opportunity was thus presented for "an amalgam of the contributions of layman and official . . . containing the elements essential to the proper administration of the social services: common sense and technical knowledge."³¹

One contribution of the Board may be cited as indication of the part the members could and did play. Early in 1939, when the Government announced the intention of building holiday camps which could be used as evacuation centres in time of war, the Board was quick to see a long-awaited opportunity to do something on a larger scale about affording work to assistance applicants. The Board successfully pressed the Minister to obtain the concession that in the construction of these camps a primary consideration should be to give jobs to the long and destitute unemployed. Whether permanent civil servants alone could have extracted this enlargement of Government policy is debatable.

A leavening of the lay element in the central administrative headquarters of the social services is a factor not

³¹ T. S. Simey, *op. cit.*, p. 108.

lightly to be cast aside. In theory, of course, the politically responsible head affords the lay touch to a government department. But the Cabinet minister has many duties which may only indirectly concern his department—preparation to discuss questions before the Cabinet, attendance at Parliament, appearances in his constituency, participation in the work of the party machinery such as speaking at by-elections, and the numerous demands of social engagements.³² Consequently the opportunities to get a grasp upon the problems of his department itself are limited. An advisory committee, made up of laymen with some background of knowledge of the work or concern of a department, might very well play an important rôle. Indeed, British departments under responsible ministers do make continual use of advisory committees, most frequently on an *ad hoc* basis, sometimes as a standing body. In such ministries, for example, as those of health and education notable service has been rendered by central advisory committees. The remark of a civil servant that the chief observable difference between serving under a responsible minister and under the Unemployment Assistance Board was that the Board took more interest in the details of the work, is one upon which to reflect.

In a sense it might be argued that the Unemployment Assistance Board was after all really an advisory committee. The fact has been emphasized that the Board could not finally determine any important issue of policy, but that decisions could only be made with the acquies-

³² Cf. Charles Aiken, "The British Bureaucracy and the Origins of Parliamentary Policy," 33 *American Political Science Review* (1939), 26, p. 34.

cence of the Minister of Labour. The tone of the Board's report for 1938 amply demonstrated this truth. As a result of the inquiries conducted in conjunction with the advisory committees into the problems of the long time unemployed, especially the young unemployed, the Board became much concerned with what could be done positively to promote the welfare of these people. Three specific proposals were put forward.

In order to discipline those "adjusted to the dole" the Board asked power to make allowances conditional upon attendance at a training course. For those wanting work but who were unlikely to find it the Board urged first that government public and defence works' contracts require the contractor to engage a large part of his workers through the Employment Exchanges, who could then guide the long unemployed to these jobs, especially the unskilled ones. Secondly, the Board suggested that they subsidize local authorities who arranged for the long unemployed to be given jobs on their public works.³³

All these proposals were only recommendations; the Board had no power to act finally in these matters. The suggested disciplinary measure required amendment of the law, which the Government would have to propose to Parliament. The first suggested step for providing jobs to the long unemployed could be effected only if the Government adopted and carried out the policy. As for subsidizing local authorities, the Unemployment Assistance Act of 1934 empowered the Board to do so, but the Board lacked the necessary funds. Conclusion of

³³ *Report of the Unemployment Assistance Board for 1938*, pp. 48-51.

the proposed arrangements was dependent upon the Government making the money available.

Moreover, by its very nature a board as a collegial body can only indicate policies; it cannot execute them. Two of the three dicta concerning the use of committees which were set forth seventeen years ago by Sir Arthur Salter bear out this point. "Committees," he wrote, "can control, but they cannot direct administration. The spring of all administrative work is individual responsibility." Secondly he declared: "Committees are in most cases more effective and useful if they are advisory."³⁴

Advisory committees can be another very helpful protective device. The third observation of Sir Arthur Salter was that "committees are an invaluable instrument for breaking administrative measures on to the back of the public." It is of inestimable value for a minister to be able to associate lay opinion outside the ranks of professional administrators or politicians with his own decision. Committees can strengthen a minister's power of resistance and be used as a reason for action or inaction. The advisory committee as buffer was in essence the explanation for the creation at the same time as the Unemployment Assistance Board of the Unemployment Insurance Statutory Committee.

So long as the insurance scheme was supposed to match outgo with its regular contributions from workers, employers, and the State there was a feeling that some machinery should be set up to call attention to the condition of the scheme's finances. The Royal Commission

³⁴ J. A. Salter, "Some Problems of International Administration" in Society of Civil Engineers' Lectures, *The Development of the Civil Service* (London: P. S. King & Son, Ltd., 1922), pp. 219, 220.

on Unemployment Insurance recommended that a statutory commission should be set up to keep under constant surveillance the finances of the insurance scheme as well as to advise the Minister of Labour on other features of the system.³⁵ From this came the Unemployment Insurance Statutory Committee, a body specially constituted so as to emphasize its independent advisory status.

The chairman, Sir William Beveridge, has listed three functions of the Unemployment Insurance Statutory Committee: reporting on regulations proposed by the Minister of Labour, advising on any matters referred by the Minister, and "reporting on and adjusting the financial condition of the Unemployment Fund."³⁶ Before the Minister can make certain regulations he must seek the advice of the Committee, who are required to consider representations from interested groups. If the Minister does not accept the advice of the Committee on these regulations, he must explain his reasons when laying the draft before Parliament. As to finances, the Committee must report before the end of February each year, and at any other time they think necessary, on the condition of the Unemployment Fund. If the Committee think the Fund unlikely to be able to discharge its liabilities, they must recommend steps necessary to achieve solvency. If there is a surplus, they must recommend how it might best be used. The legal position of the Committee's financial recommendations has been defined by the chairman in these terms:

³⁵ *Final Report of the Royal Commission on Unemployment Insurance*, p. 169.

³⁶ Sir William Beveridge, *The Unemployment Insurance Statutory Committee*, Political Pamphlet No. 1 (London: London School of Economics and Political Science, 1937), p. 7.

The Minister of Labour is not bound by the recommendation, but is bound by the figure in the estimate; he can propose to Parliament that a surplus be disposed of or a deficiency made good in some other way than that recommended by the Committee, but he cannot question the surplus or the deficiency itself. If the Committee report that the fund is insolvent, the Minister cannot reject their opinion as unduly pessimistic, and thus seek to avoid the unpleasant necessity of either lowering benefits or raising contributions. If the Committee report a surplus which is not quite enough to bring about some improvement that the Minister desires, he cannot put the surplus a little higher to suit his case, however good that case may be. The Minister must work to the Committee's figure and must spend or save, as the case may be, neither more nor less than they have said. What the Committee find as surplus or deficiency *is* the surplus or deficiency; if they don't find one, there isn't one; if they do, the Minister, in agreement with the Committee or in explained disagreement, can by Order approved by Parliament, but without fresh legislation, make far-reaching changes of the law, affecting the economic conditions of millions of people and adding millions to or taking millions from taxation.³⁷

The Unemployment Insurance Statutory Committee was an independent fact-finding body as to the status of the finances of the Unemployment Fund. Otherwise the Committee was advisory—the Minister might or might not accept the Committee's advice. The Committee differed from the Unemployment Assistance Board in

³⁷ Sir William Beveridge, *The Unemployment Insurance Statutory Committee*, Political Pamphlet No. 1 (London: London School of Economics and Political Science, 1937), pp. 27–8.

that they had no direct administrative responsibilities and executed no policy. The Committee were given their special position in order to enhance the Committee's prestige and to emphasize the importance of their pronouncements upon the condition of the Fund's finances. The responsibility, however, for the management of the insurance system was still clearly and definitely that of the Minister of Labour.

The Unemployment Insurance Statutory Committee enjoyed considerable popularity from the time the Committee began to function in 1934. But the reason thereof lay in the fact that the Unemployment Fund's finances were such that each year the Committee could recommend lower contributions or increased benefits. Whenever this trend had to be reversed, and increased contributions or decreased benefits called for, the value of the Committee as a buffer would be really tested.

Had the Unemployment Assistance Board been given some such functions as those of the Unemployment Insurance Statutory Committee, the Board's status might have been workable. The Board's contributions to the administration of relief to the able-bodied unemployed would probably have been just as great if the Board had been advisory. The Board's position as the directing head of a large organization may perhaps have imparted a sense of greater weight to their deliberations, but this fact did not enlarge their power. No final decision could be taken without the knowledge that the Minister of Labour approved. It does not seem unreasonable, accordingly, to conclude that as a board the Unemployment Assistance Board was essentially advisory, and that the exercise of this function was not dependent upon

the existence of a great administrative staff under the Board's nominal direction.

If two contributions of the Unemployment Assistance Board are recognized—their value as buffer and as an advisory agency, a third possible claim must be rejected. When the Unemployment Bill was going through the House of Lords, Lord Elton defended the proposed creation of the Unemployment Assistance Board on the grounds that it would lessen the burdens of Parliament. He told the House: "These statutory bodies are in fact examples of that devolution of Parliamentary sovereignty, which I venture to think will have to be carried a great deal further in the near future if Parliamentary democracy is to protect itself against what is now perhaps the principal danger threatening it, that is, the possibility that it may break down under the sheer weight of its legislative duties."³⁸

It is not clear what prompted this exposition of the character and purpose of the Unemployment Assistance Board, but that it was misconceived events shortly made evident. Perhaps Lord Elton thought that thereafter the Houses of Parliament would no longer have to concern themselves with assistance matters, that members of the House of Commons would no longer have to raise the grievances of their constituents. If so, the hope was falsified. Furthermore, the Board was given no greater discretionary authority than that possessed by departments under responsible ministers. Even the authority to frame assistance regulations, although Parliament could not amend them, more closely resembled the legislative initiative regularly enjoyed by the Government rather

³⁸ 92 H.L. Debs., col. 839.

than an inherent power to legislate. Parliament none the less had to take time to discuss the assistance regulations. No aspect of the Unemployment Assistance Board suggested that because of their existence the Parliamentary process had been simplified.

Against the advantages of the Unemployment Assistance Board must be offset the disadvantages. Two which have been mentioned must be restated. The first was the difficulty the Board had in presenting the problems of relief to the public. Dr. Jennings has concluded: "The chief result of 'taking unemployment assistance out of politics' is that the Board has no means of defending itself against attacks."³⁹ Later he observed: "It is an advantage to be openly attacked. For attack implies defence."⁴⁰ The same point of view was expressed by Mr. Simey when he commented that the Board "suffers from most of the disadvantages of ministerial control without possessing its advantages."⁴¹

The Unemployment Assistance Board was denied the use of the forum of the House of Commons and the public platform to explain the work they were doing, to inform of the problems they confronted, and to justify the policies they pursued. The Minister of Labour necessarily weakened his defence of the Board because he did not wish to make too apparent his own responsibility and thereby lessen the value of the Board as buffer. Personal defence is ordinarily the most effective defence, and the Board could not utilize the opportunities for such which were available to a responsible minister. The Board were expected to preserve the fiction that they

³⁹ W. Ivor Jennings, *Cabinet Government*, p. 82. ⁴⁰ *Ibid.*, p. 374.

⁴¹ T. S. Simey, *op. cit.*, p. 68, n.2.

were "outside politics." The Board's lack of political leadership must be counted a real loss. For only through vigorous advocacy can many reforms, when desired, be accomplished over the indifference or hostility of other politicians. The Unemployment Assistance Board were dependent upon whatever power of quiet persuasion they could bring to bear upon a Minister of Labour who wanted to shunt aside as much as possible all concern for assistance matters. This was anything but an ideal situation.

The second disadvantage of the Board's status arose in this connection. Should a Minister of Labour come into office who did desire to make changes in unemployment assistance administration, there might be some doubt as to his authority to bring about change. He would be confronted with the confusion and uncertainty which surrounded the factor of the Board's responsibility. The reasons for believing that the Board was not and could not be an independent administrative agency have already been set forth. The question is whether the true status of the Board ought not to have been openly acknowledged.

To be sure, the political interests of the National Government were opposed to clarification of the Board's status. The very purpose in creating the Board was to confuse the aspect of responsibility for the administration of assistance to the unemployed. The Board were set up to relieve the Government of an embarrassing responsibility. While the effort was not as successful as it was hoped, and the Board's and Government's position became tenable only at the price of increasingly more generous provision for the unemployed, still the Govern-

ment had no desire to rearrange the Board's position. There was the continual possibility or hope that, in or out of power, the Conservative Party might be able to use the argument of the Board's "independence" effectively against the desires of their political opponents.

It may well be that politicians find the pressures upon them uncomfortable. Rather than have to announce a decision themselves they may go through the motions of transferring a ticklish issue to a "body of men of good will." But is it desirable from the standpoint of the broader interest of democratic government that politicians should be permitted to divest themselves of unpleasant tasks? The political leaders and the governing institutions of a democracy are expected to provide the means for translating popular wishes and needs into action. Despite all the intricacies and camouflage involved in measuring the popular wish, political leaders are expected to make their decisions and defend them. Subsequently the opportunity may come to indicate the reaction to those decisions. Excuses that a decision is beyond the authority of the leaders of the State, or attempts to say that an unpopular decision is someone else's doing, confuse the issue, make uncertain the responsibility, delay change.

Amid the complexities which engulf the present-day world a failure to cope with unpleasant situations becomes dangerous. Democracy must to-day seek to simplify its institutions and concentrate political responsibility, so that praise or blame for existing conditions can be readily and fairly assigned. Only thus can democracy hope to survive. Positive advance through the use of the power of the State against the failure of society to provide individual sustenance and security is not synonymous

with dictatorship. *Politically irresponsible action is*. The growth of executive power which is the concomitant feature of a dynamic State demands that the means of keeping that power politically responsible remain unimpaired. The words of the Treasury Solicitor, later Chief Justice of India, to the Committee on Ministers' Powers are immediately applicable. Sir Maurice Gwyer said: "The greater the complexity of our civilization and the wider the range of our legislation, the more difficult it is for a popularly elected legislature to exercise complete control over administrative policy. The utmost under present conditions that it can do in fact is to secure that competent administrators are chosen and to enforce strictly the principle of ministerial responsibility; any fundamental change would imply the adoption of a new theory of government."⁴²

The public has an immediate interest that political power should be easily definable, definite, and fixed. The second interest is that that power be controllable. It is not enough merely to say that the Unemployment Assistance Board watched alertly for popular reactions. So may an authoritarian dictatorship. The difference lies in the ability of that popular reaction to make its wishes prevail. Any impairment of the doctrine of ministerial responsibility for vital services is an impairment of popular control.

It may be said that it has already been argued that the Unemployment Assistance Board could not long survive in the face of a hostile government, and that the Board has been represented as amenable to the wishes of the

⁴² Committee on Ministers' Powers, *Minutes of Evidence*, vol. ii, p. 6.

Government of the Day. All this is true as it affected the National Government in 1939. Yet is it beyond the realm of possibility that the very persons who realized existing actualities would be above accusing another Government of unprincipalled tampering with an "independent" board? The important issue of objective might be side-tracked for the less important but politically more telling attack upon method. A situation which is confused is always possible of misrepresentation. Clarity in political relationships is no inconsiderable desideratum.

Nor is it an adequate reply to say that a different Government could always abolish the Unemployment Assistance Board. If control is to be exercised only by destroying administrative agencies and creating new ones, chaos may be achieved rather than control. The least that can happen is a certain amount of friction through needless rearrangements, when adjustments might have been effected more effortlessly if only the authority to direct a change had been certain.

The status of the Unemployment Assistance Board was unsatisfactory because it did not clearly fix the responsibility for assistance administration and because it was not readily adaptable to popular control.

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The objective sought by creating the Unemployment Assistance Board was not very carefully defined, but was based upon some expectation that a board not directly responsible to the House of Commons could pursue policies no minister or Government would dare to effect overtly. Escape was sought not from the administrative defects of ministerial responsibility but from its political

liabilities. The Government projected an administrative agency responsible to them, but for which in turn they would not be responsible to Parliament. The assumptions that such a device was possible proved false, and democratic assertiveness triumphed. Financially the Board could not hope to be independent of the Government; politically neither the Board nor the Government could free themselves from the pressure of interest groups as reflected in the House of Commons.

If unemployment assistance was to be a centralized service, the Minister of Labour, as the chief officer of the Government concerned with employment problems, should have been made clearly and unmistakably responsible for all phases of assistance administration. The more obvious defects of ministerial responsibility in the administration of unemployment assistance could have been counteracted successfully without impairment of the doctrine itself. A high degree of centralized control could have been avoided if the effort had been made, and protection for both the individual affected by official action and the responsible minister achieved by a system of administrative tribunals. Furthermore, the unemployment assistance legislation might have included the same disability that the Poor Law imposed upon the Minister of Health: "Nothing in this Act shall be construed as enabling the Minister to interfere in any individual case for the purpose of ordering relief."⁴³ If the Minister wished to associate with his decision on policy matters the opinion of persons not immediately active in the political arena, the device of the advisory committee was

⁴³ Poor Law Consolidation Act of 1930, 20 Geo. V, Chapter 17, Section 1(1).

immediately at hand. Autonomy for administrative tribunals and advisory committees need not be illusory, since neither can initiate policy, but only interpret or suggest.

An expounder of the system of "official independence" has written: "The sole criterion as to the amount of independence or responsibility that is granted or enforced in any particular case must be the efficient performance of the work done."⁴⁴ But such a criterion evades the most fundamental part of the question: who is to judge the "efficient performance of the work done"? In a democracy that verdict must ultimately be derived somehow from the electorate. This is merely another way of saying that the criterion previously put forward here, the degree of popular interest and agreement in a matter, will determine the amount of "official independence." Just as a hereditary kingship and a permanent civil service are compatible with democracy because of the doctrine of ministerial responsibility, so independence for administrative agencies will be feasible only if the ultimate responsibility for basic policies continues clearly to be vested in the politically accountable agents of the State. Otherwise we are advancing on the road again to authoritarian government.

It must be concluded that as a constitutional and administrative experiment in governmental relationships the Unemployment Assistance Board had little to commend itself. The Board's work had neither technical nor trading characteristics to serve as justification for a peculiar administrative status; no interests were involved who could put forth a claim for special consultative or

⁴⁴ Robert M. Dawson, *The Principle of Official Independence*, p. 10.

self-governing arrangements. Instead the Board's activities concerned intimately all aspects of the lives of hundreds of thousands of people, and the Board's policies were closely related to the fundamental political controversies of the day. These policies should have been defended politically before the electorate, and the power of the electorate to bring about a change openly acknowledged. Resort to the device of an "independent" board in the field of unemployment assistance implied that political defence for the policies to be pursued was not possible, and that hence a Government was justified in using authoritarian methods. From the democratic point of view the Unemployment Assistance Board could not be said to be worth emulating.

To be sure, the fact that in practice the Board dispensed ever more generous assistance allowances demonstrated that political accountability was not lacking in the Board's status. This was enough for the Englishman. He was not troubled by illogicality. There is a national genius, we are always told, for making illogical arrangements work. The possibility of future strain arising from these illogical arrangements is postponed for consideration when that day dawns. One would have thought that by now there had been so many lessons in the dangers of expediency and concern with only the immediate advantage that such cheerful optimism would be less prevalent. Democracy may yet find in its inability to look forward its nemesis. The politician may be satisfied with the position of the Unemployment Assistance Board. The student cannot share that satisfaction.

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