CHAPTER IX

Law and the Courts

The previous part ended with the process of democratization of the British system of government and the working of the political institutions which emerged therefrom. But the maintenance of democracy must depend in a large measure on the just and efficient working of the courts of law. Judiciary, indeed, is the never-failing custodian of the liberties of the people in Britain and British justice—honest, impartial, intelligent, and available alike to rich and poor—has been the pride of Englishmen for centuries together.

KINDS OF LAW

Common Law

There are in Britain three kinds of law: Common Law, Equity and Statute Law. Common Law, arising from ancient customs, finds its origin to about eight hundred years back, Before the Norman conquest there was no uniform legal system. The courts were local bodies and the laws had varied a great deal in different places. The Norman and the Angevin Kings were determined to unite the nation and "to make the strength of Monarchy felt, or, in the legal phrase, to make the King's writ run," throughout the length and breadth of the land. They found that their judicial power was the most effective instrument for this purpose, and their practice was to send their judges to tour the country and to see that it was being properly governed. In the beginning, the travalling judges listened to cases in the local courts and applied the customs which they found in different places. Gradually, they began to iron out the differences and applied the same principles everywhere without much regard for particular local customs. By the process of unification the judges built a system of rules which was the same or "common" for the whole of the realm. This was the origin of what we still call the Common Law. It was the origin, too, of the "Assizes," the courts which the judges still hold under the King's commission when they tour the country "on circuit."

This early unification of the law in Britain has been an event of abiding importance. It gave the country a strong law, and perhaps it is partly the strength of law that has made Englishmen one of the most law-abiding nations in the world. Another result of the unification of the law or at least the method by which it came about was to give to the office of the judge a prestige and influence far above that which it holds in any other system. The Common Law was in origin a judge-made law. The decision of one judge was followed by others, because that was the easiest thing to do. In this way precedents and the doctrine of *stare decisis* ("let the rule stand") were evolved. The doctrine embraces even the Statute Law and it is an invariable rule of British jurisprudence that a decision given by a judge as to what the Common Law is or what the Statutes mean, shall be accepted as a rule to be applied in all similar cases, until it is set aside by a judge of a higher court or until a new Act of Parliament settles the matter beyond doubt.

The Common Law is therefore, a body of rules which had never been ordained by any Monarch, or enacted by any legislative body. It grew by decision and record. It is still the most fundamental element in the British system. In particular, it covers the general principles of the law of contracts and the civil wrongs. The criminal law, too, was the Common Law, though most of it has now been put into statutory form.

Equity

With the lapse of time, however, the Common Law became sufficiently inflexible as to give rise to serious complaints. Judges ceased to adapt it to the changing needs of British society. There were many cases in which the Common Law provided no remedy and sometimes there were manifest injustices because of rigid adherence to precedence. Feudalism was disappearing and money was taking its place about the fifteenth century. The country at that time was passing through a period of social, economic and political instability in which justice often required a procedure less technical and dilatory and method of enforcement more summary, than those that the Common Law was providing. The development

of Equity, the second strand in English Law, provided remedies for deficiencies in the Common Law and saved the situation.

The law had always regarded the Kings as the fountain of justice, and the courts were his courts. If his courts failed to give justice an aggrieved subject was entitled to appeal to the King and to pray him to grant a remedy out of his grace. In the beginning, the King tried to deal with each petition on merit, giving the matter his personal attention and sometimes discussing it with his Council. But he soon found that if he kept on dealing with all the petitions himself, he would have time for nothing else. The King, therefore, passed on such petitions for consideration by his Chancellor, who was not then a judge as he is today. The Chancellor was the legal member of the King's Council and "Keeper", as it was said, of the King's conscience. Thus, arose the Court of Chancery, which at first was not so much of a court as an administrative department of the State charged with reconciling law and justice. In effect, an aggrieved subject who could not get justice from the law in a civil suit, appealed to the Chancellor for the redress of his grievance in accordance with the accepted ideas and common sense.

Equity was rooted not in custom but in conscience. "It was based on the belief that law should correspond to the moral standard of the community." Since Equity provided remedies where the Common Law could only impose penalties, and as it recognised the existence of new problems to which the law had not been adapted, much business came to the Chancery. From the decisions of the successive Lord Chancellors was framed a body of rules known as Equity, not in opposition to the law, but as an addition to it. Equity included such principles as the following:

"Equity will not suffer a wrong to be without a remedy.
He who seeks equity must do equity
Delay defeats equity.
Equality is equity.
Equity looks to the intent, rather than to the form."

It was not until the beginning of the eighteenth century that the principles of Equity became well settled and the method of their development from case to case had been the same. It meant that the Chancellor had become a judge and his Chancery had become a court of justice. It also meant that there emerged two independent systems of courts applying two separate kinds of law. This extraordinary state of things actually lasted until 1873. The Judicature Act established for the first time a single system of courts and the rules of both Law and Equity were administered both in the King's Bench and Chancery. It must, however, be noted that the Judicature Acts of 1873 did not amalgamate Common Law and Equity, but it settled the relation between them by enacting that where they conflicted, Equity was to prevail.

To sum up, Equity consists of a miscellaneous collection of principles, "not systematically related to one another, but each tending to make this or that rule of the Common Law more equitable than would otherwise be."[1] It has many things in common with the Common Law. Both the Common Law and Equity were shaped by judges to fit the needs of the period in which they were formed, though the needs were different in each case. Common Law provided a basic system of law based upon ancient customs, but moulding them in conformity to the centralized royal authority. Equity simplly added to the rules of the Common Law in order to make it more equitable and thereby to remove the rigidity or inadequacy of law. Equity was thus, complementary to the Common Law. But gradually, like the Common law, it too, became a system bound by precedents and in the eighteenth century, a Chancellor declared that the doctrines of Equity "ought to be as well settled and made as uniform almost as those of the Common law."

Statute Law

The Statute Law is composed of Acts passed by Parliament and this is by far the largest source of law in modern times. Until the nineteenth century almost all civil and criminal law was Common Law or Equity. Even when the civil and criminal law had been embodied in the Acts of Parliament their basis still remained Common Law. It must, however, be noted that Statute Law overrides the Common Law. This is unlike Equity, because it does not contradict Common Law. It simply mitigates Common Law or meets its deficiencies. In case of a conflict between Statute and Common Law, the former is always upheld. For the Statute Law has final voice; whatever the Common Law, or past Statutes, or decisions based on them may have prescribed, that can be altered by a new Statute. In fact, the

1. Brier, J.L., *Law and Government*, p. 130.

need for Statutory Law was felt to remove the anomalies by the precedents which did not fulfil changing needs of society and were in conflict with the new standards.

When we turn from the sources to the contents of law, the most important distinction is the one between civil and criminal law. The object of civil proceedings, which is called "action", is to give redress, usually, in the form of pecuniary damages, to some private party whose rights another has infringed, On the other hand, in criminal proceedings or "prosecutions" the law does not regard the wrong act as directed to a particular person only. It considers that there is a public interest at stake and its aim is to protect society against such acts by punishing the offender.

THE COURTS

Civil Courts

The Courts that apply the law in the United Kingdom are broadly speaking divided into civil and criminal courts although no rigid line can be drawn since the distinction is a comparatively modern one. Quite a number of civil cases are, in fact, heard in criminal courts while occasionally a criminal case may be heard in what is primarily a civil court. For civil cases the lowest courts are the county courts, which decide cases in which the amount involved does not exceed £750, or where, in actions for the recovery of land, the ratable value of the land is not more than £400 a year. The growth of social and economic legislation has added to the jurisdiction of the County Courts. Workmen who consider they have not received due compensation for injury suffered in their employment and tenants and landlords disputing about their rights under the Rent Restriction Act, bring their cases to the County Courts.

County Courts (of which there are nearly 400) are so located that no part of a county is more than a reasonable distance from one of them. They are presided over by a paid judge who almost always sits alone, although he may sit with a jury consisting of eight persons if either party wishes it and the court makes an order to that effect. There are 106 County Court Judges now in office, each having a circuit, which is either one court, or a group of courts depending upon the work to be done.

In addition to the County Courts there are still a few local courts with somewhat similar jurisdiction. Most of these are survivals from the medieval borough courts and have little or no work to do at the present time, but the Liverpool Court of Passage, the Salford Hundred Court and the Mayor's and City of London Court are still well used.

Above the County Courts, there is one Supreme Court of Judicature consisting of two parts: the Court of Appeal, in which sit the Master of Rolls and Eight Lord Justices of Appeal, and the High Court of Justice, in which the judges are the Lord Chief Justice and about 68 Justices.

The High Court is organised into three divisions: the Chancery to which most of the cases which formerly belonged to Courts of Equity are assigned; the Queen's Bench for the Common Law cases; and Probate, Divorce and Admiralty.[2] The Court of the Appeal and the High Court sit in London, but the Judges of the Queen's Bench Division also hear criminal cases in the county at the Assizes. Petitions for divorce are also now heard at the Assizes. Appeals from the Country Courts rest with the High Court. On its original side it has jurisdiction in cases in which the amount involved is sufficiently large. Then, there is the Court of Appeal which receives appeals both from the County Courts and the High Courts of Justice. The Court of Appeal sits on two or three divisions or occasionally all Lord Justices sit together in cases of great importance. Above the Court of Appeal stands the House of Lords, the highest Court of Appeal in the realm both in civil and criminal cases. The whole House of Lords never sits as a court. In 1876 seven Peers for life were created to hear appeals and they are known as Lords of Appeal in Ordinary or more popularly as Law Lords. The Appellate Jurisdiction Act 1947, changed the number to nine. All appeals are now heard by ten Law Lords, namely, the Lord Chancellor and nine Lords of Appeal in Ordinary. The Lord Chancellor is the presiding officer and is a member of the Cabinet. The nine Law Lords are invariably men of high judicial distinction, eminent judges or lawyers who are made life Peers.

The Judicial Committee of the Privy Council is an exalted appeal body which, strictly speaking, does not belong to British judicial hierarchy. Technically, it is not a court which renders decisions, but a body which gives advice to the King or Queen on cases referred to it although its recommendations are always accepted.

---

2. Under the provisions of the Administration of Justice Act 1970, the Division has been renamed the Family Division

When the Long Parliament abolished the Star Chamber in 1641, it took way the right of the Privy Council to hear appeals from the English courts, but it did not touch the right of appealing to the Council from the overseas possession of the Crown. The Privy Council is, therefore, still the highest Court of Appeal from courts overseas, except in so far as its jurisdiction has been curtailed by legislation, as it has been in some of the Dominions.[3] It acts now by virtue of an Act of 1933 through the Judicial Committee, the members of which are Privy Councillors aided by their overseas colleagues on matters affecting their particular territories. The members of the Judicial Committee number about twenty jurists, but most of the work is done by the same judges as sit in the House of Lords, acting here, however, not as Peers, but Privy Councillors. The Law Lords are salaried life Peers, and when this category of Peers was created, it was decided that they could carry the bulk of work both in the House of Lords and in the Judicial Committee.

The Judicial Committee of the Privy Council has one special jurisdiction which associates it with the British court. In time of war it is the highest court of the whole of the Empire in naval prize cases.

Criminal Courts

In Britain when a person stands charged with a crime he is brought before one or more Justices of the Peace (J.P.) or, in the larger towns, before a Stipendiary Magistrate. The former serves without pay, whereas the latter receives regular salaries or stipends from their respective boroughs or urban districts, hence their title. The Stipendiary Magistrates are appointed by the Secretary of State for Home Affairs and are barristers of seven years' standing. Justices of the Peace are appointed by the Lord Chancellor[4] on the recommendations of the Lord-Lieutenants of the counties. The Magistrates have jurisdiction over the same classes of cases as Justices of the Peace and also some additional powers.

Acting singly, Justices of Peace and Magistrates have jurisdiction over petty cases which are punishable by a fine of not more than twenty shillings or by imprisonment for not more than fourteen days. More serious cases are tried by a Bench of two or more Justices or a Magistrate. When two Justices sit as a Bench, it is called a Court of Petty Session. The courts have summary jurisdiction and may impose maximum fines ranging from £50 to £100 or even £500 in certain specified cases, or they may impose a sentence of imprisonment up to six months or in a very few cases, a year. If the offence is punishable by imprisonment for more than three months, the accused may be tried by a Jury.

Then, there is the Court of Quarter Sessions, composed of two or more of the Justices from the whole of county. In the larger towns it is presided over by a single paid Magistrate, the Recorder, appointed by the Home Secretary. All indictable offences, save the most serious, can be tried here, and appeals from the Courts of Summary Jurisdiction are heard. In fact, it is the court in which majority of grave crimes are tried.

Courts of Assizes are branches of the High Court of Justice. They are held in the county towns and in certain big cities three times a year. A Queen's Bench judge is the presiding officer of the court assisted by a jury. The Assizes Judges work on circuits covering England and Wales, and travel from one country to another in the course of their duties. They can try any indictable offence committed in the county. The judge at a criminal trial, according to English practice, is much in the position of an umpire. In English law it is not the function of a judge to discover the truth. He is there to see that the rules are observed and both sides to the case have fair play. The truth will be known when the jury give their verdict. If the jury returns the verdict of not guilty, the accused is forthwith discharged. If on the other hand, it finds him guilty, the judge pronounces judgment. If the jury cannot agree, there may be a new trial with a different set of jurors.

From Quarter Sessions or the Assizes the accused may appeal to the Court of Criminal Appeal. The prosecu-tion cannot appeal if once the accused is found not guilty as no one can be again tried on the same accusation. The Court of Criminal Appeal consists of Lord Chief Justice and not fewer than three Judges of the Queen's Bench. The Court sits in London and without a jury. Under the Administration of Justice Act, 1960, a further appeal from the Court of Criminal Appeal to the House of Lords can be brought if the Court certifies that a point of law of general public importance is involved and it appears to the Court or the House of Lords that the point is

---

3. All the Dominions except New Zealand have restricted the right to appeal to the Judicial Committee of the Privy Council.
4. Or by the Chancellor of the Duchy of Lancaster.

one that ought to be considered by the House. The House of Lords is the highest Court, as stated previously, both in civil and criminal cases. But its criminal business is quite exceptional. Since 1948 the House of Lords has voted away the historic rights of its members to be tried for treason or felony by a jury of Peers of their own or higher rank. The House no longer exercises any original jurisdiction.

FEATURES OF THE JUDICIAL SYSTEM

There is no single form of judicial organization that prevails throughout the country. The system of courts described in the preceding pages is one obtainable in England and Wales. The law of Scotland differs both in principle and procedure and the organization of Courts there is different. Northern Ireland has still another system, although it is more like the English.

There is now integration of the courts in England and Wales. Two generations before the country was "cluttered up with unrelated overlapping and sometimes useless tribunals." Cases multiplied and it was difficult to determine which court had the jurisdiction and each type of court had its own peculiar forms of practices and procedure. As a result of the reforms brought about by the Judicature Acts extending between 1873-76 the judicial system has been thoroughly reorganised. Practically all the courts[5] have been brought together in a single centralised system removing the old anomalies and conflicts of jurisdiction.

There are no separate administrative courts in Britain just as there are in France and other Continental countries. In these countries, there are two distinct types of law, ordinary and administrative, and two separate courts, ordinary and administrative. The officers of the Government are amenable to the administrative courts for certain acts done in their official capacity and the law applicable therein is the administrative law. The Common Law in Britain recognises no distinction between the acts of Government official and ordinary citizens. All are amenable to the same ordinary courts and to the same law, though the system of administrative adjudication is inevitably developing.

But the great virtue of the British judicial system is the independence, promptness and impartiality with which justice is administered. The judges are not influenced by any consideration except that of justice and fair play. This is primarily due to their absolute position of independence. They are appointed by the Crown and hold office during good behaviour. They can be removed only by joint address of both Houses of Parliament to the Crown and their salaries are fixed so that no pressure can be brought to bear upon them. When in 1931, a special law was passed to enable the salaries of all government servants, from the Prime Minister downwards, to be reduced as an economy measure, the judges protested against their inclusion as involving an encroachment upon their absolute independence.

There is no system of judicial review in Britain. Parliament is supreme and it is beyond the competence of courts to declare a law *ultra vires*. The courts have to accept the law as it emerges out of Parliament no matter even if it is repugnant to the provisions of *Manga Carta*, the Petition of Rights, or any previous Act of Parliament itself such as the Habeas Corpus Act, the Parliament Act, 1911, the Statute of Westminster, or "any other so-termed consitutional landmark." Nor do the courts concern themselves with what Parliament meant to say: they simply look at the words of any statute.

But an important issue arose in January, 1977. Can judicial pronouncements change or modify a duly enacted law? While granting an injunction against the postal workers' decision to boycott, for a week, the services to South Africa, the Court of Appeal asked the Attorney-General to explain why he had declined to authorise judicial action against the Union. In the Judges' view, the boycott was a criminal offence since it violated the 1953 law. Instead of complying with the Court's directive, the Attorney-General Samuel Silken, questioned the Court's authority to demand an explanation from him for the refusal. He also contended that the court could not grant such an injunction. His contention was that as a parliamentary officer he was answerable to Parliament alone and that his action could not be challenged by the courts. The Attorney-General relied on the principle that it was for the Government to decide whether or not to prosecute a person or group.

The Judges and courts in Britain are custodians of the liberties of the citiziens. The Englishmen have no constitutional rights in the sense we have them in India. There is liberty in Britian because there is Rule of Law. Plainly put, it

5 Except those of the Justice of the Peace

means that it is the law of Britain that rules the country and not the arbitrary will of an individual. The judges are jealous guardians of the Rule of Law. MacIlwain said that Britain needs no written constitutional guarantees because her traditions of government are so old and so firm, and these are traditions of the Rule of Law; the common heritage of the British uniform impression.

Judicial procedure, especially in Criminal Courts, is accusatorial rather than inquisitorial. The complainant must prove his case. Before trial and at trial, an accused person is stringently protected against any kind of inquisitorial procedure. It is not for the judge to probe into the matter. He acts with complete impartiality as an umpire between the contestants and decides according to the evidence as presented to him. And the evidence itself is strictly limited. Only the sworn testimony of witnesses, subject to cross-examination, can be heard. There must be no hearsay, no evidence on previous offences or bad character. The trial must take place in open court, in the full limelight of press publicity.

The jury system in Britain is the first expression of the Rule of Law. The verdict of a jury in favour of the accused cannot be reviewed at the instance of the prosecution. It means that juries are able to tamper justice with mercy and to refuse to convict wherever the law is seriously out of touch with public opinion. The power of adjusting the law of the land to difficult cases, which is indispensable to every human and enlightened system of justice, is vested not in the officers appointed and under the control of government, but in "chance groups of citizens," who are selected at random on each occasion from the general mass of the people and retire after doing their duty into the obscurity from which they came. On several occasions the juries "have struck vigorous and effectual blows for the liberty of the subject when the law has, for the time at least, been illiberal."

The independence of judges came rather later than that of juries. Besides the statutory security of judges in their office, the method by which they are appointed has provided another safeguard for their independence. In most other countries judges start their judicial career at an early age in subordinate positions and gradually work their way up the ladder by promotion. Naturally, therefore, they must look to government or possibly to popular election, and a weak man may sacrifice his judicial independence in a temptation to win over the favour of those who can help him to improve his prospects. In Britain, on the other hand, a judgeship is the crown and not the starting point of a career. Judges are appointed generally in later middle life from among the leading members of the Bar. Once appointed, a judge has no favours to look for either from government or from anyone else. A County Judge has no chance of promotion to the High Court. A promotion from the High Court to the Court of Appeal or the House of Lords does not add much, although it does add something to the dignity or the income of a judge. The obvious result is that "judges on the whole, so far from being subservient to government, tend to be critical of it, and regard themselves as the watchdogs of the ordinary man against anything savouring of bureaucratic tyranny."

Finally, there is the acceleration of judicial business, and the cases move rapidly. This is due to two reasons. In the first place, judges in Britain possess greater discretion in dealing with legal technicalities. Secondly, the judicial Rules of Procedure are made by a special "rule committee" consisting of the Lord Chancellor and ten other persons who are eminently familiar with law. They know the technicalities and frame rules so as to ensure speedy justice. This is not possible when Rules of Procedure are made by legislature, as in the United States, composed of laymen. Courts in Britain, therefore, "do not tolerate the pettifogging, dilatory, hair-splitting tactics which lawyers are so freely permitted to use in American halls of justice. The Judge rules his courtroom, pushes the business along, and declines to permit appeals from his rulings unless he sees good reason for doing so."[6] Moreover, the higher courts do not upset in appeal the judgments of lower courts for merely technical errors.

RULE OF LAW

Meaning of the Rule of Law

One of the very important features of the British constitution is the recognition of the Rule of Law. It is based on the Common Law of the land and is the product of centuries of struggles of the people for the recognition of their inherent rights and privileges. It means three things. First, that what is supreme in Britain is law. There is no such thing as arbitrary power and every rule by which the government governs must be au-

6. Munro and Ayearst, *The Governments of Europe*, p. 260.

thorised by law, either Statute Law, passed by Parliament, or by the ancient principles of Common Law, which have been recognised for many hundreds of years now. In other words, the Latin tag *populi supreme lax*–the welfare of the people is the supreme law—cannot be used by the government as an excuse for pursuing its own idea of the public interest without regard for legality. Second, that everyone is subject to the law and no one can plead that he acted under orders. His business like everyone else is to obey the law. The government and its officials derive such power as they possess from the ordinary law. Third, the Rule of Law makes the government subject to Parliament, and through Parliament to the people. To put it another way, Parliamentary supremacy is, in part, only tolerable because the Rule of Law is recognised.

The meaning of the term Rule of Law can best be understood by considering what government can be like without it. In France before the Revolution the nobility enjoyed special privileges and immunities and they could disregard the ordinary law. They could imprison and punish their inferiors without putting them through any form of trial. In Britain the law gives no such privileges and everyone is subject to the same law. The Crown and Government, the Executive and its officials, are subject to exactly the same laws administered exactly in the same courts as the most humble citizen. This is the meaning of the phrase "equality before law." In Germany, Hitler's expressed wishes were law and his government had power to imprison people without trial, or even people who had been tried and acquitted by a duly constituted court by law. Where the Rule of Law prevails no one can suffer any penalty or loss of liberty unless he has been tried and sentenced by a court. At one time it was the practice in periods of emergency in Britain to pass Acts of Parliament suspending the issue of the writ of Habeas Corpus. In the two World Wars, it was thought desirable not to take this course. The Government was, however, empowered to intern suspected persons without trial, though special committees were appointed by the Home Secretary to consider cases of persons so detained and advised him whether or not he ought to release them. But these emergency provisions were among the first to be abolished as soon as the emergency had ceased.

The other side to the Rule of Law is the possibility which it affords the ordinary citizen of reacting against interferences with his rights by any other person even though he is a government servant. The law in this respect was formerly imperfect. It has now been considerably improved by the Crown Proceedings Act, 1947, which makes the Crown liable to action like any other ordinary person, and reduces to a minimum its privileges in litigation.

Dicey's Exposition of the Rule of Law

The conception of the Rule of Law was given classical formulation by A.V. Dicey. Dicey gave to the Rule of law three meanings.[7] It means in the first place, "that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority, of wider arbitrary or discretionary powers of constraint." This principle implies that no person may be arbitrarily deprived of life, liberty or property, no one may be arrested and detained except for a definite breach of law which must be proved in a duly constituted court by law. Cases are not tried behind closed doors but in open courts to which public has free access. The accused has the right of being represented and defended by a counsel and in all serious criminal cases he must be tried by a jury. Judgment is rendered in open court and the accused has the right to appeal to higher courts. All this reduces to the minimum the possibility of executive arbitrariness and consequently oppression. It establishes absolute supremacy of law.

The Rule of Law, in the second place, means: "Not only with us is no man above the law, but (what is a different thing) here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals." It implies, in the first place, the equality of every citizen, irrespective of his official or social status, before the law. Secondly, there is only one kind of law in Britain to which all Englishmen are amenable. All public officials, high or low, are under the same responsibility for every act done by them. If public officials do any wrong to an individual or exceed the power vested in them by law, they can be sued in the ordinary courts and tried in the ordinary manner subject to the provisions of the ordinary law. The equality of all in

7. *Law of the Constitution*, 8th edition, p. 179. Also refer to Jennings, *The Law and the Constitution*, 3rd ed. ,Chap. II.

the eyes of law minimises tyranny and irresponsibility of the Executive. Dicey in elaborating the principle of equality before law says: "With us every official, from the Prime Minister to constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."

Finally, the Rule of Law means that with the British "the general principles of the Constitution are..., the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts." In Britain rights of the citizens do not flow from the Constitution, but from judicial decision in particular cases, as in the famous Wilkes' case, and not from statements of general constitutional principles.

Dicey was a great admirer of the Rule of Law. He maintained that there was liberty in Britain becuse there was the Rule of Law. But in reality there are some significant departures from the meanings given by Dicey to the concept of the Rule of Law. Dicey himself admitted these exceptions, although his admission "did little to modify the widespread influence of the mistaken views he had propagated so effectively."[8]

In considering Dicey's first meaning of the Rule of Law, a distinction must be made between arbitrary power and discretionary authority. It is still an essential principle of the constitutional government in Britain that there should be no exercise of arbitrary authority. When Dicey referred to "ordinary law", he had in his mind the Common Law or the Statute Law. Today, criminal law includes innumerable offences which are created by statutory regulation.[9] The power to create offences by regulations made by Government Departments or subordiate bodies has become an inevitable task of the modern State. The growth of delegated legislation touches upon the principle of the Rule of Law.

Wherever there is delegated legislation there is discretionary authority. If discretionary authority is contrary to the Rule of Law, then, the Rule of Law is inapplicable to any modern Constitution. When Dicey in 1885 wrote the first edition of the *Law of the Constitution,* the primary functions of the State were preservation of law and order, defence and foreign relations. Today, the functions of the State are more positive and they regulate the national life in multifarious ways. Discretionary authority in every sphere is, thus, inevitable and administrative authorities have to be left a reasonable amount of discretion to meet the exigencies of time and peculiarities of a situation or a problem. Discretion does not mean absolute or arbitrary power and it must not be exercised unreasonaly, wantonly and maliciously. It is "a science of understanding to discern between falsity and truth, between right and wrong...(and) not to do according to will and private affections." According to Lord Halsbury discretion should be exercised according to "the rules of reason and justice, not according to private opinion, according to law, and not humour." Robson has aptly said that "Discretion in public affairs is seldom absolute; it is usually qualified. It must be used judiciously..."[10] Arbitrary power, on the other hand, is the power exercised by an agent responsible to none and subject to no control.

Dicey's second meaning of the Rule of Law is also subject to certain qualifications. In the first place, there remain, even after the operation of the Crown Proceedings Act, 1947, certain privileges and immunities which are open to public authorities and their officers. The Public Authorities Protection Act, 1893, as amended by Section 21 of the Limitation Act, 1939, makes it necessary that all proceedings against public officials for the excess, neglect, or default of the public authority must be started within six months of the act. If it is not done, the proceedings lapse. Heavy penalty by way of costs is to be paid, if a citizen's law suit against a public authority fails. Judges are not liable for anything done or said in the exercise of their judicial functions, even if they exceed their jurisdiction,[11] unless the judge ought to have known the facts ousting his jurisdiction.

Secondly, common with all civilised States, Britain too affords immunities, to the persons and property of other States, their rulers and diplomatic agents, in the forms of process in courts, though not from legal liability as such.[12] The significance of these immunities has been widely applied in favour of recognised international agencies and their officers, particularly

8. Campion and Others, *British Government since 1918; Administrative Law in England* by W.A. Robson, p. 86.
9. See ante Chap. VIII.
10. Robson, W.A., *Justice and Administrative Law*, p. 401.
11. Immunity does not attach to a ministerial, as opposed to a judicial, act. Thus an action lies for a wrongful refusal to hear a case, but not for a wrongful decision. Refer to Wade and Philips, *Constitutional Law, p. 236.*
12. *Dickinson* v. *Delsolar* (1930), I. K. B. 376.

after 1944. In the third place, there are one or two instances where internal political expediency has required the conferment of special immunities. The Trade Disputes Act,1906, prohibits the bringing of any action against a trade union in respect of a tort. Similarly, it is impossible to bring an action against an unincorporated body, *e.g.*, social clubs and many other charitable institutions, though individual members or officers are liable for wrongful acts in which they take part.

It is true that the officials are amenable to the jurisdiction of ordinary courts, and the law of England knows nothing of exceptional offences punished by extraordinary tribunals. But during the last sixty years Government Departments, which are not courts in Dicey's sense, have been made final courts of judgment in regard to many matters which fall within the scope of their work. For example, the Home Secretary has the discretion to grant or refuse the certificates of naturalisation of aliens. He has also full power of deporting an alien and his actions cannot be challenged in any court of law. The Crown alone has the power to issue or refuse passports and the exercise of this power cannot be questioned in a court of law. Similarly, the Minister of Health, the National Health Insurance Commissioner, the Ministry of Education, the Board of Trade, the Minister of Transport, the Railway Rates Tribunal, and other authorities, not being ordinary courts of the country or constituted as such, finally decide questions affecting the person and property of the citizens. There is, thus, a considerable distribution of administrative power and, therefore, Dicey's Rule of Law is, in practice, considerably modified.

A citizen is not only subject to the ordinary law of the land, he is also amenable to the special law affecting his particular profession and that special law may be enforced by a special tribunal relevant to the profession or occupation. The armed forces of the country are subject to military law or naval law in addition to the ordinary law of the land and offences against that law are triable by a court-martial. Likewise, the clergy are liable to ecclesiastical law enforced by ecclesiastical courts. The members of the medical profession are subject to the jurisdiction of the General Medical Council which is competent to try them for professional misconduct. The General Dental Council exercises similar jurisdiction over the members of the Dental profession. All this is not in conformity with and in accordance to the meaning given to the Rule of Law by Dicey. But it is now believed that group law is not inconsistent with the Rule of Law provided proper judicial methods are applied and arbitrariness of any kind is avoided.

Finally, in his third meaning to the Rule of Law, Dicey only refers to the fundamental political rights and maintains that the citizen whose fundamental rights are infringed may seek remedy in the courts and he will rely, not upon a constitutional guarantee, but on the ordinary law of the land. He does not refer to the mass of rights derived from Statutes, e.g., pensions, insurance or free education. Even the rights at Common Law, like the right to personal freedom, the right of self-defence, the right to bring an action for wrongful arrest, assault or false imprisonment, the right to speech, etc., really find their effectiveness from various Statutes. The writ of Habeas Corpus existed at the Common Law, but was made effective by the Habeas Corpus Acts of 1679 and 1816. The right to arrest is governed partly by Common Law and partly by Statutes, *e.g.*, the Criminal Justice Act 1925. The Law of Libel is primarily Common Law, but various Statutes, as the Law of Libel (Amendment) Act, 1888, give special privileges to the Press. The Public Order Act of 1936 is an important part of the Law on public meetings.

The conception of the Rule of Law as explained by Dicey, therefore, needs modifications in the context of the modern conditions. The Rule of Law still remains a principle of the British Constitution, but it needs restating in the light of present conditions. According to a recent statement, the Rule of Law "involves the absence of arbitrary power; effective control of and proper publicity for delegated legislation, particularly when it imposes penalties: that when discretionary power is granted the manner in which it is to be exercised should as far as practicable be defined; that every man should be responsible to the ordinary law whether he be private citizen or public officer; that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land."[13] Such a statement takes account of developments with respect to administrative law and justice which have important bearings on the rights of citizens. Since the principle of the Rule of Law is connected with the supremacy of Parliament, in ul-

13. Wade and Philips, *Constitutional Law*, p. 58.

timate resort the principle must guide the conduct of a political party which is in majority in Parliament and is in a position to influence the course of legislation.

Administrative Law and Justice

A feature of the Continental jurisprudence is the existence and use of a body of law known as administrative law. It regulates the conduct of official business and pertains to the relations of private citizens and the governmental authorities. In France and other countries, which have modelled their judicial system upon those of Continental Europe, Administrative Law is dispensed in a separate system of courts called Administrative Courts. A French citizen, for example, who is involved in a dispute with a Department of the Government, would seek redress, in an administrative rather than ordinary Court of Law, and if some injury or loss is sustained by a citizen by the action of an officer of the government and the court holds it to be an abuse or excess or wrongful exercise of authority, he would collect damages or compensation from the Government.

Anglo-Saxon jurisprudence has never favoured the establishment of a separate body of law and separate courts for this kind of justice. Dicey had held that there was no system of administrative law in Britain,[14] and it was antithetic to the Rule of Law as it conferred a privileged status on officials and, thus, protected them from acting arbitrarily and irresponsibly.[15] He, accordingly, argued to keep officials, in both their private and public capacities, answerable to the same law as the private citizens and to maintain the ordinary courts as the usual places for hearing and deciding cases arising out of the performance of administrative functions. Administrative Law, according to Dicey, is nothing more than the generalisation from the judgment rendered in the special courts, the *tribunaux administrativs* for officials in their relations with the public.

But Dicey's is not a correct appreciation of the Administrative Law. Nor are his conclusions acceptable. Herman Finer states the truth that "wherever there is administration and law, there is administrative law."[16] In Britain, there is such a body of law and its sources, as Prof. Robson writes, include not only the law controlling public administration, (*i.e.*, Statutes, Common Law and Equity), but also the law emanating from the executive organs in the exercise of their duly authorised powers. "Thus, Statutory Instruments, administrative orders, and the determination of administrative tribunals can be as authentic sources of administrative law as legislation and decisions of courts. Moreover, just as the usages and conventions of the Constitution form an important part of constitutional law, so the uses and conventions form an essential part of administrative law."[17]

Moreover, there are many administrative 'Courts' functioning in Britain. They have developed on an *ad hoc* basis, though they form no system of judicial organisation as in France and other Continental countries. The modern tendency towards conferring judicial functions on Departments of the Government or on tribunals controlled, directly or indirectly, and appointed by the Ministers of the Crown, began more than a hundred years ago, and that too during the lifetime of Prof. Dicey. It originated mainly in social legislation such as the Public Health Act of 1875, but "one powerful stream of tendency." Robson writes, "flowed through the successive Railway and Canal Commissions which were set up to regulate the railways in 1873 and 1888."[18] With the beginning of the present century the activities of the Government widely expanded embracing various places of the social and economic life of the people. Parliament could not legislate for everything in a detailed manner. The result was a vast volume of delegated legislation that was passed and that continued to be passed by Parliament. And the factors that made it desirable to delegate legislative authority from Parliament (the need for speed, and the technical nature of the issue) also made it necessary to create administrative adjudication machinery to consider aspects of the maladministration of the matter concerned. By 1920, judicial functions had been conferred on a wide variety of administrative tribunals, such as, the Minister of Health, the Board of Trade, the Ministry (then the Board) of Education, the District Auditor, the Home Secretary, the Electricity Commission, the London Building Tribunal, the pension appeal bodies

---

14. Refer to W. A. Robson, *Administrative Law in England, 1919-1948; and Campion's British Government Since 1918,* p. 86.
15. Dicey, A. V. *Law of the Constitution,* p. 329.
16. Finer, H., *Theory and Practice of Modern Government,* p. 924.
17. Robson, W. A., *Administrative Law in England 1919-1948, p. 86.*
18. *Ibid.*, p. 125.

and several others. Their jurisdiction covered an extensive range of subjects, including public health, housing, education, unemployment insurance, health insurance, pensions of all kinds, trade unions, public utilities and other matters. The most conspicuous development of the following years is the adoption of the three-man tribunal as the typical type. This type was adopted for the discharge of judicial functions in connection with the new national insurance scheme, the postponement of call up for military service, reinstatement of ex-servicemen in civil employment, unemployment assistance, the control of rents for furnished buildings, the regulation of road and rail transport. But, at the same time, there is still a tendency of conferring judicial powers specifically on a Minister and this has occurred in town and county planning, education, the national medical service, police appeals and the superannuation of local government officers.

The continuing expansion of governmental activity and responsibility for the general well-being of the community has, thus, greatly multiplied the occasions on which the individual may find himself at issue with the administrator or with another body of persons or an individual. Consequently, there has been a substantial growth in the number of tribunals—there are over 2,000 in existence now—and in the range of their activities during the past thirty years. Their constitution follows a fairly general pattern; all consist of an uneven number of persons so that a majority decision can be reached.

Administrative tribunals may be broadly classified as follows:

(i) those which have permanent members appointed for their special knowledge and a Chairman who may be a lawyer of experience as the Transport Tribunal, and the Lands Tribunal;

(ii) those which are purely administrative, for instance, the special Commissioners of Income Tax, who hear appeals on matters relating to Income Tax from the ruling of the Inland Revenue official;

(iii) those which deal exclusively with matters of interest to one Government Department or public authority, for instance, the Pensions Appeal Tribunals, which hear appeals against the rejection by the Secretary of State for Social Services of war services pension claims; and

(iv) those which consist of ordinary people appointed by a Minister to arbitrate between individuals, for instance, the Rent Tribunals, which have jurisdiction in the determination of rents of certain properties.

Although there is no general provision respecting appeals from statutory tribunals, the Tribunals and Inquiries Act, 1958, and other Acts provide for an appeal, at least on a point of law from all the more important tribunals to the High Court or, in Scotland, to the Court of Session. An appeal may also lie to a specially constituted appeal tribunal, to a Minister of the Crown or to an independent referee. An Advisory body known as the Council on Tribunals exercises general supervision over the tribunals and reports on particular matters, those peculiar to Scotland being dealt with by the Scottish Committee of the Council.

Britain has, therefore, a large body ofAdministrative Law and most of this law originates in Statutes and Statutory Instruments. The great majority of Acts of Parliament passed and Ministerial regulations made in recent years relate to matters of public administration. And wherever there is administration and law, ther is administrative law. There are also many administrative 'Courts'—Ministers, other administrative officials and special tribunals hearing and deciding cases.

Reform of Administrative Justice

It is now generally believed in Britain that it is unrealistic under modern conditions to give to the Rule of Law the strict interpretation placed upon it in the nineteenth century. Delegated legislation and administrative jurisdiction are both inescapable. One justification of administrative tribunals is that in their absence the Law Courts would be extremely overworked. But it may be added that tribunals have advantages over the courts for citizens and the State alike. Tribunals are cheap, speedy, less legal formalities to be observed, easily accessible to the public, and are composed of experts in the matter to be dealt with. There is, therefore, greater possibility of a right judgment and expert decision. The objections in principle to the system of administrative tribunals, however, are based partly on opposition to the increase in the executive authority and the extent of executive influence, and partly on the argument that justice cannot be expected in administrative tribunals because the administration is both the offender and the judge of the offence. It offends against the principle that no party should judge a case in which it is itself involved.

Whatever be the reasons and merits of

administrative adjudication there is need in the reform of administrative justice. In hearing and deciding cases administrative officers and administrative tribunals do not follow a judicial-like procedure; the Rules of Procedure followed by regular courts. The decision rendered are not published and the authorities deciding cases are not required to give the reasons—or at least the grounds—for their decisions. And then the right of appeal from the decisions of administrative tribunals is often limited or even non-existent. This may mean miscarriage of justice. These are some of the defects which require to be eliminated.

Lord Hewart's[19] *The New Despotism,* published in 1929 reflected the attitude of considerable body of alarmed jurists and he called to the attention of the public the dangers that he believed to be attendant on this new development, delegated legislation and administrative adjudication. Two other books, F.J. Port's *Administrative Law* and Dr. C. K. Allen's *Bureaucracy Triumphant* pertinently brought the issue before the public eye. This was followed by the appointment of the Committee on Ministers' Powers in 1929 to deal with these two hotly debated questions. Its terms of reference were to consider the powers exercised by or under the direction of Ministers of the Crown by way of (a) delegated legislation, and (b) judicial or quasi-judicial decision, and to report what safeguards were desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law.

The Committee's findings about administrative adjudication were the same as with regard to delegated legislation that both are essential and desirable under the modern conditions but subject to certain safeguards. Purely judicial functions, the Committee recommended, should not be entrusted, as a rule, to the Ministers, but quasi-judicial functions may and even must. The safeguards suggested were: that the High Court should have a right to prevent a Minister or Ministerial tribunal from exceeding their statutory power; that the aggrieved party should have a right to appeal to the High Court on a question of law; that the adjudicatory procedure should conform to the principles of natural justice which require that a man may not be a judge in his own case; that no party should be condemned, that the parties affected must know in good time the case they have to meet; that the parties are entitled to know the reasons of the decision; and that inspector's enquiry report should be published along with the decision given on its basis. The Committee rejected Professor Robson's proposal, who was also a member of the Committee, for establishing Administrative Courts. It made no recommendation about the reform of the constitution of the exising tribunals or for co-ordinating them to a system pattern.

Since the Committee submitted its report in 1932 there has been a substantial further development of administrative justice and the three-man tribunal as the typical body for dispensing it. In 1955 a Committee under the Chairmanship of Sir Oliver Franks was appointed to report on the functioning of the administrative tribunals and it submitted its report early in August 1957.

The Report of the Franks Committee is a document of great importance. It rejected the Treasury view put before the Committee that the administrative tribunals were part and parcel of the machinery of Government and consequently were not judicial institutions. The conclusion of the Committee was that administrative tribunals were independent organisations of adjudication for the impartial assessment of the individual's claim. The three points on which the report was based were: (1) all decisions of administrative tribunal should be subject to review by the ordinary courts in points of law; (2) the decision should be entrusted to a court rather to a tribunal in the absence of special considerations that make a tribunal more suitable and if possible to a tribunal rather than to a Minister; (3) the determination that the citizen should not suffer in the protection of his legal rights from the substitution of a tribunal or a Ministerial inquiry or hearing for a court of law. "We regard both tribunals and administrative procedures," the Report noted "as essential powers to society. But the administration should not use these methods of adjudication as convenient alternatives to the courts of law." The emphasis of the Report is that whosoever be the arbiter of the rights of the individual, he must be an independent arbiter and the scope for decision must be confined to points of law; neither to policy, nor to administrative expediency or efficiency. The procedure that has been recommended by the Committee is: openness in inquiry or hearings, fairness and impartiality. "The intention of Parliament," adds the Report

19. Lord Hewart was the Lord justice.

"to provide for independence is clear and unmistakable."

As regards the composition of the administrative tribunals, the Committee recommended that the Chairman should be appointed by the Lord Chancellor and not by the Minister. The proceedings of the tribunal should be open and the citizen who is a party has a right to be told in good time the case he is to meet. The reason for the proposals and the background of Minister's policy must also be stated. There must be a full statement of the cases together with relevant evidence and the parties concerned should know the reasons for the decision. The Minister's final orders must contain his reasons in full.

It seems unlikely that Britain will ever acquire a separate and unified system of administrative courts as it exists in France. The British are more apt to proceed by the way of gradual change and adaptation. What it is necessary to emphasize is the improvement in the quality of administrative justice. This can be brought about if "throughout the executive establishment there can be developed procedures for hearing cases that are fair and that accord the citizen his elementary rights, and if judicial-mindedness can be instilled into officials exercising judicial duties, then the dangers in the present situation will be removed to a large extent." The recommendations of the Franks Committee, acceptable to the government, were embodied in the Tribunals and Inquiries. Act of 1958, and the Town and County Planning Act of 1959. By the former Act, a Councial for Tribunals in England, Wales and Scotland was set up, Chairman appointed jointly by the Lord Chancellor and by the Secretary of State for Scotland and other members by the Department concerned. Its purpose is to exercise general oversight over the composition and procedure of tribunals. The detailed application of openness, fairness and impartiality could obviously not be defined by Statute alone. But Ministers have brought these principles specifically to the notice of officials concerned in tribunal work. The Act also effected an improvement in that members of public concerned now receive much fuller information than before.

The Parliamentary Commissioner

But the dissatisfaction with the system of administrative tribunals continued. It was argued that the existing tribunal system was an inadequate means of dealing with public grievances and there were many complaints that were not covered by the Tribunal system. Since redress through Parliament was becoming increasingly difficult as Government activities continued to expand, it was suggested that there was a need for some supplementary means of dealing with grievances and a similar official as the Ombudsman, which had worked satisfactorily in Scandinavia, New Zealand and other countries, could usefully be introduced in Britain. Accordingly a Parliamentary Commissioner was created in 1967 to examine complaints of maladministration.

The Parliamentary Commissioner is an officer of the House of Commons, independent of the Executive. His function, under the Parliamentary Commissioner Act, 1967, is to investigate complaints of maladministration brought to his notice by Members of Parliament on behalf of their constituents. His powers of investigation extend to any action by a Government Department in the exercise of its administrative functions, but not to policy decisions (which are the concern of the Government), nor to matters affecting relations with other countries or the activities of British official outside the United Kingdom. Certain other matters are also excluded from the scope of his investigations, but may be brought within the scope by Order-in-Council. The Commissioner does not normally intervene in cases where a complaint has an alternative remedy, whether to an administrative tribunal or a Court of Law, but he has discretion in such cases whether or not to investigate. Decisions taken by a Government Department or other authority in the exercise of a discretion vested in the Department or authority are not reviewed by the Commissioner by way of appeal.

In the performance of his duties the Parliamentary Commissioner has access to all departmental papers and, generally speaking, reports his findings to the Member or Members of Parliament who presented the case. A select Committee has been appointed to which the Commissioner submits his annual report and any other report raising important general principles.

The creation of the post of the Parliamentary Commissioner was hailed, no doubt, but the limitations imposed on his powers by the 1967 Act caused disappointment to many. The Parliamentary Commissioner is an officer of Parliament and he acts only on complaints he receives through a Member of Parliament. He has no executive authority of his own, and can only enquire into and report to Parliament, on any

complaint referred to him, while Ministers retain the right to veto the disclosure of any official document. Then, the investigations of the Commissioner are confined to the Departments of the Government alone and do not extend to Local Government or the nationalized industries. The innovation of an Ombudsman, therefore, left untouched many of the general criticisms of the existing machinery dealing with questions of alleged maladministration.

Class Bias of Judiciary

The English jundiciary system, according to Laski, is the product of Parliaments and judges who have the same political, economic and moral outlook as that of the ruling class which they represent. It is not the expression of principles of 'natural justice' derived from the minds of judges and legislators but actually reflects the property relations which have been established in British society. Thus the English law of property protects the right of the capitalists to the private ownership of the mean of production, and the right of the great landowners to the private ownership of their estates. The law of contract provides the necessary conditions for the carrying on of capitalist trading relations, the law of master and servant protects the right of the capitalist employer to hire workers for wages and then fire them at his will when he no longer needs them, and company law regulates the complex relations between companies and their share-holders."

There are, of course, some branches of the law, which are not directly related to property relations e.g. the law of marriage and divorce and criminal law ; but even these laws broadly reflect the outlook of a ruling class which owes its dominant position to the private ownership of capital. In fact, the British legal system and its judicial apparatus safeguard capitalist relations of production and the political and ideological structures which are based on them"

However, it would be a grave over-simplification to argue that the English law is a direct, unmitigated manifestation of capitalist interests. But unlike French law which was restructured as the Napoleonic Code as a result of the French Revolution, English law is a product of gradual evolution from feudal conditions to its present bourgeois and liberal forms. The working class has also been able to exert an increasing influence on law-making and judicial system. The judges have striven to create a logically consistent system of law in the context of all these historical forces. Even then, human rights remain subordinate to the property rights of the dominant class.

SUGGESTED READINGS

Allen, C.K. : *Bureaucracy Triumphant.*

Allen, C.K. : *Administrative Jurisdiction.*

Archer, Peter : *The Queen's Courts.*

Campion and Others : *British Government since* 1918, chap IV.

Campion and Others : *Parliament, A Survey,* Chap. X.

Carter, G.M. and Others : *The Government of Great Britain,* Chap. VIII.

Devlin, Lord : *Trial by Jury.*

Dicey, A.V. : *Law of the Constitution,* Chaps. IV, VIII, Introduction pp. lxvii to xciv ; Appendix Section I.

Finer, H.: *Theory and Practice of Modern Government,* Chap. XXXVI.

Gibbs, F.T.: *The Magistrates' Courts.*

Griffith, J.A.G. and Street, H.: *Principles of Administrative Law.*

Hewart, Lord: *The New Despotism.*

Jackson, R.M.: *The Machinery of Justice in England.*

James Philips: *Introduction to English Law.*

Jennings, W.I.: *Law of the Constitution,* Chap. II.

Laski , H.J. : *Parliamentary Government in England,* Chap. VII.

Munro, W.B., and Ayearst, M.: *The Governments of Europe,* Chap. XVII.

Rhodes, G. : *Administrators in Action.*

Robson, W.A. : *Justice and Administrative Law.*

Robson, W.A. : *The Government and the Governed.*

Wade, H.W.R. : *Towards Administrative Justice.*

Wade, R.C.S., and Philips, G.G. : *Constitutional Law,* pp. 48-58, 215-37, 267-79.

Whyatt, John : *The Citizen and the Administration.*

Yardley, D.C.M. : *Introduction to British Constitutional Law.*

CHAPTER X

Political Parties

Indispensability of Parties

Political parties are recognised as a natural and inevitable piece of machinery of democracy. Democracy needs them for two reasons. First, political parties are the means by which the citizens get an opportunity to choose their rulers and, secondly, they explain to them and educate them in the merits and dangers of alternative policies. MacIver defines a political party, "as an association organised in support of some principle or policy which by constitutional means it endeavours to make the determinant of government."[1] A party is, thus, a voluntary association, which in a system of parliamentary government, as obtainable in Britain, formulates a programme, presents to the electorate the candidates who represent that programme, and return to Parliament a majority of members who will carry the programme into effect through the agency of their leaders organised in a Cabinet. A party is, accordingly, a link, a bridge, between society and the State; it affects the electorate, Parliament, and the Cabinet.

Yet political parties in Britain are not organs or institutions of the State specifically regulated by its laws, as is the case in some countries. The law does not even mention them. Their only nearer approach to official recognition is in the rules for the formation of Committees of the House of Commons.[2] But without political parties the whole nature of the British constitution would be changed, and many of its conventions would become unworkable. Her Majesty's Government is a party Government and the Prime Minister is the leader of the majority party in the House of Commons. The party in opposition is Her Majesty's Opposition and it is recognised as a necessary and vital element in the working of the British Constitution. The functions of the Opposition are to criticise and vote against the policy of the Government, the party in office, with a view to overthrowing it and taking its place. Ivor Jennings has, therefore, aptly said that "a realistic survey of the British Constitution today must begin and end with parties and discuss them at length in the middle."[3]

The Two-Party System

In 1882, W.S. Gilbert wrote :

"How nature always does contrive
That every boy and every gal
That's born into this world alive
Is either a little liberal
Or else a little conservative"

Gilbert, of course, ignored the Irish Nationalist Party at that time and many other smaller parties and groups. During the last hundred years, Governments without a party majority have been in office for thirty years and Coalition Governments for twenty-nine years. Yet in substance Gilbert was right and there is a 'national' tendency for Britain to follow the two-party system. Taking recent examples, in the General Election of 1950 there were 1,868 candidates who contested the 625 seats and stood under as many as thirty-three different labels.[4] It is true that every label did not indicate a separate organised party, but even then, by grouping together parties which supported each other's candidates and omitting those whose organisation was too rudimentary, there were eleven organised parties or groups of parties. In the General Election held in October 1959 there were again eleven organised parties or groups of parties. In all there were 1,536 candidates standing for elections for 630 seats. "The list of eleven parties," observes Ivon Thomas, "...looks like the analysis of a cricket eleven's innings with a long string of 'ducks' following a big stand by the opening pair and a slight contribution by the first wicket down; one player has retired hurt and there is a little wag in the tail."[5] Two main features of the General Election of 1950 were that there was a complete

1. MacIver R. M., *The Modern State*, p. 396.
2. Stewart, M., *The British Approach to Politics*, p. 158.
3. Jennings, W. I., *The British Constitution*, p. 31.
4. Thomas, I., *The Organisation of Different Parties. Parliament, A Survey*, p. 169.
5. *Ibid.*

rout of all Independents and all the candidates of minor parties. Even the Liberal party was not able to get more than nine seats, though it put 475 candidates and two of them were elected with Conservative support. The Communists put 100 candidates and got none elected. Labour secured 315 seats and the Conservatives 298. In 1951 General Election, a closely fought General Election, the Conservatives won 322 seats, Labour 294, Liberals and others 9. In 1955 General Election the Conservatives won 345, Labour 277, Liberals 6 and Sein Finn 2. In the General Election held in October 1959, the representation was: Conservatives and supporters 365, Labour and Co-operatives 258, Liberals 6 and Independent one.[6] In 1964 General Election the Labour won 317, Conservatives 303, Liberals 9. Others, which included Communists, Scotch and Welsh, Republicans, Independents, and members of Individual parties, 0. In the 1966 General Election Labour secured 363 seats, Conservative and Associates 258, Liberals 12, Republican Labour 1, and The Speaker 1. Communists, Scottish and Welsh Nationalist Independents and members of individual parties could secure no seat. In the 1970 Elections the party-wise strength was: Conservatives and Associates 330; Labour 287; Liberals 6; Scottish Nationalists 1; Unity (Northern Ireland) 1; Protestant Unionists (Northern Ireland) 1; Independents 2; The Speaker 1. February 1974 General Election failed to give any clear-cut verdict and Harold Wilson formed a minority government, Labour securing the larger number of seats, though it secured 37.2 percentage of votes cast. The Conservatives secured 294 seats as against Labour's 301 with 33.2 per cent of the votes cast. Eight months later another election was held and this time the Labour Party could secure 319 seats, a majority of just three votes. In the elections held in May 1979, after the defeat of the Labour Government on a vote of no confidence in March 1979, the Conservatives secured 339 seats as against 296 for all the other parties put together.

General Election in Britain till 1981 has been between two gigantic machines and two-party system was the essence of governance in Britain. The British political parties started in the seventeenth century had two important and conflicting views on the constitutional questions, and consequently two parties.[7] For many years to follow there continued to be two parties. There is, indeed, a certain logic in the system. The policies which a Government can adopt are necessarily conditioned by the circumstances of the time and for the most part in Britain the real question has not been "what policy shall be followed, but the speed at which the nation shall move towards predestined end. Some wish to move rapidly and others more slowly."[8] The cautious conservative found his place in the Conservative Party and the more adventurous in the Liberal or the Labour Party.

Since 1846, the two main parties have tended to represent different class interests. If there has not been further split of an ostensible character, it is because of the striking homogeneity of the British economic life. And none of the class divisions have been so distinct as to entail sub-divisions. "As land decreased in importance, the 'Country Party' claimed the support of other kinds of capital. As the workers gained the franchise the employer and the salaried employee moved over with the *rentiers.* We have no peasants' party because we have no peasants. We have no agrarian party because the owners of land are also shareholders and company Directors. We have no farmers' party because, in the main, the interests of land owners and farmers have been the same and, indeed, it would be impossible to distinguish the two classes."[9]

Again, it is assumed that British Ministries must be homogeneous. "England does not love coalitions" is an old but still a widely accepted maxim, although in national emergencies Britain had always formed National Governments. In fact, party leaders had always striven for the two-party system whenever the possibility of the

6. The relative strength of parties as on July 31, 1962, was : Conservatives 365; Labour 249; Liberals 7; Independents 8, excluding Speaker, Chairman and Deputy Chairman, Ways and Means; Vacant 3.
7. The formation of two parties in Parliament dates back to the struggle over the Exclusion Bill in 1679. To check the passage of the Exclusion Bill, which was desinged to prevent the succession of James II, Charles II dissolved Parliament. The supporters of the Bill began immediately to petition for a new Parliament, and came to be known as "Petitioners" while their opponents expressed their abhorrence of the attempt to force the King to summon Parliament and were consequently nicknamed "Abhorrers." Soon afterwards the Petitioners became known as "Whigs" and the Abhorrers as "Tories." The two parties remained opposed in principle, though their views underwent a good deal of change in the course of time. The Whigs aimed at the restriction of the power of the Crown in favour of that of Parliament. The Tories, on the other hand, upheld Royal Power and opposed Dissent.
8. Jennings, W. I., *The British Constitution,* p. 57.
9. *Ibid.*, p. 58.

split had been in evidence. Disraeli, more than anyone, recognised that, "he must build his party and keep it under one roof." Lord Salisbury went to the extent of compromising with Randolph Churchill until he could be sure that if he went he would go alone. "Campbell Bennerman perfomed Herculean feats to keep the two wings of the Liberal party together during the Boer War; and Balfour wrote strange economics and played even stranger politics to prevent Chamberlain from splitting another party."[10] Even the Constitution itself was developed under the two- party system and "does its best to compel it." The single member system of election does not contemplate the existence of more than two parties. The electors, too, have become so accustomed to the two-party system that an election is really a choice of a government. The great majority of the people are not interested "in political principles, but they are concerned with what party obtains a majority," the party in power or the one in Opposition.

In the House of Commons arrangements rest on an assumption that there shall be two parties and two only. There most of the benches are divided into two ranks, facing each other across an intervening space. On the front Government or Treasury bench, sit Ministers and on the front bench opposite, sit the Leader of the Opposition and his associates. The procedure of the House of Commons provides for a definite part to be played by the Opposition and the Opposition is assumed to be united. The Opposition has its own "Shadow Cabinet" and its Leader is paid a salary from public funds. The Government proposes and the Opposition opposes with a view to defeat the party in power as Opposition is the alternative government. "The third party", as Jennings remarks, "is thus constantly butting into what appears to be a private fight."[11] It should either support the government or vote with the Opposition, or keep aloof and abstain from voting. If it constantly supports one party and opposes the other, it loses its separate identity. If it supports sometimes the one and sometimes the other, the electors regard it inconsistent and without any conviction for a programme. The decline of the Liberal Party is primarily due to its support to the Labour government in 1924. In the General Election of 1950, the Liberal Party contested 475 seats and secured only 9 seats, polling 9.11 per cent of the total votes. In 1955 General Election they secured 6 seats polling 2.08 per cent of the total votes. In 1959 the six seats were retained polling 16,40,761 votes. But in 1964 they polled 3,093,316 or 11.2 per cent of the votes and won 9 seats. In 1966 they polled 2,327,533 or 8.6 per cent of the votes and secured 12 seats. In 1970, their strength was only 6 and in February 1974, 14 with 19.3 per cent votes.

These are some of the reasons which have helped the emergence and maintenance of the two-party system in Britain. It has, no doubt, some tangible defects. But it does not mean overthrowing it. "The British Constitution", says Jennings, "is a nicely balanced instrument, and a change anywhere produces a change everywhere."[12] Its greatest merit is that two-party system ensures permanent and stable government. The political homogeneity of the Government produces a well organised and a responsible team of workers who play the game of politics with singleness of purpose under the captaincy of their accredited leader, the Prime Minister. They rise and fall in unison and are individually and collectively responsible for the policy which the Cabinet initiates. Minority Governments are weak because they cannot govern.[13] Coalition Government is uncertain of its existence from day to day, because it is the result of compromise. They continue to work together so long as they can be made to agree. "In a world where strong and rapid government is necessary" concludes Jennings, "only the two-party system works well."[14]

THE PARTIES

Origin of Parties

In the beginning when Parliament was an advisory body of the King the question of parties did not arise. Parliament was asked for advice and it gave it. When given, the Crown might, or might not, take any notice of it. Two conditions were necessary for the emergence of the party system. The first that Parliament should become

10. *Ibid.*, p. 61.
11. *Ibid.*, p.63.
12. *Ibid.*, p. 64.
13. Harold Wilson's minority government in 1974 and Callaghan's Government too were dependent for support of the Liberals and Scottish Nationalists. When the Liberals and the Scottish Nationalists withdrew their support, the Government fell in March 1979.
14. Jennings, I., *The British Constitution*, p. 65.

a legislative body in all its essentials and its rights fully established. This stage was not reached until the late seventeenth century. And the second was that there should be political issues of a broad and deep-character about which and on which men could combine in parties. This stage was also reached in the latter part of the seventeenth century. If any date as such can be chosen for the origin of political parties, it is 1679.

The original line of cleavage was between the Tories and the Whigs. The Tories represented the country interests, those interests surviving from feudalism and which were in danger of being eaten into by the rising mercantile interests of the towns. The Whigs represented the new interests which later transformed the economic and social structure of Britain. By the same token, the Tories were associated with the Church of England, while the Whigs were associated with the Dissenters. The aristocracy, for the most part, sided with the Tories, but elements of it favoured the Whigs. By the nineteenth century these two parties had become the Conservative[15] and the Liberal and in spite of many changes and contradictions something of the old differences between them survived. They competed with each other for power throughout the latter part of the nineteenth century and well into the twentieth century till Labour Party replaced the Liberal Party in the political arena.

Barker cites an old story which once upon a time was widely current in Britain. The story went that when Liberty, Equality and Fraternity had to be distributed between France, England, and the United States, the English came first and took away Liberty, the French came next and took Equality, and the Americans coming last, took the residuary gift of Fraternity.[16] If these gifts, continues Barker, were to be distributed among the three political parties in Britain, it would be just to say that the Liberals took Liberty, the Conservatives took the gift of Fraternity and the Labour Party adopted the residuary gift of Equality. The Liberals were the party of progress, reform, improvement and liberty. The Conservatives were the party of authority, tradition, conservatism and fraternity. The Labour Party views man as a man on an equal basis and stands for removing the hindrances and obstacles which divided men into conflicting classes because of the uneven distribution of wealth.

The Conservative Party

The Conservative Party, as said earlier, has passed through many names. The name Conservative which has now been for more than a century its general name, hardly denotes its essential nature. It values, according to Herbert Morrison, traditions and precedents.[17] "The essence of conservatism," says Finer, "is to be discovered in the social institutions of which it approves and its attitude to the idea of progress. The social institutions favoured by Conservatives are Crown and national unity, church, a powerful governing class, and the freedom of private property from State interference."[18] It would, thus, appear that Conservatives steadfastly adhere to old traditional forms and solemn ceremonies. They dislike criticism to old institutions, such as Monarchy, and emphasise the duty of loyalty to the King and the State which he personifies. The Conservative sense of nationality is intense "and its most frequent judgment is that such and such a foreign country or sect is untrustworthy."[19] It has faith in the superiority of the race to all other races. It believes in the mission of the race, popularly called the white man's burden to civilise other peoples, even against their will, and "even with violence to the point of brutality." Its attitude, as revealed in Britain's history for a century or more, was neither conservative nor cautious. It has been rather a fanatical clinging to the notion of fraternity or unity. Empire is its very breath and Churchill's famous remark, that he had not become His Majesty's first Minister to preside over the dissolution of the British empire, was no accident. The Conservative Party clung down to 1922 to the unity of the United Kingdom in face of the pressing demand, which eventually took a revolutionary form, for Irish Home Rule. It again clung, under the inspiration of Disraeli and later of Joseph Chamberlain, to the unity of the British Empire by economic ties. Today, it clings, in the face of the idea of the class division, to the idea of social unity and homogeneity of the nation.

Since one of the chief things to be con-

15. The Conservative Party is sometimes referred to as the Tory Party and the Labour Party as the Socialist Party. But the official titles are Conservative Party and Labour Party.
16. Barker, E., *Britain and the British People,* p. 43.
17. Morrison, H., *Government and Parliament,* p. 131.
18. Finer, H., *Theory and Practice of Modern Government,* p. 312.
19. *Ibid.*, p. 313.

served today is the structure of capitalism, the Conservative Party is allied to the cause of private property and private enterprise. The great industrialists are, thus, joined to the old aristocracy in the conservative ranks. This union, encouraged by Peel in the second quarter of the nineteenth century, was indeed, the making of the Conservative Party as distinct from the old Tory Party of the landed classes. The Tory element still remains, forming the Right wing of the party; a few of these called "Diehards" are inclined to regard all changes with disfavour. Majority of the Conservatives however, urge that capitalism must be justified not only to the rich but to all classes; democracy should be preserved and social services extended. Nor, in their view, must support of capitalism mean complete abandonment of industry to private enterprise; the Government should keep watch and where necessary, give assistance in such forms, as tariffs, subsidies and marketing organisations. Nationalist feelings and the interests of industrialists combine to make the party favour the protection of home industries as a remedy against unemployment. In the twentieth century it took the form of Imperial preference and extension of inter-Imperial trade.

Among the younger members of the party a sharp swing towards a vigorous and progressive programme competing with the Labour Party has recently been in prominent evidence. The publication in 1947 of the *Industrial Charter* which accepted the need for central planning, and the emphatic endorsement of this Charter by the Conservative Conference of 1947 is not only indicative of the victory of this group, but also a vital change in the attitudes of the Conservatives. *The Right Road of Britain*, the Conservative statement of policy in 1949, pledged the "maintenance of full employment" and endorsed the importance and utility of social services. The Conservative Party manifesto of 1951 emphasised the need for housing and pledged to it a priority second only to national defence. In 1955 the Conservatives pledged to "prosperity through free enterprises." In October, 1959 the election manifesto read, "the main issues at this election are simple: (1) Do you want to go ahead on the lines which have brought prosperity at home? (2) Do you want your present leaders to represent you abroad?" In a personal preface Harold Macmillan observed, "I do not remember any period in my lifetime when the economy has been so sound and the prosperity of our people at home so widely spread." In 1964 General Election the Conservative slogan was "Prosperity with a Purpose." Labour appealed on "New Britain" programme. The only difference between the two programmes was on emphasis, otherwise distinction between the two was none.

But May 1979 General Election brought a sharp change in the attitude of the Conservative Party. Mrs. Margaret Thatcher, the leader of the Parliamentary wing of the Party, believed that successive Conservative Governments since World War II had been bullied into bowing before intellectual premises postulated by the Socialists. She asserted that a return to Conservative ethos of self-help, near monopoly capitalism, with a heavy emphasis on *laissez faire* economics, strict fiscal and monetary control was the only way to get the nation back to its feet. She insisted that the philosophy that made Britain "great" in the nineteenth century must work equally well in the later half of the twentieth. The Conservative Party, accordingly, put before the electorate in May 1979 General Election the choice of the Socialist Welfare State as envisaged by the Labour Party and individualism. By voting for the Conservative Party the electorate endorsed its policy of cutting direct taxes, trimming of public bureaucracy by halting the further growth of State-owned enterprises, curbing the power of the trade unions and stringently tightening the Immigration Law. The Speech from the Throne delivered on the opening of the new Parliament on May 15, 1979 hinted at steps to prune the public sector. It was widely believed in Britain that the Conservative Government, at no distant date, would enact legislation to offer parts of the ship building and aerospace industries for sale to private enterprise. The dispatch of the Royal Navy Armada in April 1982 to regain Falkland islands from Argentina was in pursuance of the Conservative concept of an Empire. There is no change in the Party's programme and policy since 1980 and Mrs. Thatcher has stood by it steadfastly in spite of vehement criticism by a section of the Party and even within the Government. The Prime Minister managed to get rid of the inconvenient Ministers.

The Party derives its support from the possessing and patriotic and traditional governing class, of the wealthy, the aristocratic and the subaristocratic, the gentry, the upper and middle class, as well as working-class patriots, disgruntled workers, and high-skilled workers whose pride aligns them with the party that preaches the rewards and opportunities of free enterprise.

Till recently the Conservative Party was built around the Party leader. He was not elected on a sessional basis; once elected he remained the leader until he either died or resigned from the post as Churchill did. A Conservative Prime Minister was always a party leader even if he was not very palatable to other important luminaries of the party. When Churchill was appointed Prime Minister in succession to Nevile Chamberlain, his leadership of the party came as a matter of course despite his unpopularity with the die-hards.

The Conservative Party has now broken with its hoary tradition regarding the election of its leader. The members of the House of Commons and the Lords elect their leader by free ballot from among themselves.

The leader of the Conservative Party possesses powers beyond those of the leader of the Labour Party. He appoints the Chairman of the party organisation at the Central office and is responsible for the elaboration of party policy and statements issued thereunder. While in Opposition he selects from the party members of the House of Commons and Lords those who act with him in the 'shadow cabinet'.

The Liberal Party

The Liberal Party is not a major party now, though for many generations it had been one of the two large parties and even today the Liberals are not a minor party in their intellectual capacity or the quality of their leadership. But it has become an army of generals without any adequate body of troops. In 1945 it secured about two and a quarter million votes and of 306 candidates it put, only twelve were elected, and seven of this total represented districts in Wales. In 1950 the number of votes cast in favour of the Liberal Party was over two and a half million, but only 9 candidates were elected, and 319 lost their deposits. In 1951 there was a sharp decrease in the number of votes and it could get in only six Liberal members. In 1955 and again in 1959 General Elections they retained the old number, though as a result of by-elections the number increased to 7 by July 31, 1962. In the 1964 General Election the number of votes cast in favour of Liberals was 3,093,316 and they won 9 seats. In 1966, their number rose to 12, although the percentage of votes cast fell from 11.2 to 8.6. In March 1974 they secured 14 seats despite a respectable 19.3 per cent of the votes cast. In the 1979 General Election the previous number was retained. But at present there is none.

The Party has stood, at all times, for liberty in all its aspects. It has championed the cause of religious liberty and particularly the right of the Nonconformists to worship freely and to gain emancipation from the civic disabilities under which they suffered. It has championed the cause of political liberty, the right of every citizen to an equal share of the suffrage, and the right of the House of Commons, elected popularly, to a final and sovereign voice. The Parliament Act of 1911, was the triumph of the Liberals and a vindication of their creed of liberty.

The Liberals were opponents of Government restraint and championed *Laissez-faire*. In the mid-nineteenth century they represented the trading and manufacturing classes as against the landed class. The popular element in Liberalism, however, caused the Party to advocate social reforms which conflicted with the individualism of the nineteenth century. Today, the Liberals have recognised that there is a liberty of the worker which has also to be secured. The Capitalist- Socialist issue for them is not as important as it is often supposed. The Conservatives' fondness for aristocracy and for tariff and Labour's plan for collectivist control all appear to Liberals as dangerous to the liberty of the individual. While rejecting Socialism, they advocate considerable reforms in Capitalism. They are prepared to socialise some industries if it can be proved that this would increase efficiency, but do not regard nationalisation is essential for the proper arrangement of society. They go still further and advocate the diffusion of property, *i.e.,* the workers in each enterprise are gradually to become partners by receiving a share of its profits in the form of share in its capital. They also advocate the democratization of enterprise and would have each industry governed by an industrial council representing both workers and employers. In the same way they would have each work or factory provided with a works council representing both sides. The Liberal Party, in brief, proposes a kind of partnership of management of labour in industrial affairs. Private ownership and management would remain, but through representative councils and profit-sharing schemes the workers would achieve a stake in the business.

The Liberals are not Socialists but they approach Socialism in two directions. First, by advocating the socialisation of all enterprises which can be best conducted by the State, and

secondly, by seeking to introduce the principle of social co-operation in the manner just described. "They believe neither in a regime of private enterprise, nor in one of pure socialism, but in a mixed regime which combines features and elements of both, according to the needs of the nation, and progressively changes the proportion of the elements with the movement of national needs." The aim of the Liberal Party is to build a liberal Commonwealth, in which every citizen will possess liberty, property and security, and none shall be enslaved by poverty, ignorance or unemployment. The Liberals, accordingly, claim that they represent not a single class but the whole nation and are not tied to a theory; they consider every proposal on its merits. They oppose the tariff policy of the Conservatives and on immediate problems in the Imperial and foreign field and take a view very similar to that of Labour.

The Party is supported by those of moderate incomes and by a lesser proportion of both the rich and the poor. In some districts there is a strong liberal tradition, often associated with Non-conformity. But many of the Liberals feel that they can now make them of more effect by supporting the Conservative and Labour parties and thereby bringing a liberalising influence on their policies. In fact, in a country with a political system which groups citizens into two sides—the side of the Government and the side of the Opposition—the position of the third party with numbers inferior to the other two is inevitably shaken. Moreover, today it is an almost irresistible temptation to "make one's vote to count" by supporting a party which has a chance to win and the party to win is either the Conservative or the Labour. "The result has been a downward spiral Liberal power." It will be interesting to note that whereas in 1950 the Liberals "bitterly rejected the overtures of the Conservatives, in 1951 seven Liberal candidates received Conservative support."[20] Yet, it is claimed in many Liberal circles that Proportional Representation would allow the strength of Liberal feelings in the country to be fairly expressed. The possibility of such a reform is, indeed, remote in Britain. The Liberals though on the upsurge, since March 1974 election, are not likely to make any spectacular mark in the body politic. The Party was till very recently in alliance with the Social Democratic party, a splinter group of the Labour Party, but they have since separated, Liberals have not a single member in the House of Commons at present.

The Labour Party

The Labour party which is a political expression of a working class movement, belongs to the present century, though traces of the movement can be found from the Industrial Revolution which created large masses of urban workers divorced from the occupation of land or ownership of the means of production. This movement manifested itself in Trade Unions, and in co-operative societies and in the Chartist agitation which demanded universal male suffrage. But it was not until the franchise was extended in the late nineteenth century that an effective political party could arise. The Labour Party was formed in 1906 and from that date it has grown rapidly and emerged from the General Election of 1922 as the second largest party.

Labour presents itself as the party of democratic socialism and the socialist objectives of the party embrace the public ownership of the key industries and those economic enterprises that are natural monopolies. In all, the Labour Party considers that roughly 20 per cent of the economic life of the country should be owned and managed by the State and the remaining 80 per cent should continue under private ownership, but strictly regulated by Government in conformity with the economic planning of the State.

According to Labour Party policy, economic planning and control should be directed by a democratically chosen Government. The Party believes that through persuasion a majority of the population can be won to the Labour Programme. The regulation and control which a socialist economy require should not, according to the Labour Party, impinge upon the basic civil liberties of the citizen. Freedom of discussion and criticism, they believe, should be adequately safeguarded, and the socialist way must win its victory in free competition with the programmes of other political parties. Here, the Labour Party is sharply opposed to the Communist philosophy, however much their economic and social objectives may be alike.

The driving force of the Labour Party is less a passion for socialism than a passion for social equality. It strives to achieve political, social and economic emancipation of all the people, and more particularly of those who directly

20. Carter, G. M., and Others, *The Government of Great Britain*, p. 81.

depend upon their own exertions by hand or brain for the means of life. It is, as has been suggested, a "party of levellers" in a country which needs levelling, and protect the wage-earning class from the various disabilities which retard their progress and amelioration. In brief, the Labour Party aims to safeguard the individual citizen from the cradle to the grave by providing remedial measures against all social ills and devising means to constantly improving standard of living for all citizens of the country. This programme is the content of a Welfare State. The Labour Party, thus, "seeks to light Britain for- ward into a new era of equality with less of a zest, perhaps, for the technique of social change, and less of concern for the question whether or not that technique involves a policy of socialism and more, far more of a passion for the reality of social change and the actual coming of equality."[21] It carried through substantial nationalisation of industry in its period of office, 1945 to 1951, and fiscal reforms of an equalitarian nature. The Party is sincerely, genuinely, and deeply liberal and democratic and is "inspired by the Bible," as Finer says, "rather than *Das Kapital*."[22]

Labour's view of the Empire is that self-government should as soon as possible be extended to those territories which do not yet enjoy it. For the realization of that end, they would encourage the development of colonial resources, the extension of social services and the encouragement of native trade union and co-operative activity. In international affairs, while its ultimate aim is a world Socialist Commonwealth, but its immediate aim is to strive and strengthen the bonds between the United Nations and the establishment of that collective security which the League of Nations failed to secure. The student of party programmes will, however, observe that the avowed differences between different parties in Britain are mostly with regard to the ownership and control of means of production. In "social, imperial and international affairs the professed immediate policies of all parties are very similar : the elector has to judge whether Capitalism or Socialism is more likely to produce the desired results, and, perhaps which party is by its nature, personnel and record the more capable of progress."[23]

Labour Party finds its support among wage-earners in the town, and to much less degree, in the country-side. A number of middle class people, who are hostile to capitalistic structure of society and consider it a meance for the future, also support Labour. And, in fact, from all walks of life come persons who have adopted the socialist view of life.

In organisation, the Labour Party presents a Federation embracing Trade Unions, socialist societies like the Fabian Society, and individual members. Its structure is more elaborate than that of other parties and the resolutions passed at its annual conference determine its policy. There is no "leader" in the same sense as the Conservatives had till 1980. The leader was elected by the Parliamentary Labour Party, composed of all members of the Party who had seats in the House of Commons. Now the election of the leader has to be approved by an electoral college consisting of Members of Parliament, Constituency delegates and trade union representatives. As long as the party is in Opposition, its day-to-day policy is decided upon in caucus, but when the Party is in power, direction rests in the hands of the leaders who are of course, in the Cabinet. Even then constant liaison exists between leaders and back-benchers and periodic conferences are held in which the Government's policy is discussed. These conferences become quite stormy when a "rebellion" brews, but discipline usually prevails in the end and the party leaders have their way. Such rebellion usually comes from the left wing of the Party and the most recent example is that of Aneurin Bevin, who was disowned by the parliamentary Labour Party and recommended that the whip be withdrawn, though Bevin was given another opportunity by the Party Executive to "mend" himself.

The basic organisation of the party is the Annual Party conference. It is composed of delegates from all member organisations. One vote is cast for each 1,000 members of affiliated organisations. The trade unions with their million members have by far the majority. The Party conference elects the National Executive Committee. It manages Party affairs and directs the central office. In theory, the National Executive Committee is subordinate to the conference, but in actuality it is its leader. The leader of the Parliamentary Party is its ex-officio member. The

21. Barker, E., *Britain and the British People*, p. 48.
22. Finer, H., *Governments of Greater European Powers*, *op. cit.*, p. 61.
23. Steward, M., *The British Approaches to Politics*, p. 164.

Executive Committee is usually the author of the Party programme and directs, through the central office, all the vast activities of the Party. What makes the Executive Committee really powerful is the rule that no one may carry the Party label in an election without its approval. Moreover, it has the power to expel individual members or to disaffiliate organisations from the Party, though such actions are subject to review before the Party conference.

The Labour Party secured a precarious majority of five votes to form the government in the elections of 1964. The total number of votes cast in favour of the Party were 2,205,507 (44.1 per cent) and won 317 seats as compared with Conservatives' votes of 12,002,407 (43.4 per cent) and 303 seats. In 1966 elections it won 363 seats, thus ensuring a majority of 97 votes and polled 47.9 per cent votes. In March 1974, no Party could secure a clear-cut majority but Wilson formed the minority Government as leader of the largest Party. Whereas the Labour Party with 301 seats, polled 37.2 per cent of votes cast, the Conservative secured 296 seats polling 38.2 per cent of the votes cast. Eight months later another election was held and this time the Labour Party was able to secure 319 seats, a majority of just three votes which soon dwindled to a minority Government headed by James Callaghan. Callaghan's Government remained in office till March 1980 when it was defeated on the withdrawal of support by the Liberals and Scottish Nationalists on a vote of no- confidence. In the election held in May 1980 Conservatives secured 339 seats against 296 for all other parties put together.

Internal strife had ever plagued the Labour Party and it reached a new and higher stage in 1979 when it was embroiled in a demoralising ideological struggle between the leftist faction led by the former Energy Minister Anthony Wedgwood Benn and the moderate group led by James Callaghan. Wedwood Benn dominated the executive of the Party and openly spoke out against Callaghan's views on many issues. It was at this stage that the fierce struggle between the Left and the Right was feared to cause a split in the Labour Party, eventually leading to the emergence of a viable Centre party.

James Callaghan resigned from the leadership of the Party on October 15, 1980 and Michael Foot was elected the new leader. The split was averted for the time being, although the extreme Right was highly dissatisfied with the result of the leader's election. But the split became inevitable after the massive victory of the Leftists. The delegates at a one-day conference decided that the Party's next leader should be chosen by an electoral college and not by the elected Members of Parliament as the practice hitherto was. In this electoral college the Parliamentary Labour Party and the Constituency Labour parties each were allocated 30 per cent of the votes and the remaining 40 per cent were given to the trade unions. This was something of a "last straw" for the Right wing Members of Parliament led by David Owen, Mrs. Shirley Williams, William Rodgers and Roy Jenkins. They formed the Council of Social Democracy—possibly a prelude to the formation of a new Party. It proved true despite the desperate efforts of Michael Foot, the leader of the party, and the Deputy leader, Healey to keep the Party united and fight the leftward drift from within. The split, thus, changed the historic role of the Labour Party to be an electoral alternative, at least for the present, to the Conservative Party.

A fierce row has erupted between Labour and its political backbone, the Unions, over a remark by a junior Labour leader, Stephen Byers, to four lobby journalists during a dinner with them at a restaurant in Blackpool, where the annual conference of trade unions was being held in September 1996, that a Blair Government could sever links with the unions.

Byers told the political correspondents from *The Times*, the *Daily Telegraph*, *the Daily Mirror* and the *Daily Express*, that the Party leadership was planning to ballot members on whether they preferred unions retaining voting rights at Party Conferences and seats on the national executive. "But what has stoked the row and made union leaders jive with anger is the assertion by Mr. Byers that Mr. Blair would put all this to ballot if he, on becoming Prime Minister, was to face a summer of discontent through disruptive strikes." But Unions "refuse to play the second fiddle to Labour Party". The result is that a sort of war of words has erupted between the Labour leadership and the Unions with just 15 days to go for all important Party annual conference, the last before the elections. The sharp divisions could lead to a final show down between the modernisers and the Unionists. The outcome of the "battle would not only" decide the fate of the Labour Party but could radically affect the British polity." Mr Blair however, is not expected to bow down to the hard-core Union

conservatives. "He knows that the middle-class voter has to be convinced about the modern approach of his new Labour and its fears of disruptive strikes *et al* driven out, if he is to win the next polls".[24]

Social Democratic Party

In April, the Social Democratic Party was formed as a result of the split in the Labour Party, which had then twelve seats in the House of Commons. Roy Jenkins, who ended his term as President of the European Community Commission in February 1981 had made clear in 1980 that he believed Labour had moved too far to the left and that he planned to launch by December (1980) a rival political party. The left-wing drive led by Anthony Wedgwood Benn and the dismal record of Mrs. Margaret Thatcher's Government both contributed to the emergence of the Social Democratic Party which entered the country's political arena by contesting the Warrington by-election with Roy Jenkins contesting the seat. Warrington had been a traditional rock solid Labour stronghold. Roy Jenkins received 42 per cent of the votes cast, while Labour candidate Douglas Hoyle just won by obtaining 48 per cent—down from 61 per cent in 1979. The Conservative candidate lost his deposit. The result, which was described variously as "startling", "magnificent" and "sensational", was considered to be a barometer of the prevailing political climate in Britain showing deep discontent with Mrs. Thatcher's policies and disappointment with the Labour Party, torn by its internal wrangles and dissensions.

The Warrington result gave a greater confidence to the Social Democratic Party. It ended its annual convention in London in October 1981 expressing confidence that it could win the country's next general election in alliance with the Liberal party. The new Party set for itself the middle course between what it viewed as a dangerous leftward drift in the Labour Party and the extreme conservatism of the Government of Mrs. Thatcher. The Party chose the slogan "A Fresh start for Britain" to characterise what it hoped would be a departure from the traditional mould of British Party politics. The Liberal-Social Democratic Party alliance defeated in a special election in Croydon North-West the ruling Conservative Party candidate. In November Mrs. Shirley Williams won the traditional conservative seat in Crosby. What made the Liberal-SDP alliance more bright was that both the Parties were 'Centrist' and the fact that important sections of capital and labour supported the alliance. At one time there were 22 Social Democrat Members of the House of Commons and 34 Peers who supported the Centrists and they were almost entirely former Labour Party members. The Duke of Devonshire, a former Conservative Government Minister and a nephew of former Premier Harold Macmillian, left the ruling Conservative Party, on 13 March 1982 to join the Social Democratic Party. Roy Jenkins, one of co-founders of the SDP declared, "it was a characteristically courageous decision. We are delighted to have him." Roy Jenkins also found his berth in the House of Commons by defeating both the Conservative and Labour Candidates. But the future of the Party seems to be bleak with its disintegration with the Liberal Party. Quite a number of Social Democrats have gone back to their parent Labour Party. Britain has, thus, reverted to its time-honoured two-party system.

The Myth of Bipolarity

The central feature of the two-party system has been that the leadership of both the principal political formations has unanimously accepted the rationality of the socio-economic foundations of British society. Rousseau and Marx pointed out that the British people were only free to decide periodically which members of the ruling class were to misrepresent them in Parliament. Despite the gradual growth of franchise and the emergence of strong labour movement, Parliamentary democracy in England continues to fulfil the wishes of Balbour: "our alternating cabinets, though belonging to different parties, have never differed about the foundations of society. And it is evident that our whole political machinery presupposes a people so fundamentally at one that they can safely afford to bicker ; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict. May it always be so". (Bagehot, *The English Constitution*, p. xxiv).

It is a historical truth that the two major parties of England, alternating in government, have always been in agreement on basic questions of home and foreign policy. As Harold Laski put it correctly :"Since 1689 we have had for all effective purposes, a single party in control

24. "Unions Refuse to Play Second fiddle to Labour Party", Vijay Dutt, as reported in the *Statesman*, New Delhi, September 18, 1996.

of the state. It has been divided no doubt, into two wings [but] its quarrels have always been family quarrels in which there has always been room for compromise." (*Parliamentary Government in England*, p. 94). In this passage, Laski was referring only to the Conservative and Labour parties. But the leaders of the Labour Party have been just as loyal to the basic institutions of capitalism as have been the leaders of the other traditional parties. Tony Blair has now given up all pretentions that the Labour Party can have any connection with any 'socialistic' programme. But the history of Labour leadership from MacDonald to Attlee to Wilson clearly shows that its socalled commitment to any kind of 'socialism' was pure illusion. Bipolarity of British parliamentary democracy, therefore, remains a convenient fiction.

Behind the facade of bipolarity the dominant classes of England have been fortunate enough to rely on the Conservative Party as the major 'party of government' which is rarely a 'party in opposition'. One of the most remarkable thing about the conservative party is that it has very successfully adapted itself to the necessities of populist politics. Thus old, aristocratic, pre-industrial Tory party first adopted itself to the new industrial environment and accommodated in its leadership the representatives of the industrial bourgeoisie; and then consciously set out, after the second Reform Act of 1867 to develop a kind of popular base with mass membership in the country. The erstwhile Tories became new Conservatives, who have never ceased to retain their broad electoral base since then. The Whigs were transformed into the Liberal Party, which after a century was overtaken by the Labour Party that claims to represent organised labour.

The Conservative Party, despite its multi-class electoral appeal and rhetoric of piecemeal social reform, remains chiefly the defence organisation, in the political sphere of property and business. The party aggregates and articulates the different interests of the dominant classes. It reconciles, coordinates and fuses the divergent interest of the socio-economic blocs supporting it into a workable policy and programme. It also provides an ideological disguise to this policy appropriate for political competition in the age of 'Mass politics.' Major Conservative leaders are familiar figures in the boardrooms of large corporations. They are united with the business world by ties of kinship, friendship, mutual interest and common outlook. They can always depend upon the capitalists to finance generously their election campaigns and other needs. By contrast, the Labour Party is associated with subordinate and intermediary classes and its leaders cannot be found in the councils of the great corporations. They depend on Trade Union funding and small subscriptions. They may occasionally win elections but they have neither the will nor the capacity to make any dent in the consolidated structures of capitalism. The two-party system in England is, therefore, characterised by a situation of imperfect competition.

SUGGESTED READINGS

Bailey, S: *Political Parties and the Party System of Britain.*

Barker, E.: *Britain and the British People* (1943) Chap. II.

Birch, N.: *The Conservative Party.*

Blondel, J.: *Parties and Leaders.*

Briers, P. M. and Others: *Papers on Parliament, A Symposium* (1949), "The Party System and National Interests."

Bulmer-Thomas, Ivor : *The Party System in Great Britain.*

Campion and Others: *Parliament: A Survey,* Chap. VIII.

Cruikshank, R., *The Liberal Party.*

Finer, H.: *The Theory and Practice of Modern Government,* Chap. XVI.

Gollan, J.: *The British Political System.*

Gooch. R. K.: *The Government of England,* Chap. V.

Greaves, H.R.G.: *The British Constitution.* Chap. VI.

Hall, G.: *The Labour Party.*

Jennings, W.I.: *The British Constitution.,* Chap. I.

Laski, H.J.: *Parliamentary Government in England,* Chap. II.

Lowell, A.L.: *The Government of England.*

Vol. I, Chaps. XXIV-XXX.

Vol. II, Chaps. XXI-XXXVII.

Mckenzie, R. T.: *British Political Parties.*

Morrison, H.: *Government and Parliament.* pp. 78-8, 114-15 and Chap. VII.

Neumann, R.G.: *European and Comparative Governments,* Chap. VIII.

Rose, R. (Ed.): *Studies in British Politics.*

Stewart, M.: *The British Approach to Politics,* Chap. XIII.

William, F.: *Fifty Years' March: The Rise of the Labour Party.*

CHAPTER XI

Local Government

School for Democracy

"The local assemblies of citizens," wrote Alexie de Tocqueville more than a century ago, "constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty." The educative value of representative government largely depends on the development of local institutions. Local government is a school for democracy. It cultivates a sense of civic duties and inculcates among citizens a corporate spirit of common administration of common interests. All problems of administration are not certain problems. It should, accordingly, be the responsibility of the inhabitants of the area concerned to solve their local problems which are peculiar to that area. Neighbourhood makes us automatically aware of interests which impinge upon us more directly than upon others. And what is done by common counsel in the solution of the common problems gives us a degree of satisfaction which is unobtainable when it is done for us by others from outside. Local government may, accordingly, be defined as government by popular elected bodies charged with administrative and executive duties in matters concerning the inhabitants of a particular district or place and vested with powers to make bylaws[1] for their guidance.

Fundamental Aspects

The history of local government in Britain is one of gradual development. Blackstone had correctly maintained that "the liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons have learned at their own gates the duties and responsibilities." The marked genius of the British for self-government may, thus, be traced to the root of local self-government. Parliament became strong, and a system of Parliamentary democracy was eventually established, because the countries and boroughs from which the members of Parliament were drawn "had a sap of native vigour and an instinct for self-government." The old methods of local government have, indeed, been greatly altered by the legislation during the past century or so, but "the whole of the change," as Barker puts it, "has only strengthened an old and vigorous system of national liberty – so old that it is anterior to the system of national liberty; so vigorous that it has supplied the sap and the stimulus to that system." The general main-spring and the fountain of initiative is locally elected bodies. These elected bodies determine local policies and are organs of Local Government. As organs of government, they make their own local rules or by-laws, raise and spend their own local rates, and appoint and control their own administrative staffs for carrying out their functions of local services. But as organs of government in local areas, they are parts of the general system of government in the country and, as such, subject to the control of Parliament and the Central Government. Parliament determines and can always modify their activities and their powers. The Central Government and its administrative staff audits, inspects and supervises their activities and such a supervision and direction becomes all the more necessary because Parliament subsidizes the local rates by 'grant-in-aid' from the central taxes. In spite of this control Local Government in Britain is infinitely more self-reliant than is customary on the Continent of Europe. There is no all-powerful Minister of the Interior. as in France, whose hand weighs heavily on the shoulders of local authorities. "under such circumstances, free men may assemble in their councils, pretty much as of yore, and impress the mark of their personalities on their environment." Many leading statesmen of the country, in the past and during our own times, began their careers in the councils of Local Government. Taking recent Examples, Joseph and

1. Laws of local application which must be approved by the appropriate Minister.

Neville Chambelain were both Lords Mayors of Birmingham. Herbert Morrison first became prominent as President of the London County Council.

Development

Until modern times the machinery of local government was not organised in accordance with any particular plan, but grew up haphazard to satisfy particular needs. Since there was no coordination, the overlapping of functions, disorder, and a loss of efficiency were inevitable. The present counties and parishes find their origin in the shires and hundreds, vills or townships of pre-Norman days. The Central Government was largely superimposed upon existing local organization. In the Middle Ages each county or shire had its court or governmental assembly, presided over by the Sheriff as the royal representative and composed of the freemen of the county. The county court performed general governmental as well as judicial functions. Within the county were hundred courts similarly composed and under the supervision of the Sheriffs. The manorial courts of the feudal system were the courts of the smaller units, the vill and the township. Boroughs which obtained Charters from the Crown, possessed varying degree of automony. From the time of Henry II royal justice began to cover the whole country through the circuits of justices. The local and manorial courts were superseded and with them the office of the Sheriff lost much of its former importance. In the fourteenth century the newly created justices of the peace acquired judicial, administrative and police powers. The parish which was hitherto an ecclesiastical unit also became the unit of local administration. I was the parish which was responsible for the repair of roads and later for the administration of Elizabethan poor low.

No attempt was made after the Revolution Settlement in 1689 to reimpose central administrative control. Apart from the boroughs, which were largely autonomous acting under their Charter powers, general local administration was in the hands of the county justices sitting in the Quarter Sessions. This was all altered by the century of reform between 1835 and 1935. The results were mainly three. One was the reform and democratization of the organs of local government. The second was a reform and clarification of the powers aud functions of local government. The third was a reform and elucidation of the connection between local and Central Government. The reform of the organs of local government was a long and complicated process, because from 1835 to 1888 Britain pursued the curious policy of creating a new ad hoc authority to deal with each new local need that emerged. Not only that, each new authority was given a different area of operation from that of the old authorities. The Local Government Act of 1888 drastically altered all this. It instituted democratic county councils, with a general competence, in place of the old system of Justices of the Peace, mixed with the ad hoc bodies which had recently been added to it. The light has progressively grown. The existing system of Local Government is based mainly on six distinct types of authority—the Administrative County, the County Borough, the NonCounty Borough, the Urban District, the Rural District, and the Parish. Of the authorities responsible for the government of these six, the first and the second date from 1888; the third from 1835, subject to modifications made in 1882; the fourth and fifth and sixth from 1894. The London County Council was set up in 1889, as successor to the indirectly elected Metropolitan Board of Works.

With regard to the power and functions of Local Government, and their progressive reform and clarification since 1835, there now exists a system of what may be called *integral Local Government*, under which each major authority generally conducts the whole of local government in its area. The system of integral local government gives local authority a large initiative in such matters as roads and transport, police, public health, public education, public assistance and the supply to public services such as housing, gas, water, and electricity. Here is a large field for the determination and conduct of local policy. It will thus be obvious that a progressive authority can take action which will vitally affect the health, the growth of mind, and the general well-being of all its area. It may, however, be noted that since 1945, local authorities have lost their responsibility for hospitals, and for gas and electricity services, and at present there is much pressure for the nationalisation of other services, especially education, police and water distribution.

Local and Central Governments

It is here that the connection of local government with the central government begins to show its importance. It becomes, accordingly, necessary to know the development and the pre-

sent method of that connection. The Central Government has obviously a duty of stimulating local initiative where it is backward and checking it where it abuses its authority or does things beyond its powers. This necessitates a system of contact, or co-operation, and of interaction between local elected bodies, with their local administrative staffs, and the Departments of the Central Government with their administrative officers. The system of "grants-in-aid" paid from the public funds in subvention of local finances is a significant step directed to control and supervise the activities of local bodies. In fact, grants-in-aid are paid only on condition that Central Government and its officials inspect and supervise their spending and the operation of the services on which such grants are spent. The power of the purse of the Central Government may, therefore, be said to have *bought* a measure of control over Local Government and it has cost heavily to the autonomy of the local bodies. Another way of financing by the Central Government is the system of block grants.

Like all other institutions, Local Government, too, is subject to the supreme authority of Parliament and such laws as it may enact. Beyond that the various Government Departments supervise the work of local government and see that the statutory authority is fulfilled. The Home Office inspects and to a certain extent supervises the police forces, except in the Metropolitan District of London, where the police is directly administered by the Home Office. The latter is also in charge of local civil defence work, especially the Home Guard. In addition, Ministerial consent is required for certain actions by local authorities, including the making of by-laws, and the appointment of some officials. Building plans require Ministerial approval, and the administration of some services, particularly the police, fire brigade, and education is subject to examination by Ministry Inspectors. Some legislation that gives powers to local authorities, particularly with regard to planning and land development, allows for appeals to the appropriate Minister. The Treasury must give its consent to borrowing local government. Generally speaking, the appropriate Central Government Departments supervise work of local authorities, keep them in line, and establish rules with regard to procedure, organisation qualifications of officials, equipment, and general objectives. The Department of the Environments, recently set up, under a Secretary of State, to assume responsibility in England for the range of functions affecting the physical environment in which people live and work, which was formerly divided between the Ministry of Housing and Local Government, the Ministry of Public Building and Works, and the Ministry of Transport, is the main link between the local authorities and the Central Government in England. In Scotland, the Scottish Development Department is responsible for general policy in regard to Local Government, in Wales, the Welsh office and in Northern Ireland the Ministry of Development.

Since local powers and duties originate from Acts of Parliament and are enforced by courts, the Central Government may obtain from the High Court a writ requiring any neglect of legal duty to be repaired. Any private person who has suffered loss as a result of negligence of local authority can bring a civil action. In like manner, the courts are used to check action which is *ultra vires*. Central Government may also invalidate local ordinances which may go beyond powers granted to the local authorities. In health, housing or other services where neglect can have the gravest results, a Justice of Peace, or simply four rate-payers in the area, can invoke the aid of the Ministry of Health to enquire into local inefficiency and, perhaps, take over the duties itself.

Changing social conditions and broadening conceptions of the functions of government have broken new ground for Central Government control, and the end is not in sight. New central agencies, notably of the kind we call public corporations, are established to undertake new services or to replace the agencies of Local Government. Considerable transfer of functions takes place from smaller or larger geographical units in the existing Local Government structure and even the word "local" takes a new significance.[2] The policy of coordination and standardization, which is so prominent a feature of our times, has deeply penetrated the realm of Local Government. The statutory provisions concerning meetings, committees and the form of audit of accounts ensure that in each area there shall be similar machinery whatever the extent to which it is used. Meanwhile the Central Government brings a constant influence to bear through its inspectors. Not only are satisfactory reports from them the condition of grants-in-aid, but the re-

2. Campion and Others, *British Government Since 1918*, p. 198

sulting accumulation of knowledge shows to the Central Government what changes in the law have become necessary. Circulars acquaint local authorities with the policy which the Central Government wishes them to pursue and if the latter finds its legal powers insufficient, it can always propose new laws and bring them on the statute. Occasionally, if the local authority uses its power in a way of which the government strongly disapproves, a special Act will be passed handing over the powers to Commissioners appointed by the Minister of Health.

It will, thus, be seen that the methods of central control are numerous. Local Government though still admired and ardently cherished in Britain, has now become a hazy spheres of local action distinct from Central Government. Certain services once accepted as purely local have assumed national significance. The local school is part of a national educational system; public assistance is no longer a community task but a national responsibility, even gas and electricity, once characteristically municipal service, have now been nationalised. Much premium has, during recent years been placed on administrative considerations in demarcating the sphere of central and local government. J.H. Warren, while reviewing the changes which have taken place in the scope and system of Local Government in Britain, writes: "The particular sphere to be assigned to local government is not a question which is, or wholly can be determined by consideration of democratic freedom and responsibility, viewed as capable of development by ties of neighbourhood and the activity of local communities; or even by the consideration that local self-government is an educative process and invaluable to democracy on that account. The assignment of local government functions must have some regard to administrative consideration."[3] The assignment of local government functions, particularly after the First World War, is significant of this fact.

Nonetheless local administration and to a limited extent the framing of policy remain functions of local authorities. The Central Government secures the cooperation of local authorities and the relationship is one of friendly partnership. Local authorities are not branches of Departments in Whitehall, though they operate some of the central services on an agency basis. Their members are elected by the districts they serve. Their services are administered by their own officers. The overall record of the councils and their committees is splendid. In any system of political governance, the Central Government must control the local, however, autonomous the Local Government may be. But there is one important difference between the control of Local Government in Britain and in other countries, such as France. In France the control of the Central Government over the local is a control of an executive character, which goes so far that it practically eliminates local government, in any exact sense of the word, and remits the control of local policy to local administrative officials acting for the central executive. The British system of Local Government, on the other hand, is a halfway House which combines both legislative and executive control. "The value of this system," according to Barker, "is that it is kinder to local government than pure executive control and more elastic in its application to the differences of local governing bodies than purely legislative control. Parliament offers grants to local authorities as an equal might offer to equals: the executive, watching the actual operation of spending of these grants, can use an elastic discretion to suit each particular case-seeking indeed to standardise, but seeking to do so by stimulating the laggard and holding back the impatient, according to the needs and demands of each particular case." The preoccupation of the local councils and committees with administrative matters guarantees that democratic procedures are maintained on all levels. Government's control over local authorities is kept to the minimum.

PRINCIPAL TYPES OF LOCAL AUTHORITY

For purposes of Local Government, England and Wales and Northern Ireland are divided into county boroughs and administrative counties. Administrative counties (outside London) are further divided into three types of county district: non-county borough; urban districts; and rural districts. Rural districts are themselves subdivided into parishes (except in Northern Ireland). Scotland is divided into counties (including four counties of cities) which are independently administered; large and small boroughs; and districts. Each local authority division

3. *Ibid, p.* 195

is administered a different council. The London Government Act, 1963, which came into force on April 1, 1965, has reduced the number of county, borough and urban district councils in England.

The Parish

Although England is divided into Parishes for church purposes, the Parish, as a local authority, exists only in the countryside. Where the population is less than three hundred there is usually no council and the affairs of the Parish are managed by a parish meeting which all ratepayers may attend. In the larger Parishes a council of from five to fifteen members is elected at a Parish meeting and they hold office for three years. The duties of the Parish Council or Meeting are slight. It acts as a minor education authority and may provide public works, recreation grounds, and protect local rights of way. Sometimes an Act may enable them to see to the lighting of the village, and higher authorities may hand over to them the care of the water supply and the repairing of footpaths. A Parish may have paid clerk, but there is no other paid official.

The District

A group of Parishes forms a Rural District and if the development of industry turns a Parish into a small town, it may request the County Council to make it into an Urban District. The Councils of both types of Districts are elected for a period of three years, one-third retiring after every one year. The Chairman may be one of the Councillors, or chosen from outside, but in either case he has the powers of a Justice of Peace during his term of office.

The Districts enjoy greater dignity and power than the Parish. They are used by Central Government as housing authorities, and, thus, have the power to acquire land and to build, and the duty of dealing with slums and overcrowding. As sanitary authorities, District Councils may provide for water supply and other sanitary measures. Trunk roads are maintained directly by the Ministry of Transport and other major roads by counties, whereas the unclassified roads for which no grant is made by the Ministry, must be maintained by the Urban District Councils. In the countryside, although the county is the responsible authority, it frequently delegates the work to the Rural Districts.

District Councils have often owned or shared in the management of public utilities. With the nationalisation of gas and electricity, however, this field of activity has been greatly reduced. District Councils keep a number of paid officials, e.g., Clerk, Treasurer, Medical Officer of Health, Sanitary Inspector, and Surveyor of Highways. An Urban District Council has some additional powers, such as that to provide allotments, libraries and public baths. Where the population exceeds 25,000 a Stipendiary Magistrate can be appointed. There is, in fact, little to choose between the large Urban District and the small Borough.

The County

England still clings to the county system of the past that has come down through the centuries. The fifty-two historical counties are relics of former times and are shorn of all important functions. They have no elected councils and have only three principal officials, the Local Lieutenant, the Sheriffs and the Justice of the Peace. The office of the Local Lieutenant has great dignity and is usually held by a wealthy county gentleman. He has charge of the county records and recommends suitable persons to be Justice of the Peace. The Sheriff is responsible for making all the preparations necessary for the holding of assizes.

There are now sixtytwo Administrative Counties superimposed over the historical councils. Every Administrative County is divided into Electoral Divisions, each returning one Councillor at the elections, which are held once every three years. The Councillors, when elected, choose a number of Aldermen equal to a third of their own number. Frequently Councillors themselves are Aldermen, and this necessitates a by-election to provide a new Councillor. The term Aldermen goes back to the times of the Saxons when it meant men chosen for their maturity of age and experience to assist in government. Today, it has no reference to age. They are elected for six years, one-half retiring at the time of each Council election. Greater length of office, no doubt, equips them with experience of the Council work. It also enables talented persons, who do not wish to face the mud and mire of election campaigns, of get elected. The Chairman of the County Council is elected in the same manner as the Chairman of District Council, and has the same right of acting as a Justice of the Peace. The Council can pay a salary to the Chairman and the travelling expenses incurred by members when doing Council work.

The County Councils are responsible for

the policy and the administration of the county and supervise the work of subordinate bodies. The Councils also act as agents for the Central Government, cooperating with it to administer Public Assistance and the Pensions. They maintain the ordinary local services, building and asylums. They also administer the licensing laws except for liquor, and appoint the regular administrative personnel of the county.

New and very considerable powers and duties have been imposed on the Councils as a result of two important Statutes, the Education Act of 1944, and the Town and County Planning Acts of 1944 and 1947. The Education Act of 1944 has made counties responsible for the education service at all stages. This task was previously shared between Counties, Boroughs and Urban Districts. Legislation passed after the war of 1939-45 has made the County the responsible authority for the Health Service and for Town and County Planning. the latter had become necessary for the reconstruction of war devastated areas in line with a general plan. In addition to this general work, the County Council must give attention to agriculture, and its duties in this respect have been considerably increased.

The old and new forms of county government are brought together by the Standing Joint Committee. half of whose members are Justices, and half County Councillors. This Committee appoints the Chief Constable of the County, and organises a police force in accordance with the law and the Home Office regulations. The police are inspected annually by the Home Office, and if the result is satisfactory, half the expenses will be met by the Central Government. Subject to this control, the County police are responsible for all police duties within their area.

The Borough

A unit of local government of a special type is the Borough, which is simply a Town with a Charter. An Urban or Rural District which desires to become a Borough petitions to Her Majesty in Council for a Charter. If as few as five per cent of the local ratepayers object an Act of Parliament will be necessary.

The Borough is governed by a Borough Council constituted similar to a County and District Council. The Borough is divided for election purposes into wards, each returning three, or a multiple of three, Councillors. One-third of the Councillors retire each year. The Councillor choose Aldermen to one-third of their number, as for County Councils. The Borough Council selects its own Mayor either from among the Councillors or from outside; and he holds office for a year and may be reelected. Besides being the Chairman of the Council, he presides over the local bench of the Justices of Peace during his year of office, and continues to act as Justice of Peace for the following year. Generally, his functions are ceremonial.

The Borough status gives a town a much greater degree of dignity and civic pride. It also means larger expenses for pomp and ceremonial occasions. All Boroughs possess, as a minimum, the powers of a large Urban District Council, and those additional powers which the Charter confers. Any Borough may by ancient custom or Royal Order be called a city, but this is only a dignity and involves no legal powers. The Mayors of some of the most famous cities are called Lord Mayors. Just like the County Council, the Borough Council operates chiefly through Committees. The Council manages the corporate estate and the borough fund. It establishes the borough rates. It has its own budget and appropriates money. Subject to approval by the Central Government, it may borrow money. It also administers the municipal services which are often quite extensive.

The Government of London

London is the largest capital city and with the exception of New York, the greatest metropolitan area in the world. Today, there is still the old city keeping its boundaries, street names and forms of local administration which as they were centuries ago. Round this city have grown the dwellings of millions, rich and poor. Systematic government for this huge district dates back on to the last century.

The City of London properly speaking is an area of about one square mile located in the heart of London, primarily the business and financial centre, in which over a million people are active during the day but in which few people live at night. It is divided into twenty-six wards each of which returns, according to its size, number of Councillors to the Court of Common council elected by those with residence or business qualification in the city. In addition to the 206 councillors elected annually, the Court of Common Council contains 26 Aldermen, elected directly by citizens and holding their office for life. These together with the Lord Mayor, form a separate Court of Aldermen. Another, and the

third body is called the Court of Common Hall and it consists of the Court of Aldermen and the Liverymen of the city companies. These companies are the survivors of the ancient guilds. Today they have none of their old duties and in reality these are now private societies of wealthy men. The Court of Common Hall annually selects two Aldermen, one of whom will be elected Lord Mayor by the Court of Aldermen.

The Court of Common Council is the real governing body of the city. It relies on the county for its municipal services, although it has a small police force and courts. It also controls certain areas outside the city limits. The city of London is the scene of magnificent ceremonies especially on the annual Lord Mayor's Day held at the Guild Hall.

The London County Council

The Act of 1888 set up a County Council for London. Its structure and that of Metropolitan Boroughs are now consolidated in the London Government Act, of 1939. The London County Council, bears only a general resemblance to other County Councils, there being three important differences. It is organised differently, for the electoral divisions are those used in the return of members of Parliament for the Metropolis, the County Councillors being twice as numerous; the Aldermen are in the proportion of one to six, instead of one to three Councillors; and Chairman of L.C.C. is a very dignified president with no control of policy. Secondly, an ordinary County Council receives authority once for all over the ancient county areas, minus its County Boroughs. The L.C.C. received authority over the Administrative County of London. The third difference is that the L.C.C. inherited the functions of the old Board of Works as well as acquiring those of the County Council.

The hundred and twentynine Councillors choose twenty Aldermen who hold office for six years, half on them retiring at the end of a three-year period. The Chairman of the Council may be chosen from outside as was Lord Snell in 1934. The powers of the L.C.C. are extensive indeed. It is the sole authority with respect to main sewers and sewage disposal, fire protection tunnels and ferries and bridges. It is responsible for street improvements which are metropolitan. Its power also extends to the construction and operation of tramways, and it has undertaken several rehousing schemes, involving the demolition of slum areas and the erection of workmen dwellings. It is, also, responsible for maintenance of the larger London parks and provision for public recreation. It has comprehensive functions in the matters of education, elementary, secondary, and technical.

The Metropolitan Borough

The County area, apart from the city, is divided into 28 Metropolitan Boroughs. The Councillors are elected for a threeyear period and they choose Aldermen to one-sixth of their number for a period of six years, one-half retiring every three years. The Mayor is chosen as in a Municipal Borough and enjoys the same power and dignity except that he is an ex-officio J. P. for his year of office only, not the subsequent year as well. In their functions the metropolitan Boroughs resemble closely the small Municipal Boroughs which have no separate police force, and are not education authorities. Health services are shared between L.C.C. and Boroughs, Some Boroughs have their own housing schemes.

From April 1, 1965, under the provision of the London Government Act, 1963, the London County Council and the Middlesex County Council have been abolished and the area hitherto administered by them, together with adjacent areas of Essex, Hertfordshire, Kent and Surrey, form the Greater London area. This area is administered by the Councils of 32 London boroughs and the City of London, which retains the independent status, and the Greater London Council

Proposals for Restructuring Local Government

Since the nineteenth century, when conception of a comprehensive system of locally elected councils to manage various services provided for the benefit of the community was first incorporated in statute law, there has been increase in the population, and a massive transformation in the range, complexity and scale of local authority functions. As a result of this, Local Government in Greater London was reorganised in the 1960's. Government proposals for a major restructuring of Local Government throughout the remainder of Great Britain were announced in 1971 and were intended to come into effect by 1975. The existing 1,800 authorities are replaced by 51 county and some 375 district authorities in England and Wales, and 8 regional and 49 district authorities in Scotland (outside the Orkney and Shetland Islands, which have separate, virtually

all purpose authorities). The new county and regional authorities normally provide those services most suitably administered on a large scale, including major planning, roads, education and social services, while the independently elected district authorities provide the more local services such as housing, refuse collection, and the provision of amenities. The main exceptions are the provisionally styled 'metropolitan' counties, where the districts are responsible for education and the social services.

The Northern Ireland Government is committed to a reorganisation programme which it intended to implement by April 1973. According to this programme it was proposed that the Local Government functions which were of a regional character should be transferred to Northern Ireland Government. Planning, roads and water and sewerage services would be administered by the Ministry of Development, while education, personal health and personal social services would be the responsibility of area boards acting as agents of the ministries concerned. It has been decided that the remaining local Government functions will be provided by 26 new district authorities. Housing has already become the responsibility of the new Northern Ireland Housing Executive.

A Critique of Local Government

The British system of local government is often held up as a model for other counties representing the principle of democratic decentralisation at its best. *The Labour Party Speakers' Handbook* even claims that the functions of local authorities have now developed 'to the positive ones of giving to every citizen the best possible opportunities for a full and happy life," This attitude completely ignores two tendencies which are a marked feature of the existing system of local governance in England — "firstly, the progressive tightening up of administrative, legal and financial control over all local authority activities by the central government; secondly, the increasing tendency to take away the powers of local authorities altogether." (James Harvey and Katherine Hood, *The British State*, p. 241).

The principal weapon of central control is finance. But a progressive county or borough council is obstructed also in ways not connected with finance. Denial of financial aid is a big hindrance for any local authority that is planning social services for the deprived section of the population. However, the most important restriction on its powers is derived from the doctrine of *ultra vires.* While an ordinary citizen can do anything which is not forbidden by law, local authorities are allowed to do only those things for which there is express statutory sanction. As a result, the various units of local government constitute today, to a greater or lesser degree,"an extension of central government and administration, the latter's antennae or tentacles. "In an advanced capitalist country like Britain, sub-central government is rather more than an administrative device."

Ralph Miliband concludes : "In addition to being agents of the state these units of government have also traditionally performed another function. They have not only been the channels of communication and administration from the centre to the periphery but also the voice of the periphery or of particular interests at the periphery ; they have been a means of overcoming local particularities, but also platforms for their expression, instruments of central control and obstacles to it." (*The State in Capitalist Society,* p. 49). While centralisation of power has grown in the British political system, local organs of government in the United Kingdom have continued as power structures in their own right. Therefore, they have been capable of influencing the lives of the people they have governed to a great extent.

SUGGESTED READINGS

Campion and Others : *British Government Since 1918, Chap. VI*

Clarke, J.J. : *Outlines of the Local Government of the United Kingdom.*

Cole, G.D. H.: *Local and Regional Government.*

Drain, G. : *The Organization and Practice of Local Government.*

Finer, H. : *English Local Government.*

Griffith, J.A.G. : *Central Departments and Local Authorities.*

Golding, L. : *Local Government.*

Maud, J.P.R. : *Local Government in Modern England.*

Hart, William O. : *Introduction to the Law of Local Government.*

Jackson, R.M. : *The Machinery of Local Government.*

Jackson, W.E. : *Local Government in England and Wales.*

Jackson, W. E. : *The Machinery of Local Government.*

Jackson, W. E. : *The Structure of Local Government.*

Jennings, Sir Ivor : *Principles of Local Government.*

Jwell, R.E.C. : *Central and Local Government.*

Lofts, D. (Ed.) : *Local Government Today and Tomorrow.*

Robson, W. A. : *The Development of Local Government*

Warren. J.H. : *The English Local Government System.*

Warren, J.H. : *Municipal Administration*