CHAPTER VII

Parliament

Origin and Growth of Parliament

Parliament is described by its critics as a mere 'talking shop'. This description is used opprobriously and yet that is what the word parliament means and to a great extent it describes the actual institution. It is a place where people talk about the affairs of the nation.

The earlier document in which the word 'parliament' is found is the eleventh-century *Chanson de Roland,* where it is used simply to refer to a conversation between two persons. But the word early acquired a derivative meaning, that of an assembly of persons in which discussion took place. A contemporary referred to the meeting Runnymede as the parliament in which King John "gave his charter to the barons."[1] Anyway, by 1258 parliament had evidently begun to acquire a special meaning. In June, of the same year, one of the reforms demanded by the barons at Oxford was three parliaments a year "to treat the business of the King and Kingdom." Clearly, therefore, the essence of parliament is discussion and when the word was first applied to the great councils of the English Kings it was with the view to emphasise their deliberative function.

The origin of parliament may be traced to two ideas and both these ideas are of great antiquity. The one is that the King, though himself the supreme law-giver, always sought the advice and counsel of the wisest and most experienced of his subjects. In Saxon times, Kings governed with the advice and counsel of the "Witanagemot," or meeting of wisemen. The other idea is that of representation. The Norman Kings held their courts in different parts of the country, and summoned therein for discussion of national affairs prominent members of the Church, big landlords, and Knights. They were really not representatives of the people in the sense in which we understand them today, but it does indicate the idea of selecting some prominent individuals, even by the Norman Kings whose power was unlimited, for purposes of consultations. This kind of consultation took a significant shape in 1213 when King John, who was hard pressed for money, ordered the Sheriff of every Shire to send up four 'Knights' from his Shire to discuss the affairs of the realm with the King. Here are the seeds of a modern idea of Parliament; a representative assembly of the people, where their affairs are discussed and laws made for them.

The growth of Parliament was more or less spontaneous, slow, and sometimes haphazard.[2] But its form was very different from what it is today. And so were its powers. It took eight centuries to transform Parliament into a governing body resting on the suffrage of all adult persons in the country and the process has only been completed in our own times. All these eight centuries had been a period of struggle which had been more intense during the reign of evil Kings. It began with King John. All of us know how the barons, in desperation, took the King prisoner and made him sign at Runnymede, on June 15,1215 *Magna Carta* or the *Great Charter.*

This was not a victory of the people over the King, but a victory of the rich and powerful men of Britain over the King. The *Magna Carta,* all the same, gave them, *inter alia,* assurances against arbitrary arrest and it provided that the King could not impose taxes on his chiefmen without the common counsel for the realm. For the next eighty years the struggle was between the Kings who were anxious to get money, and the other great men of the land who claimed the right to meet, and consider whether the King's demands were reasonable or not, and get their grievances redressed. Out of this struggle emerged the present political dogma of no taxation without representation, and the conversion of these assemblies into legislative bodies.

The original idea of calling 'Parliament' was, thus, associated with the pressure of the money demands of the Kings. It was called when the King wanted it and its primary business was

1. Mackenzie. K. R., *The English Parliament,* p. 12
2. *See ante Chap. II*

to hear from the King why money was needed, how it was going to be spent, and to consult those who had been summoned as to the best means of raising it. This is still the most important business of Parliament.

The 'Parliament' summoned by Simon de Montfort, in 1265, is generally described as the first parliament in anything like the modern meaning of the word. For, he called two knights from each county and also representatives from certain towns, although much of the credit for its being representative is lessened by the fact that he summoned only his own supporters. In 1295, Edward I, who needed money for wars, called together, what has been named, the 'Model Parliament.' To this were summoned archbishops, bishops, abbots, earls and barons; all of whom attended as landholders on personal writs. General writs were also issued to the Sheriffs for the election of two knights from each county, two citizens from each city, and two burgesses from each borough. Representatives of the lesser clergy were also summoned through the bishops, Thus, a large representative element was added to the feudal council.

Two important things emerged out of this kind of transacting of business. The persons summoned to the King's Parliament only discussed the best way of raising money by taxes. They grumbled, no doubt, but they could hardly afford to come into conflict with the King and question the propriety of his demands. But whenever they came to attend the meetings of 'parliament', they brought with them their local grievances and presented petitions to the King detailing the wrongs and injustices done in their part of the country and prayed for their redress. If the King refused to redress the grievances, the apprehension was that the representatives of the tax-payers might create difficulties about meeting the financial needs of the King. Gradually, therefore, was established the principle that the redress of grievances should precede the grant of supply. With the lapse of time another development took place. The grievances were at first personal and particular. But it was soon discovered that many people and many localities had common grievances. They, accordingly, began talking about it in 'Parliament' and if other members supported them in their requests, then, they would send a petition from 'Parliament' to the King. If the King agreed to grant what they asked, he would send back the petition with the words *Le roy le veult* (the King wills it) written on it. If he did not accept it, he would send the petition back with the words *Le roy s' avisera* (the King will think about it). Even today public Bills are assented to with the words *Le roy le veult*. *Le roy s' avisera* has not now been used to a measure since 1708 as it amounts to vetoing a Bill.

Even more important was the second development. There began a custom that the King could not tax his people unless Parliament voted him the money and devised ways of raising it. This finally became a mighty law, and the struggle between Cromwell and Charles is the culminating point in this connection. Another important result of this struggle was the decision of the issue: who was to govern in Britain—King or Parliament. The struggle ended in the execution of King Charles by Parliament and subsequently the supression of Parliament for some years by Cromwell. But the Glorious Revolution of 1688 finally decided the supremacy of Parliament. With abdication of the last Stuart King, Parliament turned to the Hanoverian dynasty. It had two definite results of constitutional importance. First, Monarchy became the gift of Parliament, and secondly, any future Monarch of Britain would be a constitutional Monarch acting on the advice of his Ministers responsible to Parliament. This ended four centuries old conflict between the Kings and Parliament, and, then, followed the process of democratization of Parliament.

The *Magna Carta* had curtailed the King's powers over his barons. The struggle between Cromwell and Charles had represented the claim to a share in power of the new rising class. The Revolution of 1688 had established the sovereignty of Parliament by reducing Monarchy to dependence upon it. But Parliament was still very far from being a democratic Parliament. Before 1832 there were only a few thousands of voters spread all over the country, and parliamentary seats—"pocket boroughs" or "rotten boroughs" as they were called- were in the gift of rich men, and were bought and sold like shares on the Stock Exchange. The First Reform Act of 1832 was a cautious measure which left the working class completely unrepresented. After all it added only 1,00,000 persons to the voters lists and it represented just the partial acceptance of the claim of the middle class. Parliament was, therefore, still a long way from being a people's Parliament.

At intervals after 1832 extending to 1928 there has been successive electoral reforms. First to the more substantial middle class, then to the

lower middle class and the workmen in the towns, then to the mass householders, then to adult males over twenty-one years of age and most women over thirty and afterwards to almost every person over twenty-one of either sex. The age of voting has now been reduced from January 1, 1970 to 18; adding another two million to the voting population of the country.

The essential changes which these eight centuries have brought about may, thus, be summarised :—

1. Eight centuries ago Parliament was called when the King wanted it. When it met, it could not make laws. All that it had to do was to grant the King the money he asked for, and to discuss the best way of raising the money by taxes. Today, the King must call a Parliament. It has become a regular thing and its meetings, except for intervals of recess, go all the year round.

2. From being a selected thing it is now an elected thing. The King does not select whom he will call to a Parliament. Members are elected by the people at regular intervals.

3. The right to take part in the election of members of Parliament, instead of restricted to a small section of the people, is enjoyed by all adults, men or women in the country who had attained the age of eighteen. This right they express through a system of secret ballot.

4. Power has passed from King to Parliament. The King is only a constitutional head of the State who acts on the advice of his Ministers and they in turn are responsible to Parliament.

5. That within Parliament, power has passed from Upper to Lower Chamber-from the Lords to the Commons.

Sovereignty of Parliament

The development of Parliament discloses how it conducted a struggle with the Kings to determine the residence of authority and to vindicate sovereignty for itself. This issue was practically determined in the seventeeth century and cosolidated in the eighteenth. Three landmarks illustrate the result. It was Parliament mutilated and under the control of the army but nevertheless Parliament that resolved in December 1648 to bring Charles I to trial[3] and his subsequent execution in 1649."[4] It was, again, the same Parliament that abolished[5] Monarchy by an Act and declared Britain to be a Commonwealth.[6] In 1660, it was, again, Parliament which restored Charles II to the throne, and on the condition of his co-operation with Parliament.

The second landmark was the Revolution of 1688 when James II, failing to co-operate with Parliament was made to abdicate, and it was again Parliament which supported the invitation to William of Orange to come over to defend Britain's rights against James II.[7] Parliament also determined, by the Bill of Rights of 1689, not only who should reign next, but also on what express conditions he should reign.[8] In 1701, Parliament made the Act of Settlement, an Act, which, *inter alia*, actually determined the succession to the throne.[9]

The third landmark is 1783 when, with the accession of Younger Pitt to office, the Cabinet system in all its essentials was finally fixed, and the King ceased to choose and dismiss his Ministers. Henceforth, in reality if not in form, Ministers came to be chosen and dismissed by parliament.

The power of Parliament is supreme and unlimited. It embraces a vast field including the making of laws, levying of taxes, the sanction for declaring of war and making of peace. It controls and supervises all governmental machinery. It can dethrone Kings; it can elect Kings; it can abolish Kingship. The power and jurisdiction of Parliament, said Sir Edward Coke, "is so transcendent and absolute, as it cannot be confined either for persons or causes within any bounds." Blackstone held the same view and used language to the same effect. Erskine May said, "The constitution has assigned no limits to the authority of Parliament over matters and persons within its jurisdiction. A law may be unjust and contrary

3. Act Erecting a High Court of Justice for the Trial of Charles I, Adam and Stephens, *Select Documents of English Constitutional History*, p. 389.
4. Sentence of the High Court of Justice upon Charles I, *Ibid.*, pp. 391-393.
5. Act abolishing the office of the King, *Ibid.*, pp. 397-399.
6. Act declaring England to be Commonwealth, *Ibid.*, p. 400.
7. It was called the *Convention Parliament*, the assembly resembled Parliament in every way, except that it was not convened by the King's writ, a state of affairs rendered inevitable by the flight of James II, and by the fact that William had not yet been crowned as King. The proceedings were, however, validated by the Confirmation Parliament Act passed on February 20, 1689, *Ibid.*, pp. 454-456.
8. *Ibid.*, pp. 462-69.
9. *Ibid.*, pp. 475-79.

to sound principles of government; but parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself." De Lolme declared that "Parliament can do everything but to make a woman a man, and a man a woman." But like various other remarks made by De Lolme this statement also involves confusion. If the power of Parliament be envisaged wholly from the legal point of view, the proposition that Parliament cannot make a man a woman is inaccurate. Should Parliament enact a law causing a confusion in the sexes, legally speaking, a man would be a woman and no other body can set the law aside on the grounds that it is unconstitutioal or undesirable. Parliament is not legally subject to any physical limitation.

"The Sovereignty of Parliament," said Dicey, "is from a legal point of view the dominant characteristic of our political institutions," and the principle of Parliamentary Sovereignty, he added, "means neither more nor less than this, namely, that Parliament thus defined has, under the British Constitution, the right to make and unmake any law whatever; and further no person or body is recognised by the law of England as having a right to override and set aside the legislation of parliament"[10] Dicey, thus set the following propositions:—

(1) That there is no law which Parliament cannot make; and

(2) That there is no law which Parliament cannot unmake.

From the above two follows the third :

(3) That there is under the British Constitution no marked or clear distinction between laws which are fundamental or constitutional and laws which are not; and

(4) That there is no authority recognised by the law of Britain which can set aside and make void such legislation.

Finally, Dicey added:

(5) That Parliamentary Sovereignty extends to every part of the King's Dominions.

To sum up, Parliament can legislate what it pleases, as it pleases, and that what Parliament enacts is law. What Parliament has enacted, the courts interpret and apply unless Parliament has otherwise provided. Parliament is both a legislative body and a Constituent Assembly. No formal distinction is made in Britain between constitutional and other laws, and the same body, Parliament, can change or abrogate any law whatsoever and by the same procedure. An Act of Parliament cannot be called into question in any court of law. Nor can it be declared invalid, for no law exists in Britain higher than that made by Parliament. Although Equity and Common Law are the oldest and most fundamental to the British Constitution, yet neither Equity nor Common Law can overrule the laws enacted by Parliament. If two Acts of Parliament are in conflict with each other, a more recent Act of Parliament takes precedence over a less recent and supersedes any earlier statutory provisions inconsistent with it.

The principle of the legal supremacy of Parliament also helps to explain the status of certain "fundamental and historical documents," like Magna Carta, the Petition of Rights, the Bill of Rights, the Habeas Corpus Act, the several Acts dealing with suffrage, etc., which are accepted as a distinct element or source of the British Constitution. In reality such "documents" possess the general character of statutes, and as they are connected with the structure or functions of government, they carry with them greater sanctity than an average statute. But any recent statute, though it is unlikely to be in conflict with the provisions of these legal landmarks, would nonetheless in law take precedence over them.

Finally, the right to this legislative supremacy resides in Parliament and in Parliament alone. Executive in Britain has not the power of issuing decrees which have the force of law save in so far as that power is conferred on it by Parliament itself and so can be taken away by Parliament.[11] Neither through the Royal Prerogative nor by any other means can any legal limitation be placed on Parliament. As a corollary, the right to impose taxes resides with Parliament alone. Again, Parliament alone has the right to legalise the past illegalities. Legally, therefore, Parliament can make or unmake any law, destroy by statute the most firmly established convention or turn a convention into a binding law, and legalise past illegalities reversing the decisions of courts. It even has power to prolong its own life by legislative means beyond the normal period of five years as determined by the Parliament Act, 1911.

Sovereignty of Parliament, however, is re-

10. Dicey, A., *Introduction to the Law of the Constitution*, pp. 39-40.
11. The famous exception, the Statute of Proclamations which only remained in force for a few years, is in one sense an illustration itself of this principle, since it was considered necessary to confer the decree-power on Henry VIII by an Act of Parliament.

ally nothing but a legal fiction and a legal fiction may assume anything. Dicey, and many others like him, dealt with only legal aspects of sovereignty divorcing it from the realities of actual life. And the reality of actual political life in Britain is that a legal truth very often turns out to be a political untruth. Parliament cannot do any and everything, and make or unmake any kind of law. There are many moral and political checks which limit its powers, and Parliament would find many other things as difficult to accomplish as to make a man a woman. Blackstone correctly said that, "It (Parliament) can, in short, do everything that is not naturally impossible." All proposals for law are considered on the touchstone of practical utility and moral considerations. In a law-abiding community, such as the British community, the very fact that Parliament has enacted a law is strong presumption that it will be obeyed. The ordinary citizen does not readily set up his own private judgment against that of Parliament. But there are limits to obedience too. "If a legislature decided," as Leslie Stephen suggests, "that all blue-eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; but legislators must go mad before they could pass such a law and subjects be idiotic before they could submit to it." In fact, no legislature can even think of such a legislation, particularly in a country like Britain where public opinion is strong and has the ready means of expression. Democracy is a government by consent and laws in a democratic government must necessarily be the manifestation of the will of the people. If they are not, the political sovereign takes his revenge. The supreme legislature, therefore, always takes care to keep itself within the practical restraints, though legally there may be none.

It is true, as Dicey said, that law is a law whether it is moral or not and legislation passed by Parliament may not have any reference to the moral aspect. But Parliament cannot pass a law which is against the facts of nature or is against the established codes of public or private morality. Similarly, it dare not pass legislation against the established customs of the country unless the people want it. Even the supremacy of Parliament is itself nowhere laid down as a fundamental and unalterable law. It is the expression of custom, the result of a long and ultimately successful struggle against the ordinance-power of the King. The will of the people triumphed in making Parliament supreme and sovereign and in this way sovereignty of Parliament became an organic principle of the British Constitution. And so are the conventions which carry with them the acquiescence of the people; the supreme and sovereign will. The conventions of the Constitution are, thus, an organic principle of the British Constitution as the Sovereignty of Parliament itself is and, accordingly, they are beyond the practical possibility of the competence of Parliament. This is a significant restraint against the Sovereignty of Parliament.

Another important feature of the British Constitution is the Rule of law. The conception of the Rule of Law was given classical exposition by Dicey as he had given to the Sovereignty of Parliament. The Rule of Law means that the ordinary law of the land is of universal application, that there is no exercise of arbitrary authority, and that there is no division into separate systems of law, one for officials and another for the ordinary citizens. It also carries with it the rule that the remedies of the ordinary law will be sufficient for the protection of the rights and liberties of the citizens, and, there is nothing in Britain as the Fundamental Rights. The Rule of Law is closely interwoven with the supremacy of Parliament. To put it in another way, Parliamentary supremacy is, in part, only tolerable, because the Rule of Law is recognised. If Parliament passes a legislation which is contrary to the principles of the Rule of law, it imperils its own supremacy, Sovereignty of Parliament and the Rule of Law remarks Barker, "are not only parallel; they are also interconnected, and mutually interdependent. On the one hand, the judges uphold and sustain the sovereignty of Parliament, which is the only maker of law that they recognise (except in so far law is made, in the form of 'case law', by their own decisions) ; on the other hand Parliament upholds and sustains the rule of law and the authority of the judges, who are the only interpreters of the law of the land."[12] Rule of Law is, therefore, an effective limitation on the legal Sovereignty of Parliament.

The most decisive proof of the legislative sovereignty of Parliament are those Acts which fix the limits of its own duration. The Triennal Act provided that no Parliament should last

12. Barker, Ernest, *Britian and the British People*, pp. 24-25. It should, however, be noted that the Executive has now acquired a power of administrative jurisdiction.

longer than three years, and the Septennial Act of 1716 enacted that it should last for seven years unless previously dissolved by the King. The Parliament Act of 1911 reduced its life to five years, and the same Parliament that introduced the change extended its own life by successive statutes until it had sat for almost eight years. All these extensions were made in times of war with the express approval of all the political parties and the tacit consent of the nation. What is more important to note is that in 1945, after the precedent of the First World War had been followed for almost five years, it was universally recognised that the Conservative majority in Parliament must not get another extension without the consent of the Labour minority. Accordingly, when Churchill asked his Labour colleagues to remain in the National Government without a General Election until the end of the Japanese War, he coupled his request with a suggestion that the electorate should be asked to signify its approval of the postponement of General Election by a referendum. The Labour Party did not agree and though Britain was still in the midst of hostilties. General Election was held and the electorate returned the Labour in majority to form the Government. No Parliament, therefore, dare extend its duration, permanent or temporary, until it has with it the tacit consent of the nation. While discussing the question of Sovereignty of Parliament, Heman Finer says, "All is true except that, in fact, there are limitations in practice to the authority of Parliament, limitations that are embodied in the authority of the electorate, mediated or not through the political parties. The sovereignty of Parliament, is limited by the power of the people—but by no other instrument."[13]

Yet, what is Parliament ? Jennings says, indeed, we talk in "fictions on concepts even when we mention 'Parliament'. Parliament is not an institution."[14] Parliament consists of the King, the House of Lords, and the House of Commons. All the three functionaries join together to complete the actions of Parliament. We need say nothing about the King, for his part in legislation has become little more than formal. The House of Lords and the House of Commons are two different institutions having different characteristics and different functions. The authority of the House of Lords with the passage of the Act of 1911, as amended in 1949, has become rigorously limited and if today the House of Commons were to pass a law abolishing the House of Lords, it can do it and the Queen must give her assent thereto. There is nothing to obstruct it. The conception of the Sovereign Parliament, therefore, now stands fundamentally changed. Under the present circumstances Parliament really is the House of Commons, and in the broader sense it means the majority party in the House which in its turn is the Cabinet. Parliament endorses what Cabinet proposes. And yet it is normally the joint action of the Queen, the Lords, and the Commons which law requires to make legislation possible. This is evident from the words with which an Act of Parliament opens : "Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same...."

Though, Parliament may legally legislate for the Dominions, yet its powers are rigidly limited by constitutional limitations. As a result of these constitutional limitations it is in accord with the constitutional position of all the Dominions, "in relation to one another that any alteration in the law touching the succession to the Throne, on the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of Parliament of the United Kingdom." Moreover, no Act of British Parliament passed after 1931 is to extend to a Dominion unless the Act expressly affirms that the Dominion concerned has requested and assented to it. Legally, North America Act of 1967, till April 1982, when Canada "patriated" its Constitution, could be amended by the British Parliament. But the convention which then governed the constitutional amendment was that it proceeded from the Canadian Parliament and the British Parliament quickly passed the required amendment. This process nullified Dicey's assertion that the right or power of Parliament extended to every part of the King's dominion. The Canadian Constitution Act, 1982, put an end to this anachronistic practice by which Canada, a full sovereign nation, had still to ask a foreign (British) Parliament to make changes in their own Constitution. The British North America Act, 1867, with all its amendments remains in existence but sans its previous nomenclature. It has now become the Canadian Constitution Act,

13. Finer, H., *Governments of Greater European Powers*, p. 47.
14. Jennings, W. I., *Parliament*, p. 2.

1867, together with its various amendments.

But the great inroad made on the sovereignty of Parliament is by the delegated legislation. Dicey, perhaps, did not visualise this modern development when he maintained that legislative supremacy lies in Parliament and in Parliament alone. Parliament cannot find time for all the work it has to do, and so lightens its task by permitting other bodies to take share in law-making. In some cases the Crown acting on its prerogative powers, is left to issue Orders, usually Orders-in-Council, and in other and numerous cases an Act of Parliament gives some Minister, Department, or other authority, the power to make Orders and Regulations. It is true that it is the Act of Parliament which authorises the issuing of Rules and Regulations, but a great mass of these Rules and Regulations practically remain unknown except to those who administer them. Cecil Carr divides the "Statutory Instrumentts", as these Rules and Regulations are now called under the Statutory Instruments Act of 1946, into separate classes, 'general and local' and estimates that their average exceeds 1,200 a year.[15] In 1946 the total just topped 2,287. Their number has since then still more increased. Parliament does not and cannot keep a check on this tremendous increase in the delegated legislation and they have the force of law and the courts can intervene only when the rules and regulations so made are against the delegation of power or when proper procedures have not been used.

The jurisdiction of Parliament is also limited by practices of International Law. It is now a recognised principle of the British Constitution that International Law is a part of the Municipal Law of the land. It was decided in *West Rand Gold Mining Co.* vs. *The King* "that whatever has received the common consent of civilised nations must have received the assent of our country." Any legislation which is repugnant to the principle of International Law Parliament cannot enact.

Dicey himself recognised the formal and purely legal aspect of the doctrine of the Sovereignty of Parliament and proceeded to point out that this formal concept operated within two limits, external and internal. Ultimately, the legal sovereign derives its authority from the political sovereign. Political sovereignty is tersely but fully stated in Labour Party pamphlet circulated in the elections of 1945:

"It really does rest with you. You may complain about statesmen and politicians. You may criticise Parliament. But you give statesmen power. You elect politicians to Parliament. You determine the membership and thereby the policy of the House of Commons.[16]

You meant the voters, and the House of Commons is really Parliament, it is the principal pillar on which national democratic government rests. Legally, Parliament can make and unmake any kind of law, but in actual practice it must bow to the will of those who determine the membership and policy of the House of Commons. It cannot ignore the wishes and interests of those who are likely to be affected by its legislation.

Finally, with the accession of Britain to the European Community on January 1, 1973, the provisions of the European Communities Act (passed by Parliament) applying the Treaty of Rome became operative, and Parliament subjected itself to various types of Community legislation, including regulations made thereunder and directives issued from time to time by the Council of the Community. These directives are binding upon each member-State of the Community to which they are directed. The British Parliament can make no deviation therefrom. The only option allowed to Parliament is to choose the form and method of implementation. Under the Treaty of Rome the Parliaments of all member-States delegated a number of their members to sit in the European Community Parliament. to deliberate and decide matters coming before it. European Parliament is now elected directly by the people of the member-states. Parliament in Britain has adopted special parliamentary procedures to keep its members informed about Community developments, and enable them to scrutinise and debate matters which are to be decided by the Community's institutions. But Britain's accession to the Community, as a result of the nation-wide referendum—which itself negates the sovereignty of Parliament—completely erodes the concept of Parliament's sovereignty. The British Parliament cannot legislate on or take decisions on matters that conflict with the decisions of the Community's institutions. The decisions and directives the British Government receives are binding and take direct effect. Lord Dunning ruled in April, 1980 in the case of

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15. Campion and Others, *Parliament : A Survey*, p. 241.
16. Finer, H., *Government of Greater European Powers*, p. 59.

stockroom manageress Wendy Smith that the European Common Market Law took priority over the English statute law. He held that the Common Market Law, by virtue of Britain's accession to the Treaty of Rome, was binding and, consequently, overriding. This, perhaps, is the first instance in which an Act of British Parliament has been overruled in deference to a non-British Law, thus, reducing the Sovereignty of Parliament to less than a legal fiction.

The Sovereignty of Parliament, therefore, operates within the limits imposed by conventions, public opinion, morals of the community, expediency, International Law, and International Agreements.

THE HOUSE OF LORDS

Parliament now consists, apart from the King himself, of two Houses—the House of Lords or the Upper Chamber, and the House of Commons or the Lower Chamber. It was not always so, and on the most formal occasions it is not so even today. When the King opens Parliament, or prorogues it, or when his assent to the Bills is announced, all members of Parliament—Lords Spiritual and Temporal and Commons—assemble in one Chamber, and there listen to the King in his person or his message. Ordinarily, however, the Peers do their business in one Chamber and the Commons in another.

In Britain nothing is arranged. It just grows and the House of Lords is the child of this growth. When Edward I called his Model Parliament in 1295, all the different classes of people summoned to attend met in one single assembly. But afterwards they broke into three groups or "estates"—Nobles, Clergy and Commons—to hear separately the King's plea for money and "to make such response as they individually chose". Gradually, however, practical interests led to a different arrangement. The greater barons and the greater clergy[17] had many interests in common and they, accordingly, associated together in one body. The lesser clergy found attendance at Parliament very irksome. Moreover, they were jealous of their clerical privileges and preferred to make their money grants to the King in their "Convocation." They soon ceased to attend Parliament altogether. Similarly, the Knights, after a good deal of wavering, found their interests identical with the burgesses and finally united with them for all purposes. The result was the division of Parliament into two Houses. In one House sat the Peers—Temporal and Spiritual—in the other, the representative Knights of the Shires and the representative Townsmen. The first, which became the House of Lords, was a non-representative House, as it was composed of men who attended in response to personal summons. The second was a completely representative House, called the House of Commons, as it consisted of the representatives of the Shires and the Boroughs.

How and when exactly this arrangement came about, nobody knows. It was accidental and the result of social and economic circumstances. By the close of the reign of Edward III, this bicameral organisation seems to have been fully established.[18] Thenceforward the distinction between the two Houses became political.

The hereditary principle came into being similarly. The term "peer" means *equal* and originally it referred to the feudal tenants-in-chief of the King all of whom were legally peers of one another. After the division of Parliament into two Houses in the fourteenth century, it was being used for those members of the baronage who were "accustomed" to receive a personal writ of summons when a Parliament was to be held. There is no evidence to show that the Kings had ever a mind to create a peerage of a hereditary character. It was, however, a custom that a King, whenever he summoned a Parliament, would send for the same peers who had sat in an earlier one, or if in the meantime they had died, for their eldest sons. In course of time, custom became a right and a seat in the House of Lords descended from father to eldest son, just as did the family estate under the rule of primogeniture.

Composition of the Lords

Potential membership of the House of Lords is over 1,000, but this number is reduced to about 760 by a scheme which allows Peers who do not wish to attend to apply for leave of absence, either for the duration of a particular Parliament or for a single session.[19] Average daily attendance is upwards of 250 but more may attend when some matter in which they have a special interest is under discussion. Its composition may be divided into the following seven categories :

17. The greater clergy were not simply clergies, but they were feudal landholders too.
18. Adams, G. H., *Constitutional History of England,* pp. 194-95.
19. Provision is made for a Peer to terminate his leave of absence on giving a month's notice.

1. The Princes of the royal blood, who now-a-days take no part in the proceedings of the House.[20]

2. *The Lords Spiritual,* 26 in number and include the two Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and 21 most senior Bishops of the Church of England. When a sitting Bishop dies or resigns, the next senior on the list becomes entitled to a writ.

3. The *Lords Temporal* subdivided into:

(i) all hereditary Peers and Peeresses, now 700 in number who have not disclaimed their Peerages under the Peerage Act, 1963. Hereditary Peers carry with them a right to a seat in the House of Lords, provided the holder is 21 years of age or over. Under the Peerage Act, 1963, however, anyone succeeding to Peerage may, within twelve months of succession, disclaim that Peerage for his or her life time. Those who disclaim their Peerages lose their right to sit in the House of Lords, but are eligible for election to the House of Commons;

(ii) until 1963 the Scottish Peers elected for each Parliament sixteen representative Peers to sit in the Lords. The Peerage Act, 1963, opened membership of the Lords to all Scottish Peers;[21]

(iii) nine Lords of Appeal in Ordinary (commonly called the Law Lords), appointed under the provisions of the Appellate Jurisdiction Act, 1876, to assist the House of Lords in the performance of its judicial functions. They hold their seats for life; and

(iv) life Peers and Peeresses created under the provisions of the Life Peerage Act, 1958.[22] There are at present more than 200 life Peers.

By far the most important and the most numerous are the hereditary Peers and they account for more than seventy per cent of the total membership of the House. A great bulk of them hold their seats simply as a result of chance as they happen to be the eldest son of an eldest son back to an ancestor who was first created a peer. They are the "accidents of an accident", as Bagehot has called them. Nearly one half of the total of the hereditary Peers are the creation of the twentieth century. Another 300 go to the nineteenth century, and the rest go up to the thirteenth century. The bulk of the Peerage is, therefore, of recent origin. No hereditary peerage has, however, been conferred since 1965.

The power of the Crown to create hereditary peers, until 1965, was unlimited and till then it had been used with great freedom. Normally, it was usual to create anything from two to half a dozen new Peers a year and the object was to honour men of distinction in law, letters, science, politics, diplomacy, war, or for any other meritorious services, But it had also been an important constitutional weapon in the hands of the Crown to change the complexion of the House of Lords in order to overcome its resistance to the avowed policy of the party in power. It was actually used by the creation of twelve Tory Peers in 1711 in order to secure approval of the Treaty of Utrecht. In 1832 the continued resistance of the House of Lords to the Reform Bill incurred the threat to create as many new Peers as Earl Grey's Ministry deemed necessary to get the measure passed. A similar situation arose over the Parliament Bill of 1909. Once again, the reluctant House of Lords succumbed to the threat. In view of the provision of the Parliament Act of 1911 and scrupulous adherence to the "mandate convention" there had been no more occasion to resort to this method of securing the assent of the House of Lords over an issue on which electorate had given its verdict.

Sometimes the Government of the day needs spokesmen in the Lords or must fill Royal Household appointments. Peerage is, accordingly, conferred on men of talent and loyalty. Lord Passifield, formerly Sidney Webb, was raised to peerage in the first Labour Government and scores of others were elevated from 1945 to 1965.

Privileges and disabilities. Members of the House of Lords have certain privileges and are under certain disabilities. They enjoy freedom of speech and are exempt from arrest while the House is in session. The Lords can individually approach the King to discuss public affairs. They have also right of recording a protest against any decisions of the majority in the House in its

20. There are now three peers of royal blood; Prince Charles, the Prince of Wales, Dukes of Gloucester and Kent.
21. By the Act for the Union of Great Britain and Ireland, the Irish Peers were entitled to elect 28 representatives, but no elections have been held since the creation of the Irish Free State (now the Irish Republic) in 1922, and no Irish Peers now remain.
22. Some of the appointments under the 1958 Act, are recommended by the Prime Minister after consultation with the Leader of the Opposition or with the Leader of the Liberal Party and its alliance.

Journals. They have the right to commit for contempt of their privileges and that right extends beyond a session. A Peer when charged with treason or felony had the right to demand trial by his fellow Peers but the privilege with regard to felony was withdrawn in 1936. The Peers have, also, the right to act as a court of final appeal for the realm, but this right is now exercised by the Law Lords only.

The members of the House of Lords had no right to vote at Parliamentary elections, and they were disqualified for election to the House of Commons. They could not divest themselves of their titles or refuse inherit them when their elders died. Consequently, it was a matter of much tribulation "when their heir who has made a career for himself in the Commons and Ministry must leave the excitement of these centers of government with the prospects of high office, even the Prime Ministership, to go to the House of Lords". Three recent examples are good to illustrate the point. One is Quintin Hogg, son of Lord Hailsham, an eminent lawyer and once a Commoner who bitterly suffered his "promotion". The other was the Marquess of Salisbury. Lord Stansgate's son and heir, Anthony Wedgwood Benn, in vain fought hard to avoid eventually inheriting his father's title Winston Churchill was willing to be kinghted, but he firmly refused the peerage, for he rejoiced in remaining a "House of Commons man".

With the passage of the Peerage Act, 1963, the old position is changed. It now enables any hereditary Peer with political ambitions to disclaim peerage, and seek election to the House of Commons. Wedgwood Been, Viscount Stansgate, was the first to renounce his title and won back his seat as Labour M.P. The enactment of Peerages Act was the result of nearly ten years' struggle of this "reluctant peer." Persons who disclaim their peerages lose their right to sit in the House of Lords, but they are able to vote at parliamentary elections and are eligible for election to the House of Commons. Lord Home disclaimed his peerage and became Sir Alec Douglas-Home. He became Prime Minister after the resignation of Harold Macmillan.

The membership of the House of Lords was hitherto entirely male. Although there were some twenty-six peeresses in their own right, holding titles by virtue of decent from male ancestors, but they were not admitted. Even now those who are allowed to sit and vote in the House of Lords are the life Peeresses. The male Peers, who have not renounced their titles cannot seek elections to the House of Commons, but the wives of Peers may sit, as did Lady Astor for many years. Similarly, the husbands of new life Peeresses retain their right to seek election to the House of Commons, as they will get no title.

The Peers receive no salary for their parliamentary work, but they are entitled to travelling expenses from their homes to the Palace of Westminster, provided they attend at least one-third of the number of sittings. They may also claim, with the exception of the Lord Chancellor, the Lord Chairman of Committees, the Law Lords and any member in receipt of a salary as the holder of a ministerial office, payment for expenses incurred for the purpose of attendance at the House (except for judicial sittings). The Leader of Opposition in the Lords receives an annual salary.

Procedure and Organisation

The two Houses of Parliament must invariably be summoned simultaneously and both are prorogued[23] together, but adjourned[24] separately. The House of Lords meets only for four days in a week—Monday to Thursday—and normally for two hours or thereabout. Friday sittings are arranged when pressure of business demands. The precedent is that except under direct pressure, discussion must be concluded in time to enable the noble Lords to dress for eight o'clock dinner. The House is sparsely attended. The usual attendance used to be from 70 to 80 members and that, too, on occasions when a matter of first rate importance was being discussed. Now the average daily attendance at a sitting is over 250. It is one of the results of the Reform Act of 1957. Three members constitute a quorum, but at least thirty must be present in order to pass any Bill. According to Standing Orders promulgated by the House in 1958 holders of peerage are asked, at the beginning of each Parliament, whether they will attend the sittings of the House as reasonably as they can or whether they desire to be relieved of the obligation to attend. If they so desire, they

23. At the end of a session of Parliament the King dismisses it and tells to reassemble on a certain date to begin a new session's work. This dismissal is called proroguing. Parliament prorogation both ends a session and terminates all pending business.

24. To adjourn means merely to interrupt the course of business temporarily. At the end of each day's work, and whenever it takes a holiday, Parliament adjourns.

are requested to apply for leave of absence, either for the duration of Parliament or for a shorter period, during which they are on their honour not to attend, and not to vote without notice. Failure to send a reply to the Lord Chancellor is tantamount to the wish not to attend. This is a useful step to wards rationalising the composition of the House of Lords.

The debate is more leisurely than in the House of Commons. Freedom of speech is virtually unrestricted and the presiding officer, the Lord Chancellor, has far more limited power over debate than enjoyed by the Speaker in the House of Commons. The Lord Chancellor is a Chairman, not a Speaker as in the Commons. The level of debate is high and on certain occasions higher than that of the House of Commons.

The organisation of the House of Lords closely parallels that of the House of Commons. The Lord Chancellor is the presiding officer. The Crown, by commission under the Great Seal, appoints several Peers to take their place on the "Woolsack" in order of precedence in the absence of the Lord Chancellor. The first of the deputy speakers to act for him is the Lord Chairman of Committees, who is appointed each session and takes the chair in all Committees, unless the House otherwise directs. He also has important duties in connection with Private Bills Legislation in which he is assisted by his Counsel, who is a permanent salaried officer of the House. The House also appoints a number of Deputy Lord Chairmen of Committees. The permanent officers of the House include the Clerk of the Parliament, who is charged with keeping the records of proceedings and judgments and who pronounces the words of assent to Bills, the Gentleman Usher of the Black Rod, who enforces the order of the House, and the Sergeant-at-Arms, who attends the Lord Chancellor. The appointment of the Sergeant-at-Arms and that of the Gentleman Usher of the Black Rod are now held by the same person.

The Committee system of the House of Lords is more simple than that of the House of Commons. The Lords conduct some of their business in the Committee of the Whole House and it consists of the members present. It is presided over by the Lord Chairman of Committees and it operates under less formal Rules of Procedure than when the House is in regular session. The House has no Standing Committees except one for textual revision to which Bills are referred after passing the Committee of the Whole House. Sessional and Select Committees are utilised for the consideration of special kinds of legislation or for gathering of additional information on pending Bills. Sessional Committees may consist of all members present during the session or of small number as determind by the House. There are a number of Select Committees on Private Bills, consisting of five Peers, appointed in each session.

The Lord Chancellor

The presiding officer of the House of Lords is the Lord Chancellor, a member of the Cabinet. He presides while sitting on the traditional "Woolsack", a large and rather shapeless divan. The Lord Chancellor is usually a Peer and if he is not, he is created one immediately after his appointment. It does not, however, mean that a Commoner cannot be chosen to that office. The "Woolsack" is technically placed outside the precincts of the House of Lords to enable those who are Commoners to perform their official duties as presiding officers of the House.

The powers and functions of the Lord Chancellor are many and varied. Here we are only concerned with those connected with the occupant of the Woolsack.[25] His powers as presiding officer are absolutely insignificant as compared with the Speaker of the House of Commons. They even fall far short of those commonly assigned to a moderator. The questions regarding procedure are decided by votes of the House. For example, if two or more members simultaneously attempt to address the House, the House itself, and not the Chair, decides who shall have the floor. The proceedings of the House of Lords are extremely orderly, but if order in debate is to be enforced, it is done by the House and not by the presiding officer. When the members speak, they do not address the Chair, but the House and begin with "My Lords." If the Lord Chancellor is a Peer, he may join in the debates of the House. When he does so, he steps away from the Woolsack. He may even vote, on party lines, like any other member, but in no case does he have a casting vote.

POWERS AND FUNCTIONS OF THE LORDS

Powers before 1911

As said earlier, Parliament began its career as an advisory body of the monarch without any

25. For other functions of the Lord Chancellor see Chap. IX, *infra*.

legislative power. But gradually Parliament established the principle that the King should not levy taxes without the consent of Parliament, and how Parliament granted supplies to the King on the redress of grievances. But while this struggle between the King and Parliament was continuing, there developed a struggle within Parliament as to which House should speak for Parliament on financial matters. The Commons in the reign of Richard II, demanded the right to be consulted on money matters, and in the reign of Charles I they claimed that the grants of money given to the King were exclusively their right. Later in 1671, they maintained that though grants of money required the consent of the House of Lords, but it was not within the power of that House to offer amendments to any financial proposals from the Commons.

In 1678, the Commons passed another resolution of a still more comprehensive character. It asserted "that all aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons, and all Bills for the granting of such aids and supplies ought to begin with the Commons; and that it is the undoubted and the sole right of the Commons to direct, limit and appoint in such Bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords." The House of Lords never admitted this claim to sovereignty by Commons on financial matters, although by usage gradually the Lords acquiesced to the claims of the representatives of the people. In 1860, however, the House of Lords made a bold attempt to reject a Bill for the repeal of duties on paper. But the Commons made a defence and got it through. Control over financial matters, they reiterated, was the exclusive business of the House of Commons and any attempt on the part of the Lords to tamper with or in any way modify the financial powers of the Commons would be regarded by them as an infringement of their privileges.

The beginning of the present century witnessed another bid on the part of the House of Lords to revive its powers. Having become bold by rejecting some legislative measure in 1832, 1889, and 1893 they rejected the proposals of Lloyd George which aimed to levy certain new taxes on landed property and claimed it to be their political right to do so. This became a regular issue of first rate constitutional importance with the Liberal Government which was placed in power early in 1906 by the most sweeping electoral victory. The outcome of this struggle was the passage of the Parliament Act of 1911. This Act not only confirmed the sovereignty of the House of Commons in money matters, but made it "omnipotent in matters of ordinary legislation too." The Act virtually abolished the power of the Lords either to amend or reject a Money Bill.

With regard to ordinary legislation the House of Lords possessed co-equal powers with the House of Commons. All Bills, except Money Bills, could, and still may, originate with the Lords, although by usage nine-tenths of them start their career in the Commons.[26] The House of Lords could, and it did, amend or reject a Bill passed by the House of Commons. It might continue to reject a Bill passed continually by the House of Commons and it did this on various occasions. When after a bitter struggle, Gladstone could see his second Home Rule Bill through the Commons only to have it rejected in the Lords he felt that "the cup of grievances was full." In his last speech in Parliament, the retiring Prime Minister referred to the struggle that had begun between the two Houses and predicted that it would have to go forward to an issue. The prediction came out true and the issue was brought to a head in 1909 which ultimately ended into the Act of 1911 thereby curtailing its powers over ordinary legislation too.

Before the Parliament Act, 1911, the House of Commons had no means to assert its will. The only alternative with the Prime Minister was to ask the King to create enough Peers to swamp the House of Lords. But it was a drastic measure and no Prime Minister would ask for it without being sure that he had the support of the electorate. The only recourse for him, under the circumstances, was to ask for dissolution of the House of Commons and put the issue before the public at a general election. If it was ratified by the electorate, the Lords were expected to give way and this they usually did. But when the verdict of the people was sought in 1910, they did not care for the precedent. On November 16, the King agreed that if the Liberals were returned after a second General Election and the House of Lords rejected the Government's Bill to limit the power of the House of Lords to reject Bills, he would create sufficient new Peers sympathetic to the Govern-

26. Most of the Bills which originate in the House of Lords are Private Bills and other non-controversial Bills, like a Judicial Bill.

ment to ensure the Bill's passage.[27] The General Election held later in the year showed little change, and the Parliament Bill was, accordingly, introduced again. Eventually the news of the King's pledge to create sufficient new Peers was made public; and when it came to a vote on the Bill in the House of Lords, a number of opponents of the measure abstained, and it became a law of Parliament.

The Parliament Act, 1911

The Parliament Act, 1911, is of fundamental constitutional importance. It sealed the victory of the House of Commons statutorily. Under this Act the House of Commons attained a recognition of three principles, and thereby of its own final and conclusive sovereignty. The first principle was that the Commons alone had control of all Money Bills. The House of Lords could only delay and its delaying power was limited to one month only. Out of this emerges the second that the House of Commons alone had control over the Cabinet, and, finally it could pass by itself alone and without the concurrence of the Lords, any legislative measure which was affirmed by its vote in three successive sessions (whether of the same Parliament or not); the Lords exercised only delaying power for two years. The Act also declared that a Second Chamber constituted on a popular rather than a hereditary basis would be set up. The relevant clauses specified:—

1. "If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that House, the Bill shall, unless the House of Commons directs to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal assent being signified, notwithstanding that the House of Lords have not assented to the Bill."

It means that should the House of Lords withold its assent to a Money bill for more than one month the Bill would be presented to the King and become law on receiving the Royal assent, nothwistanding that the House of Lords have not assented to the Bill.

2. The term Money Bill was so defined as to include measures relating not only to taxation, but also to appropriations and audits. The Speaker was empowered to certify whether a given measure was or was not a Money Bill.

3. "If any Public Bill (other than a Money Bill or a Bill to extend the maximum duration of Parliament) is passed by the House of Commons in three successive sessions (whether of the same Parliament, or not), and having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, the Bill shall on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill : Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes in the House of Commons in the third of those sessions."

This clause provided that a Bill passed three times by the Commons in successive sessions, and each time rejected by the Lords might be presented to the King for his assent provided two years had elapsed between the initial proceedings of the Bill in the House of Commons and its final passing in that House in the third session.

The Amending Act, 1949

In addition to the specific provisions of the Parliament Act, 1911, there was an understanding that the House of Lords would not reject a measure for which there was a mandate from the electorate at the preceding General Election. But the Labour Party was not satisfied with the statutory limitations which the Act of 1911 imposed, particularly relating to ordinary legislation in forcing a delay of two years before a Bill could be finally enacted. The 1945 manifesto of the Labour Party affirmed : " .....We give clear notice that we will not tolerate obstruction of the people's will by the House of Lords." When the Labour Party came into power something dramatic was expected. But nothing actually happened till October 1947, when the Speech from the Throne disclosed the Government's intention

27. "After a long talk (with Asquith)", wrote the King in his diary, "I agreed most reluctantly to give the Cabinet a secret understanding that in the event of the Government being returned with a majority at the General Election, I should use my prerogative to make the Peers if asked for. I disliked having to do this very much, but agreed that this was the only alternative to the Cabinet resigning, which at this moment would be disastrous." Nicolson, H., *King George the Fifth*, p. 138.

to introduce immediately a Bill to amend the Parliament Act, 1911, by reducing from three sessions to two and from two years to one the maximum period during which measures passed by the House of Commons could be held up. This sudden announcement was necessitated by the Government's determination to nationalise the iron and steel industry. The Government could rightly anticipate the opposition of the House of Lords and it was, accordingly thought necessary to clear the way for the passage of the measure in the fourth year of its term of office. The Amending Bill was introduced in November 1947 and at all stages it met a stout opposition from the Lords.[28] It, however, passed over the Lords' veto two years later modifying thereby the procedure of the Parliament Act, 1911, relating to ordinary legislation.

According to the Amending Act of 1949, a Bill may now become law despite its having been rejected by the House of Lords if it has been passed by the House of Commons in two successive sessions (instead of three as provided in the Act of 1911), and, if one year (instead of two) has elapsed between the date of the second reading in the first session in the House of Commons and the final date on which the Bill is passed by the House of Commons for the second time. The 1949 Act, thus, reduced from two years to one the period during which the Lords may delay Bills which had passed the Commons.

Present Powers and Functions

The powers and functions of the House of Lords are fixed by the Parliament Act, 1911, as amended in 1949. They may be reduced into four main groups :—

(1) The power of amending or delaying legislation other than financial legislation;

(2) The power of influencing Government and people by debate;

(3) Executive powers; and

(4) Certain judicial powers.

On the Money Bill the power of the House of Commons is absolute. If the House of Lords withhold their assent to a Money Bill and what is a Money Bill is determined by the certification of the Speaker of the House of Commons, for more than a month, the Bill would be presented to the King and become a law on receiving the Royal assent. What is meant by a Money Bill was defined in the Act, but each such Bill has to bear a certificate by the Speaker that the Bill is a Money Bill within the meaning of the Act.

A non-money Bill passed by the House of Commons in two successive sessions with an interval of at least one year between its first and second readings and final passage in the House of Commons will become a law after having received the Royal assent irrespective of its having been rejected by the House of Lords.

The second function of the House of Lords is the influencing of Government and the people by its debates. Among the Peers, who make a habit of participating in the debates and votes, are generally elder statesmen and others who have spent their lives in public service and whose talents place them high in the world's esteem. No Government which is obliged to submit to criticism and to the need for explaining its actions and views can ignore the opinion expressed by such elder, seasoned and veteran statesmen and politicians. The debates are free, outspoken and sometimes reach a much higher dialectical level than in the House of Commons. This is obviously due to many reasons. The Lords are not subject to so many restrictions on debates as the Commoners are. Their discussion is all the more free because of the impossibility of overthrowing a Government by an adverse vote in the House of Lords. The furthest that the Lords can do is to delay the passage of legislation for one year. Secondly, their positions are secure. Not being subject to dissolution, and not being liable to seek re-election every five years, the Lords do not have to speak with one eye on the reactions of their voters to their speeches. They are responsible to no one but then no one is responsible to them. They need not follow the Party Whip and are free from that form of parliamentary pressure known as "lobbying." Moreover, the House of Lords is an august Chamber, a reservoir of expertise knowledge. It contains amongst the galaxy of its members past Prime Ministers, may be three or four at a time,[29] and Ministers, who had made their mark on the political life of the nation.

As it is, the result is that debates in the House of Lords, which are based upon experience and ability, set a very high standard of discussion and a thorough thrashing of the issues. Lords'

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28. In the House of Commons the vote on third reading was 323 to 195, with Liberals supporting the Government whereas in the Lords it was 204 to 34 for rejection with the Liberals opposing the Government. It was a vote of very unusual size for the House of Lords.

29. There was in November 1986 only one, Harold Macmillan. On his death there is none now.

debates can and do exercise a very definite influence on Government, and through the press, on the public opinion generally. "It is sometimes a truer sounding board than the House of Commons itself."[30] Herman Finer gives a beautiful summing up of the influence which Lords exercise. He says, "The House of Lords had and still has important legislative authority, but this is distinctly inferior to that of the Commons. Yet still retains some, far from negligible. Beyond this, it remains one of the most distinguished forums of public debate in the world, for it has the right to discuss any phase of legislation, policy, and administration,....a substantial part of its membership is of exceptional distinction in intellect and political, social and business experience. These constitute a body of public-spirited experts, able to talk with great intelligence and knowledge, and really to do so with an aloofness from immediate partisan politics because they are not dependent for their status on appeals for popular election, and with abundant time to deliberate, as the Lords are far less pressed with decisive business than the Commons. This candid expertise has influence with the public, the government, and the civil service."

Executive Powers

The Lords had and still they have the power to ask questions, to elicit information from the Government on any aspect of administration and a full right to debate its policies. They exercised and still exercise equal power with the Commons to approve or disapprove the Statutory Instruments and jointly participate with the Commons on the removal of the Judges. In the course of the sixteenth century the Lords lost actual power to control the Executive. But they still enjoy a share in the Cabinet membership, partly because the House of Commons Disqualification Act, 1957, as amended by the Ministers of the Crown Act, 1964, limits the number of Ministers who may sit in the House of Commons, and partly because every Government must be assured of spokesmen of standing to expound its intentions and actions to the House of Lords. In recent years, it has been usual for the House of Lords to include about 20 office-holders, among whom are the Government Whips, who are members of the Royal Household, and act as spokesmen for the Government in debate. The number of Cabinet Ministers in the House of Lords varies; there are usually between two and four out of a total number of about 20. In the Government of June 1955, Lord Chancellor, Lord President, the Minister for Colonies, the Minister for Air, Paymaster-General, Minister without Portfolio, Minister of State for Foreign Affairs belonged to the Lords. Only the first four were in the Cabinet. In the Labour Government of 1950 three Cabinet Ministers, two outside the Cabinet, and five Under-Secretaries were in the Lords. Prime Minister Harold Macmillan appointed a Peer, the Earl of Home, as the Foreign Secretary. The appointment produced a storm of opposition from the House of Commons. Mrs. Margaret Thatcher, once again, appointed a peer, Lord Carrington, as Foreign Secretary. Two other Foreign Secretaries, to sit in the House of Lords in this century, were Lord Curzon in 1923 and Earl of Halifax before the outbreak of World War II in 1939.

The House of Lords performs two judicial functions. The first is the trial of unpeachment cases on charges preferred by the House of Commons. With the acceptance of the principle of ministerial responsibility this power of the Lords has become obsolete. The last impreachment occurred in 1805. The second judicial function is that the House of Lords is the Supreme Court of Appeal in civil cases for Great Britain and Northern Ireland. But the whole House now never meets as a Court of Appeal. It is only the Lords of Appeal or the nine Law Lords, with the Lord Chancellor presiding, who do the judicial work of the House. The Law Lords are, so to speak, a small specialised committee of the House of Lords to whom the function of hearing appeals has been delegated.

REFORMING THE LORDS

No other political institution in Britain has been criticised to such an extent as the House of Lords. The slogan of the Labour Party since 1907 is to end the House of Lords as a hereditary Chamber is a political anachronism in a democratic age. The Liberal Party, on the other hand, had its political creed for reforming it and a comprehensive reform of both the composition and the powers of the House of Lords was envisaged in the Preamble to the Parliament Act of 1911, but the former was not enacted. Abolition of the Lords has not been attempted by any Labour Government, "partly it would seem because the Second Chamber is recognised as being capable of performing useful legislative and deliberate functions, especially for Labour Govern-

30. Brown, W. J., *Everybody's Guide to Parliament* (1952), p. 52.

ments which tend to have heavier legislative programmes than Conservative Governments."[31] Since 1911 two measures affecting the composition, but not the powers, of the Lords have been passed : The Life Peerage Act, 1958, and the Peerage Act, 1963. Both these Acts came from the Conservative Governments. The general attitude of the Conservative Governments towards the House of Lords in this century has been to defend its obstructive powers and advocate minor reforms of its composition "in order to make it more respectable and thus more justifiable in the use of its existing powers."[32] Proposals to eliminate the present hereditary basis of the House of Lords and to reduce its powers were published in a White Paper and legislation to give effect to these proposals was promised within a year's time, but nothing came out of it.

The drastic amendments of the "Socialist Bills"—nationalisation of aircraft and shipping industries—by the House of Lords in November, 1976, once again, brought into sharp focus the role of the House of Lords as a second chamber of legislature. Eric Varley, Minister of Industries in the Callaghan Government, gave a warning to the House of Lords to desist from wrecking and mutilating the Bill coming from the House of Commons. He called on the Lords to realise that if they forced a confrontation with the House of Commons, "there can only by one outcome—the abolition of the House." The Conservative Lords, supported by some Liberal Peers, rejected Varley's warning and said that they would continue to obstruct these "Socialist Bills." The anger in Labour ranks against the House of Lords was indicated by a Labour Member of Parliament calling on the Prime Minister to create 400 new peers to redress the balance between the Lords and Commons. By an overwhelming majority of $6\frac{1}{2}$ million to 91,000 the annual conference of the Labour Party, in October 1977, voted to abolish the House of Lords. The Party prepared a 2-policy document which proposed to abolish the rights of hereditary Peers, and to revise the system of life Peerage, which was a compromise that the Labour Party had accepted earlier. The membership of the reformed House was to be drawn from both sides of the industry, employers and unions, from the public and private sectors and from Local Government elected or nominated by their respective organisations. The House so constituted would be named Lords of Parliament or Parliamentary Aldermen. The House would have no veto or delaying power over the House of Commons.

But the Labour Government, headed by James Callaghan, had a precarious majority of one which was ultimately reduced to a minority Government depending upon the support of the Liberals and Scottish Nationalists could not dare to abolish an institution that rightly boasted of some of the greatest minds that Britain had ever produced. When the Liberals and the Scottish Nationalists withdrew their support in March 1979, Callaghan was defeated on a vote of no confidence. The Conservative Party received the electoral mandate in May 1979 General Election and formed the Government with a comfortable majority in the House of Commons. The issue of abolishing the House of Lords had no meaning during the Conservative regime. Nor is there any possibility that the House of Lords would be abolished in the very near future even if the Labour Party, which itself has split, comes into office. Tony Blair has declared that he would institute drastic reforms in the composition and functions of the House of Lords during the current tenure of the Labour Government.

Arguments against the Lords

The arguments which are generally advanced against the House of Lords are :

The House of Lords as at present constituted is a political anachronism in a country with thoroughly democratic institutions. The composition of the House still remains what it has been for centuries and more than seventy per cent of the Peers sit in their places because their forefathers sat before them. There may be hereditary genius on a large and sweeping scale. Even if it may be conceded that all the Peers have the making of capable legislators, no test of their aptitude has been applied. And even if ability of all the Peers were positively proved "the modern world," as Finer points out, "has rejected the application of ability to government unless it is representative of the interests of those expected to obey the Law."[33] No elective principle, popular or occupational, characterises the composition of the House of Lords. The Peers are responsible to nobody save themselves. They take their seats by their own right. They need no party labels, and no jealous constituency watches their

31. Punnett, R. M., *British Government and Politics*, p. 275.
32. *Ibid.*
33. Finer, H., *The Theory and Practice of Modern Government*, p. 407.

votes or takes a note how diligently and regularly they attend to their duties. In other words, as Jennings points out : "They have not to trim their sails to the breeze of public opinion."[34] And yet they claim that they are representatives of the people enjoying their full confidence. Webbs, Sidney and Beatrice, had aptly remarked, "Its (House of Lords) decisions are vitiated by its compositon; it is the worst representative assembly ever created...[35]. Patrick Gordon Walker, speaking for the Labour Party in the House of Commons on the Peerage Bill maintained (June 19, 1963) that it should be considered only a first step towards complete abolition of hereditary peerage. The Life Peerage Act, 1958, was designed as means of infusing new life into the House of Lords. But the Labour Party criticised the measure as an attempt by the Conservative Government to give no authority to the Lords, while avoiding the basic problem of the hereditary element. The Peerage Act, 1963, has not at all helped to change the complexion of the House. The hereditary principle remains intact as the Act specified that the title could pass, on the Peer's death, to his heir and that too if the heir also chose to disclaim. In the first twelve months of the operation of the Act, only eight Peers chose to disclaim and among the eight were Lord Home and Lord Hailsham, who were able to disclaim at the time of the Conservative Party leadership crisis in 1963. During the total span of more than two decades the Act did not lead to any attractive figure of exodus. The general effects of both the Acts of 1958 and 1963, were, therefore, that the original basic problem of composition of the House of Lords was left untouched. On November 21, 1968, the House of Lords approved by 251 to 56 votes planned abolition of its 600-year old aristocratic, privilege in law-making. the Labour Government promised detailed legislation within a year, but nothing came out.

The latest proposal for reforming the House of Lords came from the Conservatives themselves. Apprehending that the Labour Party would make it an election issue and if they gained electoral majority at the next General Election a serious attempt would be made to abolish the House of Lords. The reform proposal sponsored by the Conservatives aimed to make the House a body in some respects resembling the United States' Senate elected by the method of proportional representation. The proposal received an active support from some Cabinet Ministers of Mrs. Margaret Thatcher's Government. But the proposal was extremely vague. It did not, for example, discuss what would possibly happen to the Law Lords, let alone the Bishops. Equally vague was what power the new body would possess, particularly in relation to the House of Commons. The net result is that for the umpteenth time there is talk in Britain for reforming the House of Lords and for the umpteenth time little if anything seems likely to come of it.

The meagre attendance which the House attracts, and lack of interest which the Lords evince in their legislative duties is an argument by itself for either ending or mending it. Normally sixty or seventy members had participated in its deliberations.[36] Now the daily attendance on the average is rather less than two hundred, while one-hundred and fifty are regularly engaged in the work of the House. Many Peers so seldom show their faces in this gilded Chamber that the attendants even do not recognise them.[37] One half of its membership has perhaps never spoken at all in the Lords. The number who have spoken several times is something like one in eight of the entire membership, and those who speak are largely Ministers or ex-Ministers. It is only on rare occasions that they "bring up the big battalions when the defeat of a progressive measure is desired."[38] And the quorum is only three. The smallness of the number of Peers who participate frequently in the work of the House is a grave defect, as Bagehot pointed out : "The real indifference to their duties of most Peers is a great defect, and the apparent indifference is a dangerous defect....An assembly–a revising assembly especially–which does not assemble, which looks as if it does not care how it revises, is

34. Jennings, W. I., *The British Constitution*, p. 90.
35. Sidney and Beatrice Webb, *A Constitution for Socialist Commonwealth of Great Britain*, p. 63.
36. "In 1932 and 1933, 287 Peers never attended the House. Beween 1919 and 1931, 111 Peers never voted, and more than half never spoke; there were only 13 divisions out of over 440 in which more than 200 voted. In the whole period only 98 Peers spoke on an average more than once a year, and those were largely ministers and ex-ministers." Greaves, H.R.G., *The British Constitution*, p. 53.
37. In 1893 when the Lords made a great rally in order to defeat Gladstone's Second Home Rule Bill, one Peer was stopped by the door-keeper who asked him if he were really a Peer. He replied, "Do you think if I weren't I would come to this blankety, black hole".
38. At the second reading of the Bill to amend Parliament Act, 1911, in 1947, the voting in the House of Lords was 204 to 34 for rejection. This was a vote of very unusual size for the House of Lords.

defective in a main political ingredient. It may be of use, but it will hardly convince mankind it is so."[39] Lord Samuel's remark on the composition of the House of Lords that the efficiency of that House was secured by the almost permanent absenteeism of most of its members was a telling blow aimed at the Lords.

Then, the large and predominant majority of these hereditarry members belong to one political party, the Conservative, which appears to be permanently entrenched in the House of Lords. Of those whose party membership is known, it is computed that two-thirds of the members, belong to the Conservative Party, and one- third are Liberal and Labour. The result is that whatever be the direction of the popular vote, and no matter which party controls the House of Commons, the Conservative Party, and even worst of it, its more reactionary members, remain in unchallenged mastery of the House of Lords. Some members of the House openly admit the claim of Lord Balfour that it was the duty of the Lords to see that the Conservative Party "should still control whether in power or whether in Opposition the destinies of this great Empire." And the Lords have proved true to their professions. A Conservative Government is always certain of its majority. No Bill promoted by a Conservative Government has been rejected by the House of Lords since 1832, "and, for the last fifty years at least no Conservative Bill has been amended against firm Government opposition."[40] When any other Party is in power, the position is quite different. The Conservative majority in the Lords determines its strategy in consultation with the Conservative leaders in the House of Commons. Nothing passes the House of Lords except what the Conservative Party permits, no matter whether that Party is in office or in Opposition.

The House of Lords has become also, what Ram- say Muir has termed, the "common fortress of wealth." There is now no great national industry, says Harold Laski, whose leadership, so far as its capitalist side is concerned, does not find its appropriate representation in the House of Lords.[41] In fact property has always been the basis of the Upper Chamber, and is still adequately represented there. "Over one-third of them are Directors (some multiple) of the staple industries of the nation. One-third of them also own very large estates. Many of them are related by marriage, birth and business connections with the Conservative members of the House of Commons."[42] The Peers are, therefore, predominantly an economic interest. It also provides a sufficient data to establish that the division between parties in Britain is in essence a class division and Peers are drawn from one class only. How can it be possible, then, that this capitalist class with vested interests can look to proposals for radical social and economic reforms with any desirable sympathy ? The answer to this question can be found from what Lord Acton wrote to Gladstone's daughter in 1881, when the Lords opposed the Irish Land Bill. He said, "But a corporation, according to a profound saying, has neither body to kick nor soul to save. The principle of self-interest is sure to tell upon it. The House of Lords feels a stronger duty towards its eldest sons than towards the masses of ignorant, vulgar, and greedy people. Therefore, except under very perceptible pressure, it always resists measures aimed at doing good to the poor. It has almost always been in the wrong—sometimes from the prejudice and fear and miscalculation, still oftener from instinct and self-preservation."[43]

When the House of Lords is invariably wedded to the principles and policy of a single party and it has avowedly retarded the forces of progress, then, the existence of the House of Lords, as Herman Finer puts it, is a gross anomaly, "without justification in this era." The views of Abbe Sieyes, that if the Second Chamber agrees with the first it is superfluous, while if it disagrees, it is obnoxious, seems to many in Britain, according to Prof. Laski, "common sense."[44] The formal policy of the Labour Party, though it has not contributed anything towards its realization, is still in favour of a single Chamber. Laski, while arguing his case for abolishing the House of Lords has maintained that an undemocratic institution like the House of Lords cannot survive in a democratic society unless it

39. Begehot, W., *The English Constitution,* pp. 101-102.
40. Jennings, W. I., *The British Constitution,* p. 90.
41. Laski, H. J., *Parliamentary Government in England,* p. 112.
42. Finer, H., *The Theory and Practice of Modern Government,* pp. 407-408. "There were 246 landowners in the House in 1931, while directors of banks numbered 67, railways 64, engineering works 49, and Insurance Companies 112, to name only a few." Greaves, H.R.G., *The British Constitution,* p. 54.
43. As cited in Herman Finer's *Theory and Practice of Modern Government,* p. 48.
44. Laski, H. J., *Parliamentary Government in England,* p. 123.

is always able to adjust its behaviour to the demands of democracy. And the demands of democracy are the *speedy responsiveness* to the public opinion and the social needs. The House of Lords cannot fulfil these demands, because, "where it is tempted to be active in defence is just where democracy is tempted to be active in offence." [45] The House of Lords, in simple words, is wealth and privilege personified and the real conflict is between wealth and the masses. Democracy stands for the masses and in democracy nothing should exist which comes in conflict with their interests. The need is to end the House of Lords or to radically mend its composition.

Arguments in Favour

In spite of the determined policy of the Labour Party to abolish the House of Lords and the vigorous efforts of the Liberals to substitute for it a Chamber constituted on a popular instead of hereditary basis, the House of Lords still remains what it has been for centuries in the past. It is essentially a hereditary Chamber of Peers. The Liberals could not adopt a workable plan to democratize it. Even the Labour Party made no attempt in its five regimes either to end or mend it. The only change which the Labour was able to bring on the Statute book was an amendment to the Parliament Act of 1911 in 1949.

The first and really the conservative argument advanced for its preservation is that the British people will not tolerate this historic institution to be obliterated. In Britain nothing is created anew. Everything evolves gradually, over a long period of time and so it is that every British institution preserves into the present elements of the past. If the British had ever sat down to refashion the whole of their political machinery, it is possible that the hereditary House of Lords would have disappeared. If they had ever set out to reduce their Constitution into writing, the Lords might also have disappeared. But that is not their instinct and their method of doing things. They take everything as it is and put up with it as long as it works tolerably well. When its shortcomings are experienced, they are tried to be remedied as a matter of course. And when the inadequacies become unendurable, it is amended to the extent it is necessary to meet the revealed inadequacy or difficulty. It is not obliterated, because the British people intuitively know that life is more than logic. And having admitted that a hereditary House of Lords in a democracy is illogical, the practical way of life tells them that on the whole it works well, and in some ways "surprisingly" well. "The very irrationality of the composition of the House of Lords and its quaintness," said Herbert Morrison, "are safeguards for our modern British democracy."[46] Because changes intended to make the House of Lords democratic and representative would have undemocratic results. It would tend to make the Lords equal to the Commons, thus creating rivalry, conflicts and deadlock between the two.

And democracy needs a second chamber. The United States of America expressly provided for a second chamber—the Senate—which exercises vastly wider powers than does the House of Lords. The French, who are a very logical people, have included a second chamber in all their Constitutions. So have the Scandinavian democracies. Even those countries which experimented with a single chamber ultimately reverted to the double chamber system because of the demands of democracy. Unless it is acceptably proved that democracy does not need a second chamber, it is not democratic to abolish one in Britain when the Parliament Act has destroyed the power of the Lords to interfere with Money Bills, and limited its power on other Bills to "delaying action" and, that, too, just for a year. Life Peerages Act, 1958, and the Peerage Act, 1963, tend to democratize it, accepting the democratic utility of bicameralism. Even the Labour Party, except for some members, do not favour its abolition. Lord Morrison portrayed the attitude of the Labour Party when he said, "So the powers of the Lords have been much diminished over the years. I think rightly so. But it remains an assembly of considerable importance where good debates are held. There are men of great experience in the Lords' Chamber. The debates are of pretty good quality as a rule and in legislative revision, improving and polishing up parliamentary Bills, the House of Lords is useful and effective. Although its powers are more limited, its standing is still pretty high."[47]

An argument that the House of Lords ought not to have a permanent Conservative majority is not necessarily an argument that there ought

45. *Ibid*, p. 136.
46. Morrison, H., *Government and Parliament*, p. 194.
47. Morrison, H., *British Parliamentary Democracy*, pp. 7-8.

not to be a House of Lords. Conservatism is needed to check the radicalism of the Lower House. It is just like the appeal from Philip drunk to Philip sober. A second chamber in a unitary State is a means of checking what a nineteenth century Lord Chancellor called "the inconsiderate, rash, hasty, and undigested legislation of the other House." The House of Lords is a brake of considerable advantage on the decisions of a popularly elected House, sometimes reached under stress of great national emotion. When radicalism is injected with conservatism it is reason without passion and this is precisely what laws ought to be. Then, the real question which needs a straight answer is whether the House of Lords should be hereditary or elective.

There are certain advantages about having a non-elective second chamber. If the second chamber is to be the replica of the Lower Chamber, then, there is no point, or little point, in having the second chamber. The essence of the second chamber is that it should not be subject to the same impulses and the same pressures as the Lower Chamber. No member of the House of Commons can afford wholly to disregard the wishes of his constituents. "Some indeed, are little more than the echoes of the popular emotions of their constituents, and trim their political sails to every wind of popular feeling. Even the most courageous and honest must keep a 'weather eye' on popular feeling." But a member of the House of Lords rarely speaks for the sake of speaking. He has no advantage to keep the debate going. He can speak freely, express unpopular views, and advocate unconventional remedies. Nor has he any constituents to please. A Peer's constituency, it is claimed, is under his hat. At the end of the debate when all kinds of views have been expressed and opinions given, there is usually no division. Even if there is one, it is of no political consequence, for an adverse vote does not involve the fate of the Government. The Lords also know that the Parliament Act, 1911, as amended in 1949, sets a limit to their capacity of defying the will of the Commons. They, accordingly, resist but do not persist.

The result is that the House of Lords can afford to have full and free debates on legislative and non-legislative issues which the Commons "are too busy to discuss or which party leaders may consider too explosive to touch," because a Lords' vote does not of itself imperil the government. The proceedings of the House of Lords receive wide publicity and the people at large find cue to their opinions in the utterances of these reverential statesmen. This is how the Lords prepare the public for the consideration of the important issues, educate public opinion, and make the Government susceptible to such reactions. The House of Lords, thus, performs a very useful function of influencing the people and the Government. Debates and votes on Motions in the Lords "can and at times do", writes Morrison, "stir public opinion, or they may ventilate true public grievances or have repercussions in the House of Commons so they make the Government conscious of some failure or shortcoming. No Government, therefore, whatever its political complexion, studiously and systematically ignores the opinion of the House of Lords. Indeed, it is the duty of the Leader of the House of Lords in the Cabinet to indicate to his colleagues the feelings of his House on subjects under considerations."[48]

Then, the House of Lords acts as a legislative chamber. Bills can be introduced there instead of in the House of Commons. The Bryce Committee stated that partially non-controversial Bills, when they originate in the House of Lords, may find an easier passage in the House of Commons if they have been fully discussed and put into a well considered shape before being submitted to it. Moreover, a finished Act of Parliament must be word-perfect. For, if mistakes are made, the Government may be involved in administrative embarrassment or confusion or it may place the community in grave difficulties as a result of legally correct but unexpected and disturbing decisions of the courts. The House of Lords is a specially valuable institution in this matter of spotting lack of clarity or doubtful matters of drafting, because it includes not only distinguished lawyers but a number of members who have functioned on the bench of a High Court of Justice, and also include the Law Lords.

The House of Lords usefully does the examination and revision of Bills, after they have passed through all the stages in the House of Commons. This is now more needed since the House of Commons almost on all Bills is obliged to act under special rules limiting debates, thereby, curtailing the possibilities of free and fuller discussion. The House of Lords functions under no such limitations. Moreover, the Lords

48. Morrison, H., *Government and Parliament*, p. 176.

is properly said to be a ventilating chamber consisting of men who have distinguished themselves in the field of public activity, and possessing varied and diverse experiences. Glancing down the list of those who have been created Peers during recent years, one notices that in addition to persons who may be described as "politicians" there are to be found former Diplomats, Admirals, Generals, Labour Union Officials, Businessmen,Newspapers proprietors, University Professors, Doctors, and civil servants. Such a galaxy of men with expertise knowledge in the various fields of public life can with confidence engage themselves in practical and highly intelligent discussion and criticism. Nearly a century ago Walter Bagehot wrote, "The House of Lords has the greatest merit which such a chamber can have; it is possible. It is incredibly difficult to get a revising assembly, because it is difficult to find a class respected revisers....The Lords are in several respects more independent than the Commons....The House of Lords, besides independence to revise judicially and position to revise effectually, has leisure to revise intellectually. These are great merits, and, considering how difficult it is to get a good second chamber, and how much with our present First Chamber we need a second, we may well be thankful for them."[49]

The House of Lords is still a forum of debate on the administrative activities of the Government. The Lords had and still have the power to ask questions and a full right to debate its policies. The House of Commons has not the time to discuss all issues and problems, national and international, whereas the House of Lords has sufficient time and opportunity to do so. This is a useful national service rendered by the distinguished men whose views matter with the people and government. Even the apathy of the Peers to attend the meetings of the House has been characterised as a virtue in disguise. It would be impossible to get through the business of the House under present conditions if all who were entitled to attend and participate did so; a staggering number of more than 1,000. "The working of the House is made possible only," maintained Viscount Samuel, "by the absenteeism of a large number of members, and we should be grateful to those who grace the meetings of this House by their absence."

The Lords also relieve the Commons of the work of considering Private Bills. Most of these Bills are examined in the first instance by committees of the House of Lords. Such Bills undergo a "quasi-judicial" process which may take much time when they are opposed. A Bill opposed in one House is usually not opposed in the other; and the result is that the Peers diminish by one third the heavy and uninteresting labours which would have to be undertaken by members of the Commons if there were no House of Lords. Provisional Order Bills and Special Orders are much in the same position.

Interposition of delay is needed to crystallise public opinion on all Bills before they become Acts. In fact, it is of considerable advantage that the decisions of a popularly elected Chamber should be given a second thought and that, too, under conditions of calmer atmosphere in a Chamber which is less susceptible to immediate popular pressure. The problem of second thought is much needed in Bills which affect the fundamentals of the Constitution, or introduce new principles of legislation, or raise issues upon which opinion of the people may appear to be almost equally divided. George Washington illustrated the need for interpostion of delay by pouring a cup of hot liquid into a saucer and allowing it to cool. "We pour legislation into the senatorial saucer to cool it," he said.

But the real point is how long the House of Lords should be allowed to interpose delay in the enactment of legislation ? Churchill was of the opinion that all controversial legislation should be passed in the first two years of a Government's term of office, and thereafter the Lords should apply the brake to radical change until such time as "the engine of the popular will is refuelled by popular election." To this Attlee replied that it would mean that "the engine had to go to be repaired every five years for a Conservative Government and every two years when a Labour Government was in power." In the three party conference, convened to consider the composition and powers of the House of Lords, when in 1947 the amending Bill to Parliament Act had passed in the Commons, the Conservatives suggested a delay of eighteen months after the second reading of the Bill. But the Labour's proposal was for nine months from the third reading. No agreed compromise could be arrived at and the result was interposition of one year's delay after the second reading was determined by the Act of

49. Bagehot, W., *The English Constitution*, pp. 99-100.

1949.

Perhaps, the greatest merit of the House of Lords, as Bryce emphatically maintained, is its moral authority. "A Second Chamber," he said, "ought to possess, if possible, the largest measure of moral authority. By moral authority I mean.... the influence exerted on the mind of the nation which comes from the intellectual authority of the persons who compose the chamber, from their experience, from their record in public life and from the respect which their characters and their experience inspire... This House has a moral authority as well as the prestige, the unequalled prestige, of its long antiquity. There is no assembly in the world which can look back over so long and glorious a career as the great Council of the Nation, the *Magnum Concillum* of early Norman times, the form of which remains in this House as its oldest member...I cannot help hoping that, whatever new Chamber is constructed, every effort will be made to preserve for it both the prestige of antiquity and the moral authority which this House inherits."[50] The House contains Peers who are members of ancient families in whom a sense of public service is ingrained by long traditions. Then, there are ex-Cabinet Ministers who have earned their titles through their political work.[51]

Finally, it is argued that the House of Lords is also useful as a seat for Ministers, in that any figure who is called upon to serve in the Government, but who does not wish to enter the party political fray of the House of Commons can be raised to Peerage and thereby made eligible for Ministerial office. In 1957 Sir Percy Mill was created a Peer and he took up the post of Minister of Power in Macmillan's Government. Lords Bowden, Cadogan, Chalfont, and Gardiner were given Life Peerage in 1963 and 1964 and were, thus, made eligible for Ministerial office. But this argument does not cancel the case for abolition of hereditary Peerage. The most important aspect of the debate is that conservative writers favour its retention, while the radicals distrust it as a group.

REFORM PROPOSALS

Proposals for Reform : 1869-1918

With the enactment of Parliament Amending Act, 1949, the issue of the powers of the House of Lords had been decided and the Labour Party did no longer argue for its abolition till 1977 when the demand was renewed. But the Labour Party is now split and its stage back to power in the near future is not probable. The next question then is reforming its composition. This question is as old as several generations. Lord Russel introduced in 1869, a Bill in Parliament providing for the gradual infiltration of Life Peers. But it was rejected. In the same year a project of Earl Grey came to a naught and the same fate awaited the proposal of Lord Rosebury in 1874 and Lord Salisbury in 1888. No more was heard of the House of Lord reform until 1907. In 1907, the House set up a Select Committee to consider the suggestions made from time to time to increase the efficiency of the House in legislation. The report of the Committee suggested new constitution of the House consisting of Peers of the royal blood; the Lords of Appeal ordinary; 200 representatives elected by the hereditary Peers; hereditary peers possessing special qualifications; Spiritual Lords of Parliament, and Life Peers.

But it was too late. In the meantime the struggle between the Lords and the Commons had commenced and that, too, with great momentum. The result of the struggle was the Parliament Act of 1911. The 1911 Act was declared to be only a stage towards a more fundamental reform and its *Preamble* was indicative of it. The *Preamble* said that it was "intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis." But the overwhelming occupation of the Asquith Ministry left the subject unpressed. Then, came the First World War and the issue remained untouched till 1917 when a Committee, consisting of 30 members equally chosen from both the Houses and representing all shades of opinion, presided over by Viscount Bryce, was appointed.

The Bryce Committee submitted its Report in the spring of 1918. It expressed the opinion that "in so far as possible, continuity ought to be preserved between the historic House of Lords and future Second Chamber, which obviously would mean that a certain portion of the existing peerage should be included in the new body." At the same time, the Committee agreed that its membership should be open to all the people so that it might represent adequately their thoughts and sentiments and no one set of political opinion should exercise therein a marked permanent dominance.

The Committee proposed that the reconstituted House of Lords should have 327 members,

50. Speech in the House of Commons, March 21, 1921. As cited in Sidney Bailey, *British Parliamentary Democracy*.
51. Brasher, N.H., *Studies in British Government*, p. 108.

three-fourths (246) to be elected by an electoral college composed of the members of the House of Commons grouped into 13 regional divisions. The Commoners from each region would elect the quota to which their area on the basis of population was entitled to. The remaining 81 members were to be chosen from the whole body of Peers by a Standing Joint Committee of both the Houses. The tenure of office was fixed at 12 years, one-third members in each group retiring after four years.

With regard to the functions of the House of Lords, the Committee agreed that the reconstituted Chamber ought not to have equal powers with the House of Commons. Nor should it aim at becoming a rival of the Commons, particularly in making and overturning Ministers or of voting Money Bills. The Committee considered the following functions appropriate to a Second Chamber in Britain:—

(1) The examination and revision of Bills brought from the House of Commons.
(2) The initiation of Bills dealing with subject of a comparatively non-controversial character.
(3) The interposition of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it.
(4) Full and free discussion of large and important question.[52]

Reform Plans : 1918-1934

The Bryce Committee Report and the plan it recommended was too much of a compromise and it pleased neither the Conservatives nor the progressives. The Government of Lloyd George, however, in 1922 moved in Parliament a resolution embodying the essentials of the Bryce plan. The plan was coldly received and three months after when the Coalition Government resigned it was left without official sponsorship. The short-lived Conservative Government marked its own time, and the first Labour Government under Ramsay MacDonald dared not touch the problem because of its own precarious position.

When the Conservative party came to power, it showed a genuine desire to do something in the matter so that Labour Government if it again came to office might not take some drastic measures. In fact, the Conservative werre pledged to the reform of the House of Lords in the elections of 1924, but the Prime Minister was not keenly interested in it and the matter hanged on. In 1925, Lord Birkenhead brought to the House of Lords a plan with no tangible results. In 1927, the Lords adopted a resolution declaring that they would welcome "a reasonable measure limiting and defining the membership and dealing with defects inherent in the Parliament Act." Nothing came out of it as well. In 1928, Lord Clarendon suggested a plan according to which 150 members should be elected by the peers and 150 nominated by the Crown in proportion to the strength of the various parties in the House of Commons, and a few Life Peers. The Labour when in office in 1929 did not consider the matter important to take it up and the National Government was pre-occupied in other things.

In 1932, a Conservative Party Committee made a fresh study of the subject and published the results of its deliberations in the document entitled Report of a Joint Committee of Peers and Members of the House of Commons. The Committee presented a plan for a Second Chamber with 320 members. Then, came the Salisbury plan in December 1933. It suggested that the House should consist of 300 members. The definition of the Money Bill was to be more restricted and interpreted by a Joint Select Committee of both the Houses with the Speaker as Chairman. No Bill, other than the Money Bill, was to be passed under the Parliament Act until after a dissolution. The Bill was passed by the House of Lords by 83 to 34 votes on the first reading and by 171 to 82 on the second reading. Baldwin, however,brought about the discontinuance of the discussion.

Reform by Labour Government

In 1934, the Labour Party passed a resolution that: "A Labour Government meeting with sabotage from the House of Lords would take immediate steps to overcome it; and it will in any event take steps during its term of office to pass legislation abolishing the House of Lords as a legislative chamber." The Labour Manifesto in 1945, read : "...We give clear notice that we will not tolerate obstruction of the People's will by the House of Lords". This, of course, implied curtailing its powers rather than reforming its composition and the 1947 Amending Bill to Parliament Act, 1911, was a clear testimony of the intentions of the Labour. The Bill aimed to reduce the delaying action of the Lords on ordinary Bills

52. Committee on the Reform of the Second Chamber, 1918 (Report) p. 4.

to one year only and it became an Act in 1949 despite its rejection by the House of Lords.

When the Bill of 1947 was passed in the House of Commons an intra-party conference, under the Chairmanship of the Prime Minister, was convened early in 1948, the issue for discussion being the relationship of the composition to the powers of a second chamber. There appeared to be a "substantial agreement" on the following general principles with regard to the composition of the Lords :

(1) The Second Chamber should be complementary to and not a rival to the Lower House, and, with this end in view, the reform of the House of Lords should be based on a modification of its existing constitution as opposed to the establishment of a Second Chamber of a completely new type based on one system of election.

(2) The revised constitution of the House of Lords should be such as to secure as far as practicable that a permanent majority is not assured for any political party.

(3) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission.

(4) Members of the Second Chamber should be styled "Lords of Parliament", appointed on grounds of personal distinction or public service. They might be drawn either from Hereditary Peers, or from Commoners who would be created Life Peers.

(5) Women would be capable of being appointed Lords of Parliament in like manner as men.

(6) Provision should be made for the inclusion in the Second Chamber of certain descendants of the Sovereign, certain Lords Spiritual and the Law Lords.

(7) In order that persons without private means should not be excluded, some remuneration would be payable to members of the Second Chamber.

(8) Peers who were not Lords of Parliament should be entitled to stand for election to the House of Commons, and also to vote at elections in the same manner as other citizens.

(9) Some provision should be made for the disqualification of a member of the Second Chamber who neglected, or became no longer able or fit, to perform his duties as such.

Life Peerage Act and Peerage Act

Life Peerage Act, 1958, empowers the Queen without prejudice to Her Majesty's Powers as to the appointment of Lords of Appeal in Ordinary, to confer on any person a peerage for life. The Act also made women eligible for the conferment of life peerage. For the first time the Act of 1958 gave women the right to sit and vote in the House of Lords. In 1963 further changes in the composition of the House of Lords were affected by the Peerage Act, which gave a Peer the right to disclaim his peerage for his life time and to renounce for himself, but not for his successors, the rights and privileges of a peerage and at the same time remove his disqualifications to sit in the House of Commons and to vote in parliamentary elections. The Act also equated the position of Peeresses in their own right with that of hereditary Peers for parliamentary purposes, and gave full rights of admission to all Peers and Peeresses of Scotland thus bringing to an end the system of representative Peers.

Future of the House of Lords

In spite of the general recognition of the fact that a hereditary legislative chamber is an anachronism in a modern democratic State, there had been no progress in reconstituting the House of Lords. The Peerage Act, 1958, and the Peerage Act, 1963, made no material difference in its composition. In 1967, the Labour Government announced its proposals for a major reform of composition together with proposals for further reduction in the powers of the House of Lords. It was planned to abolish the 600–year old privilege of law-making. It was, indeed, a sweeping reform that would have virtually, if enacted, made the hereditary peers extinct as a political force. The House would have, of course, retained its ancient right to function as a brake on legislative measures sent to it from the House of Commons. The Labour Government promised a detailed legislation incorporating its proposals within a year, but nothing came out. Nor would there have been any certainty of Callaghan's minority Government to succeed in its plan of reforming the Lords if it had been attempted. Still, change appeared to be on the way. Some observers saw Britain moving eventually from a unitary to a federal system in view of developments in the European Community and the devolution referenda in Scotland and Wales, although the proposal did not envisage federalism. The Scottish Nationalists have now declared as their goal the independence of Scotland and the possibility of a federation, if at all there was any, is completely out of the question. The renewed Labour Party's threat to abolish the

House of Lords and to include the issue in the Party's next General Election manifesto induced the Conservatives to anticipate the impending danger and with the support of some members of Mrs. Margaret Thatcher's Government set afoot a proposal for reforming the Lords and making the new body resemble the United States' Senate in some respects. The proposal is vague in many respects and it is doubtful if the Conservatives themselves will own the proposal and initiate reform proposal. A divided Labour Party has indefinitely eclipsed its chances of securing an electoral majority and pursuing its plan of abolishing the House of Lords. The splinter group of the Labour Party—Social Democratic Party–in alliance with the Liberal Party had not any such proposal on its cards.

Two issues, however, are definitely clear. In future, the House of Lords will not be composed of aristocrats whose seats are guaranteed by hereditary birth-right alone. Abolition of the House of Lords is not the scheme of reform. What it is intended is that privilege should no longer remain the basis of entrance ticket to the House of Lords. And, secondly, it will be left with an obstructive power that amounts to a nominal delay. The Labour Party recognises the utility of the Lords as a revising and deliberative chamber. Herbert Morrison cor- rectly expressed the point of view of the Labour Party. He said, "whilst willing to respect the House of Lords for the value and standard of its debates, and for its capacity as chamber of legislative revision, we should not tolerate, from such an institution, any undue interference with the will of the House of Commons or of the people."[53] It should exist as a second chamber strong enough for revision and weak enough to be no rival to the Commons. It is really ironical that so much learned controversy should continue over the merits of an essentially undemocratic institution three-hundred-fifty years after it was abolished by the first democratic revolution of the world as early as 1649 in the English Civil War.

Abolition of the House of Lords?

As we know, the Republican Revolution of 1649 had abolished the House of Lords along with the monarchy as the Republicans regarded both these institutions as feudalist and anti-democratic in character. They were reactivated twelve years later as an act of counter-revolution. The present Labour government led by Tony Blair is not committed to its abolition as such but, nevertheless, it is determined to put an end to the institution of hereditary peerage. The Labour majority, with cooperation of the Liberal-Democrats, has not yet decided about the future shape of the second chamber but both these parties are unanimous to give a representative character to this 'archaic' relic of the past.

The conservatives have not yet reconciled themselves to the prospects of a radical change in the character of the House of Lords which according to them, has a 'democratic' legitimacy! T.E. Utley once told a conservative audience, "We as a party are always having to think up enlightened reasons for doing things which we believe in on other grounds. When, in the late nineteenth century, Lord Salisbury was struggling in the House of Lords to prevent the process, which has gone up, of diminishing the power of the Upper House, he thought up an argument of the highest possible importance in our constitutional history; that the House of Lords must be allowed a veto on legislation – not in the interests of stability or security or anything glum like that, which a democratic electorate would not like – but in order to protect the electorate against the danger that a government, having been returned to power, might neglect its mandate. He presented the House of Lords as the assembly which protects the community against the abuse of its mandate by a popularly elected government." (James Harvery and Katherine Hood, *The British State*,. pp. 82-83

The grandson of Lord Salisbury repeated the same thesis : "We on this side of the House ask no more than that issues affecting the welfare of the electorate, where their judgment is unknown or doubtful, should be referred for their consideration, or at least deferred for a short time to enable their view to be found out. That is the whole reason for our stand for an effective Second Chamber." Lord Balfour pointed out : The doctrine that the majority in the House of Commons has a right to do what it likes in the fourth and even in the fifth year of Parliament.... seems to me a negation of democracy." The Earl of Glasgow, opposing the reform bill of 1949, declared, "If this Bill passes, no longer will the people of this country, when their liberty and way of life are threatened, be able to say, 'Thank God we have a House of Lords." (*Ibid*... p. 83).

Lord Teviot, asserting that the House of

53. Morrison, H., *Government and Parliament.*

Lords was a defender of true democracy, asked a ridiculous question, "Is not this bill another attempt to override still further government by traditional constitutional methods in this country, and to continue the drive to totalitarianism which would wreck democracy by the removal of the last barrier between government and total power?" (Ivor Jennings, *Cabinet Government*, p 360). There is no doubt that so long as the House of Lords survives even in its existing form, it will be used by the vested interests for safeguarding their special privileges. In future too it will continue to resist progressive and radical legislation. The left-wing supporters of the Labour Party consider its existence dangerous for ary attempt to bring about social transformation in the direction of socialism. A genuinely socialist government, in the opinion of Laski and Greaves, which wants to bring about far-reaching socio-economic changes in Britain, cannot succeed in realizing its aims without abolishing the House of Lords. The capitalist forces, says Laski, will certainly support the continued existence of the second chamber by every means at their disposal. Even Tony Blair, at the close of the twentieth century, is not proposing the *abolition*, of this 'fortress of wealth'. As Labour Prime Minister, with a huge majority in the House of Commons, he can easily abolish this permanent citadel of Conservatism, but he does not possess the political will for doing so.

The House of Lords in England has a social basis in the large class of English landowners who still possess huge landed property and pursue an aristoeratic coiratic style of living. They are now an adjunct of the British capitalist class. As Laski pointed out, capitalist democracy in England does not regard an aristocratic chamber as incongruous with its parliamentary system of governance.

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CHAPTER VIII

Parliament (Continued)

THE HOUSE OF COMMONS

Composition and Organisation

The House of Commons has always been a purely elective body, but both the electorate and constituencies varied greatly in the course of centuries. There are 635 seats in the House of Commons: 516 for England, 36 for Wales, 71 for Scotland and 12 for Northern Ireland.

The age of voting has been reduced from January 1, 1970 to 18. But adults getting the right to vote are not eligible to become members of the House or serve in the Jury before attaining the age of 21. Members are elected from single member constituencies and the law relating to parliamentary elections is contained principally in the Representation of the People Act, 1949, as amended by the Act of 1969.

All British subjects, of either sex, provided they are 21 years old or over, and from whatever part of Her Majesty's dominions they come, are eligible for election, provided they are not lunatics, bankrupts, persons convicted of certain crimes including corrupt practices, clergymen of the established Churches of England and Scotland and the priests of the Roman Catholic Church, and Peers of England and Scotland and the United Kingdom, and the holders of certain offices under the Crown, as also those expressly precluded under the House of Commons Disqualification Act, 1957 (for instance, holders of judicial offices, civil servants, members of the regular armed forces and police forces, members of the legislature of any country or territory outside the Commonwealth, and holders of other public offices listed in the Act).

The life of the House of Commons is for five years unless previously dissolved. But normal Parliament is dissolved by the Sovereign, acting on the advice of the Prime Minister, before the expiry of the full legal term and General Election held. Where a particular vacancy occurs in the period between General Election, for example, on the death or resignation of a member, a by-election is held to fill the vacant seat. According to the ancient theory, service in the House of Commons is like a jury service, not a right but duty. Technically, a member may not resign his office. But resignation is possible through a fiction. There is a sinecure office "the Steward of the Chiltern Hundreds" and the "Steward of the Manor of the Northstead" and a member intending to resign applies to the Chancellor of the Exchequer for appointment to one or other of these offices. Such a request is granted as a matter of course. The appointment automatically results in the vacating of a seat in the House of Commons, because it is a paid post under the Crown. Then, the office of the stewardship is promptly resigned.

The House of Commons, according to the usual practice, must meet at least once a year because certain essential legislation, including taxation and expenditure of public funds, is passed only for a year at a time and must be renewed annually. The session normally begins in October or November and continues for twelve months, except for brief adjournments. The session is brought to an end by prorogation and all business unfinished at the end of the session is terminated (with certain minor exceptions) until Parliament is again assembled. This means that a Bill not completed in one session must be reintroduced in the next, unless it is to be abandoned. The dispersal of the House through adjournment does not affect uncompleted business.

Since 1947 the normal times of meetings of the Commons have been the first five days of each week, except when Parliament is in recess. The hours of sitting for normal business are : Mondays to Thursdays from 2.30 p.m. to 10.00 p.m. and Fridays 11.00 a.m. to 4.30 p.m. Certain business is exempt from normal closing time and other business may be exempted if the House so chooses, so that the Commons often sits later than 10.00 p.m. on the first four days of the week, and all night sittings are not uncommon. On all these occasions time has to be rationed. From 2.30 till not later than 2.45 on Mondays to Thursdays private business is taken, questions following until 3.30. Immediately after questions is the time at which members may seek leave to move a

motion of adjournment in order to discuss a matter of urgent public importance. If leave for the motion has been granted it stands over till 7 o'clock. It is only after such like preliminaries that comes the order for the day for the transaction of public business. This continues until 7 p.m., when adjournment motion or opposed private business may be taken. After that the interrupted business is resumed and continues until 10 p.m.

Members of the House of Commons were paid an annual salary of £4,500 under the Ministerial and other Salaries Act, 1972, subject to income tax. Members were also entitled to a number of special facilities and allowances, including the stationery, postage and telephone calls from within the House of Commons; travel or car mileage allowances; a tax-free subsistence allowance of £1,050 a year for provincial members and a secretarial allowance of £1,750 a year. Members' pensions, first introduced in 1965, are now regulated by the Parliamentary and other Pensions Act, 1972. This provided for a compulsory contributory scheme to pay pensions to members after four years' service on retirement from the House if they had reached the age of 65. Provisions had also been made for widows' and orphans' benefits.

Closure of Debate

As the time of the House of Commons is carefully rationed in order to provide for an orderly conduct of business, some measure for an enforced closure of debate is necessary. Ordinarily, an agreement is made "behind the Speaker's Chair" between the Chief Whips of the Government and the Opposition with regard to allocation of time to debate on different measures and the Speaker will see to it that the agreement is carried out. If such an arrangement fails, then, there are several expedients to cut short debates. This system of shortening the debates is known as the closure.

"A time must come," remarks Herman Finer, "when debate ceases and action is taken. This is, alas, a law of life itself."[1] Before 1880, the procedure in the House of Commons was designed to obstruct and prolong discussion rather than produce laws or oversee administration. In 1881, the Irish Nationalists adopted tactics by obstructing the business of the House. They would speak for hours on any subject, relevant or irrelevant, and yet the Speaker had no authority to stop that confusion and end such obstruction. The sitting of the House, which began at 4 o'clock on Monday, January 24, 1881 ended only at 9.30 a.m. on the following Wednesday. Speaker Brand declared, "The dignity, the credit and the authority of this House are seriously threatened, and it is necessary that they should be vindicated. Under the operation of the accustomed rules and methods of procedure the legislative powers of the House are paralysed. A new exceptional course is operatively demanded."[2] He declined to call any more members to speak, put the question, asked the House to change its rules or give the Speaker more authority.

The House did both. It altered the rules of debate so that time wasting and obstruction could be checked, and increased the authority of the Speaker in controlling the debate. Deliberate obstruction is rare now, and to some extent the members can be relied upon to recognise an obligation to be reasonably brief in what they have to say. But occasion may arise when cutting short the debate may become expedient. Closure may, then, take one of the following forms:

(1) After a debate has been going on for some time, a member may move that the "the question be now put" –that is, that the subject on which discussion is taking place may be put to the vote. It is the discretion of the Speaker to accept or refuse the motion. He will refuse it, if he thinks that such a motion is an abuse of the rules of the House, or an infringement of the rights of the minority. If the Speaker permits it, and the motion is carried by not fewer than a hundred votes, the debate is closed and the matter under discussion is voted upon. If it is negatived, the debate is resumed.

The procedure of closing the debate in this way makes the Government, if it is despotically minded, the master of the debate. With a comfortable majority at its back, it can get the motion to put the question moved, get 100 members to support it, and carry the issue. It is only the impartiality of the Speaker which can stem such designs of the Government and see that the right of the Opposition to have sufficient say is not choked.

(2) In addition to the simple closure device, which may be used on any kind of motion, there are other devices whose use in general practice, is confined to legislation. This kind of closure

1. Finer, H., *Governments of Greater European Powers*, p. 113.
2. As cited in above. *Ibid.*

involves allotting a certain amount of time to various parts of a measure or to its several stages, and at the appointed time taking a vote no matter any part of the measure or even its important aspects had been discussed or not.

The closure by compartment or the "guillotine" is introduced in a resolution before the House, planning the various stages, and provides that at the end of each, at a time fixed, the Speaker shall "put the question" without further debate. This kind of closure has been developed in order to deal with long and obstinate Opposition, and in order to give the Opposition some measure of choice as to how the time allotted for discussing the various parts of the Bills is to be used. Since 1946 Standing Committees use the "guillotine" also.

(3) Another form of closure provided for in the Standing Orders is known as the 'Kangaroo.' It was first used in 1909, by which the Speaker is empowered to select those clauses and amendments to be proposed which he thinks most appropriate for discussion. That is to say, the Speaker at the Report Stage is invested with power to decide which amendments may be debated when several have been submitted to the same clause. The practice of missing some amendments is called the Kangaroo since the Speaker "leaps over" some amendments either because they are not in order or had been talked about before, or are merely time wasting. Kangaroo may be used either in conjunction with Guillotine or separately. The Chairmen of Committees, too, possess a similar power. The device of Kangaroo invests the Speaker with grave responsibility, but there is virtually no evidence of real abuse. The principle which the Speaker follows in the application of the Kangaroo is to select those amendments that raise the most important points of principles and concern the most important sections of opinion, and the most effectively worded in this sense.

Parliamentary Privileges

Each House of Parliament enjoys certain privileges and immunities designed to protect the House from unnecessary obstruction in carrying out its duties. These privileges apply collectively to each House and individually to each member.

In the House of Commons the Speaker formally claims from the Crown for the Commons "their ancient and undoubted rights and privileges" at the beginning of each Parliament. These include freedom from arrest in civil proceedings for a period from forty days before to forty days after a session of Parliament; freedom of speech, so that Members of Parliament cannot be prosecuted for sedition or sued for libel or slander anything said in the House or reported in Parliamentary publications and the right of access to the Crown, which is a collective privilege of the House. Further privileges include the right of the House to control its own proceedings ; the right to pronounce upon legal disqualifications for membership and to declare a seat vacant on such grounds; and the right to penalise those who commit a breach of its privileges.

Parliament claims the right to punish not only for breaches of its privileges, but contempt, which is an offence or libel against its dignity or authority. An offender may be detained within the precincts of the House, though such a punishment has not been given since 1880. Nowadays the House would probably direct offenders to be reprimanded. An offender who is not a member of the House is brought to the Bar by the Serjeant-at-Arms, and is there reprimanded by the Speaker in the name, and by the authority of the House. If the offender is a member he receives the Speaker's admonition or reprimand standing in his place. An offending member may also be suspended or, in extreme cases, expelled[3] from the House. Offenders other than members, may be ordered to attend at the Bar of the House; all may be heard in extenaution of their offences, or in mitigation of their punishment, before the House decides what action to take.

OFFICERS OF THE HOUSE

The chief officer of the House of Commons is the Speaker who is elected by the Members to preside over the House immediately after a new Parliament is formed. Other officers of the House are : the Chairman of the Ways and Means, and one or two Deputy Chairmen, all of whom may act as Deputy Speaker. The Speaker had a salary of £13,000 a year plus £3,000 parliamentary allowance and residence within the Palace of Westminster. On retirement he is offered peerage and is provided with a pension. The Chairman of the Ways and Means and the Deputy Chairman were paid salaries of £6,750 and £5,500 respectively, in addition to their parliamentary allow-

3. In 1947 Garry Allighan was expelled from the House on account of critical articles he had written about Parliament.

ance of £3,000. They neither speak nor vote in the House other than in their official capacity. Permanent officers of the House, that is, those who are not members of Parliament, include the Clerk of the House of Commons, who is charged with such matters as keeping the records, endorsing bills and signing orders, and the Serjeant-at-Arms, who attends the Speaker in the House.

The Speaker and His Role

At the appointed hour for the House of Commons to meet, the Speaker enters the chamber with time-honoured ceremonial. The *Oxford English Dictionary* defines the Speaker as "the member of the House of the Commons who is chosen by the House itself to act as its representative and to preside over its debates." This is a fairly correct definition and it brings out three important points : that the Speaker is himself a member of the House of Commons and elected like all the others; that the House itself elects its own Speaker; and that he is the House's accredited deputy and the chairman of its deliberations. The dictionary definition, however, gives no idea of the Speaker's indispensability. Without the Speaker the House cannot meet. On the death of Speaker FitzRoy,[4] for instance, the House rose at once and could not function until the election of his successor, although the country was in midst of the Second World War.

The Speaker is an office the origin of which is obscure, but it is an office of much dignity, honour and authority. The first Speaker officially recorded in the Rolls of Parliament was Sir Peter de la Mare in 1376. In old days the Speaker was the spokesman for the Commons when they wished to lay their petitions before the King and in a sense he is that still. Today, in all his work, both in and out of the Chair, the Speaker interprets the will of the House and speaks for it as well as to it. For more than six hundred years the office has developed, but not essentially changed.

In the earlier days the King appointed the Speaker, but long after when the office became elective the usage was, as Coke testified in 1648, that the Sovereign would "name a discreet and learned man" whom the Commoners would then proceed to "elect". It was not till the reign of George III that the Royal influence wholly ceased to be exercised in the choice of a Speaker. Even now the election of the Speaker is subject to the approval of the Crown. But the real choice is that of the House of Commons, and normally the practice is to have unanimous election of the Speaker[5]. He is chosen by the Party in power from its own benches when there is a vacancy. The Opposition is always consulted before his name is proposed and if the Opposition objects, his name is withdrawn. As the Speaker is expected to be as impartial as any human being can be, the candidate proposed for the Speakership is one who has not been a violent partisan, or a member of the Government, and has ordinarily served a long apprenticeship as Chairman or Deputy Chairman of the Ways and Means or of some other Committee. The purpose is to secure general respect, and "no violent animosity." In 1945 when Labour had a majority of over 200, it did not oppose the re-election of Colonel Clifton Brown, who had been the Conservative nominee in1943. In 1959 the Conservatives thought that they might elect a Speaker from the Labour Party. It could not materialise as the Conservatives insisted that the choice of the candidate should be theirs. Sir Frank Soskice refused the appointment and the Conservatives refused to consider any other.

The Speaker, thus, elected continues in office for the whole life of Parliament[6]. But once elected he continues in office for so long as he wishes no matter whether or not the party which first proposed him for the Speakership is returned in majority[7]. The practice had been that once elected, the Speaker retains office until death or voluntary retirement. It is a tribute to the impartiality of the presiding officer of the House. Onslow, who was Speaker for thirty-four years

4. Fitz Roy died in 1943.
5. A contest for the Speakership is possible. Shaw Lefevre was elected for the first time (in1839) in a contest and so was Speaker Gully in 1895. Another contest over the election of a new Speaker took place in 1951 when the Conservatives were returned to Office. The Labour Party, in Opposition, did not object to the Conservative candidate for the office, but at the same time proposed that the former Deputy Speaker was most suitable a candidate because of his greater experience. Votes were taken and the Conservative candidate ex-Minister W.S. Morrison was elected defeating Major Milner of the Labour Party. The contest is not rare now.
6. The Speaker remains in office after dissolution until the next Speaker has been elected. He does not, however, after the dissolution execute duties such as issuing writs, etc., as he does during Parliamentary recess.
7. During the nineteenth century, for instance, only three Speakers were elected from the Conservative Party. The Party came to office in 1841, 1874, and 1895, but in each case the Speaker already in office was reappointed although he was elected to Parliament as a Liberal and to the Chair under a Liberal Government. In 1945, when Labour had a clear majority, Clifton- Brown, a Conservative, was retained as Speaker.

at the beginning of the eighteenth century, set a good example of impartiality by resigning his office as Treasurer of the Navy in order to show that he was independent of the government. But his successors for the next hundred years did not adhere to his conception of office. Not until the nineteenth century, it became the generally accepted principle, never questioned since 1870, that a Speaker, once elected takes no further part in party politics.

Since the time of Shaw Lefevre it has come to be understood that the Speakership is a strictly judicial office, wholly divorced from politics. As the Speaker abstains from any kind of political activity, its natural corollary is that a Speaker should not have to fight an election. Accordingly, for a long time there was a tradition to re-elect him unopposed. Since 1832 this had been the general rule. But in 1935 and again in 1945 the Labour Party contested the re-election of Conservative Speakers, FitzRoy and Clifton-Brown, though without any success. In 1951, no official Labour candidate opposed the Speaker. But an independent Labour candidate who ran against him was overwhelmingly defeated. In 1955 General Election the Speaker was opposed but re-elected by a large majority. It appears that the electorate feels alive to its duty of re-electing the Speaker unopposed and are determined to continue with a tradition which is now more than a century old, although since the end of the Second World War the Speaker has, almost always, been opposed. But when a candidate at the polls, the Speaker remains aloof from party issues, standing as 'the Speaker seeking re-election'. The endeavour has been, as Herman Finer remarks, "to make the Speaker the objective embodiment of the rules and laws of the Commons, purgating from him the last milligram of partisanship"[8].

An impartial arbiter in the proceedings of the House, the duties of the Speaker are many and arduous. Some of these duties depend on age old practice, some on statutory authority, and some on the Standing Orders of the House. We divide them into three main categories.

On occasions he acts as spokesman of the House, *e.g.*, when he claims the Commons' privileges, and executes its orders and decisions. Sometimes he bears their loyal address to the Throne. The Commons have access to the King only through the Speaker, or, in a body, with the Speaker at the head. In the name of the Commons the Speaker conveys thanks and censures. He presents Money Bills at the Bar of the House of Lords.

In certain ways, the Speaker acts as the House's representative and executive. He is its active and the only constitutionally recognised deputy. He issues a number of warrants in the name of the House for various purposes. For example, when a seat falls vacant during a session, the House directs Mr. Speaker to cause a writ to be issued for new election. Similarly, he issues warrants for the commitment of offenders and for the attendance of witnesses in custody.

The Speaker is also in charge of the administrative department, specifically called the Speaker's Department of the House of Commons. To it belong the Clerk of the House, a Librarian and staff, an Examiner of Petitions for Private Bills, officers of the vote office, and various others.

Occasionally, the Speaker is required to preside over a constitutional conference like the Buckingham Palace Conference in 1914 and the Speakers' Conference in 1920.

Gladstone once said that the Speaker's chief function was to defend the House against itself. He does this when he presides in the Chair of the House during the debate. In the Chair, his functions are threefold. First to keep order in the House, second; to keep members in order; and third, to select the speakers in the debate.

The Speaker presides over the sittings of the House of Commons, except when it sits as a Committee of the Whole, and decides who shall have the floor. All speeches and remarks are addressed to the Chair. In any political assembly feelings are apt, from time to time, to run high. When they do, there is always the possibility of disorder. It is the business of the Speaker to see that the proceedings of the House are conducted with decorum and, if possible, with effect. He has, accordingly, wide powers to check disorder, irrelevance, tedious repetition and unparliamentary language or behaviour. It is a rule that when the Speaker stands, no member must remain on his feet. When he finds signs of disorder, the Speaker will stand and with a few well-chosen words of admonition or appeal will try to cool down the passion of Members, and thus, avoid disorder. Usually this is effective, but if any Member persists in disorder, the Speaker may ask him to resume his seat. If he still continues to be

8. Finer, H., *Governments of Greater European Powers*, p. 107.

disorderly, the Speaker may order him to withdraw from the House.[9] If he does not go, the Speaker will 'name' the Member. This means expulsion of the Member from the House. If the Member refuses to leave the House he will be escorted out (by force if necessary) through the Serjeant-at-Arms.[10] He adjourns the House, if the disorder becomes serious. A Standing Order to this effect was brought in after certain Irish Members had forced Speaker Gully into a very difficult position and it was applied in May 1905[11].

On November 13, 1980 the House witnessed rowdy scenes when Labour M.Ps blocked the prorogation ceremony denying the Queen's messenger, Black Rod, bearing summons from the Lords, access to the Commons Chamber. The Speaker was forced to suspend the stormy sitting twice, first for ten minutes and then for 15 minutes, before the Government bowed to the Opposition's demand for the withdrawal of the Conservative document on the proposed increase of council house rents, the issue which had sparked off the uproar. Michael Hasaltine, Secretary of State for Environment, emphasised that he was withdrawing the consultative document because the authority of the Speaker was at stake. But such occasions are very rare in the parliamentary life of Britain.

Here is a lengthy quotation from Herbert Morrison to illustrate the high traditions of the office and the great reverence with which the Members hold the incumbent. "The Speaker, "says Morrison, "has no bell with which to restore order not even a gravel. When he rises in his place and says, 'Order,' it is rare for the House not to come to order at once. And if some Members should be noisy a large proportion of the House will aid the Speaker by crying 'Order, Order' until the noisy and disorderly ones are quietened, or a Member standing at the same time as the Speaker rises resumes his seat. One evening between the wars I was impressed by a comparison with the French Chamber of Deputies. The occasion was exciting and the Deputies were thoroughly enjoying themselves in one of their occasional outbursts of noisy and persistent disorder. The President sat in his place ringing the bell vigorously and at length, it almost seemed that the louder he rang the bell, and the longer he rang it, the worse the disorder became. I could not help thinking, with some British Parliamentary pride of Mr. Speaker in the House of Commons."[12]

His second function is to keep members in order and this relates to the judicious conduct of debates. The Speaker is "Lord of Debate." He must see that the debate centres on the main issues before the House and Members do not wander, accidentally or deliberately, in the realm of irrelevance. Any Member can point out to Mr. Speaker that the Member who is speaking is out of order. But generally, the Speaker himself calls such a Member to order. Then, there are constant direct appeals to him for his rulings on points of procedure. Here the Speaker acts as a judge interpreting the law of Parliament. His ruling is final which need not be contested.[13] Each decision of the Speaker ranks as a precedent, to be heeded like the judgment of a court on the next occasion. Similarly he advises the Members and the House on points not covered by Law. He puts questions and announces the results of votes.

The Speaker's third duty in presiding over Commons debates is to "call" the Members to participate. He decides who is to speak, for so little time is available now-a-days that only those who are fortunate enough "to catch the Speaker's eye" can hope to speak. The Speaker is guided in his choice by many considerations. He will usually give a Member a chance of making his first, or maiden speech, but generally he will choose those Members who, in his opinion, are likely to be in a position to make the best contribution to the debate; the Government and Opposition leaders share a conventional priority. And since his object is to give opportunities for the

9. On the first occasion when the member is named he must stay away for five days. On the second, for twenty-one days. On the third, until the end of that sitting of Parliament.

10. The Serjeant-At-Arms attends the Speaker with the Mace (the symbol of Speaker's authority) and arranges the policing of the House. The Speaker can also order the arrest of a member and confinement to the Tower of Big Ben. In 1930, one member in a fit of anger seized the Mace and lifted it from the Table. There was talk of Mr. Speaker using this power for the offence, which by Parliamentary standards, was very grave, but he did not use it and the offending member was merely expelled for a period.

11. For one whole hour the House refused a hearing to the Colonial Secretary. The Deputy Speaker was in the Chair and he adjourned the House.

12. Morrison, H., *Government and Parliament,* pp. 204-205.

13. During the 1958-59 session, a number of Labour Members grumbled about Speaker Morrison's actions. It has been mentioned that some Members were discourteous to the Speaker in raising pointless points of order, and they disputed his decisions.

expression of all the main shades of opinion, he exercises his judgment most discreetfully. In fact, Members apply to the Speaker beforehand through their Whips, so that his choice is by no means haphazard, and, of course, the Leaders of the House and Opposition decide who shall be their principal speakers. But he preserves his freedom to depart from this list.

Another less obvious function of the Speaker is to protect the House against the encroachments of the Government. When Ministers tend to encroach upon the freedom of Members, or refuse to answer questions, or do not give sufficient information, it is to Mr. Speaker that the Member appeals to safeguard and enforce the rights of Members against the executive.

There are some other functions of the Speaker and they are of crucial importance. He can prevent the putting of the question to a vote, when moved by a Member of the majority and usually a Government Whip, until he is personally satisfied that the minority has been given due opportunity to debate its views. After all Closure is an infringement of the rights of the minority and it is the duty of the Speaker to protect the liberties and rights of debate of the minority. He, also, decides whether to admit or rule out amendments. Then, he has the power of decision on the admissibility of questions. He may, on his own judgment, decide whether a matter is of definite public and urgent importance and so put it on the immediate agenda for debate. The Act of 1911 empowers the Speaker to certify that a Bill is a Money Bill and thereby eliminates the obstruction of the House of Lords. He decides how Bills are to be allocated between the various Standing Committees, and in this respect has a comparatively free hand. The Speaker also appoints the Chairmen of Standing Committees, whom he chooses from the Chairmen's panel, a list of not less than ten Members drawn up by the Committee of Selection. It is for the Speaker to decide who is the leader of the Opposition should this ever be in any doubt.

The umpire-like quality of the Speaker is characteristic of the trust which the Commons repose in him. He does not vote, except in a case of a tie. But the Speaker usually endeavours to give his casting vote in such a way that it maintains the *status quo,* upholds established precedents and previous decisions of the House, and avoids making himself personally responsible for bringing about any change. What he really does is to put a temporary stop to the debate on an issue that will probably be revived at a later date.

What precisely the office of the Speaker is and his functions have been succinctly described by Douglas Clifton-Brown, who was Speaker from 1943 to 1954. On the occasion of his re-elction in 1945, he said, "I have to try to see that the machine runs smoothly. The Speaker can help here, in the Chair and behind the Chair. I have to see that the Government business, while I am not responsible for it, is not unduly hampered by wilful obstruction. I have to see that minority views have a fair hearing ....Of course, there will be various shades of opinion on all sides of the House and all these have to be considered when one is calling speakers. Free speech and fair play for all must be my main duty....As Speaker, I am not the Government's man, nor the Opposition's man. I am the House of Commons man and I believe, above all, the back-benchers' man .....As Speaker, I cherish the dignity of the office very much. I wish to uphold it, and I shall." Sir Harry Hylton-Foster, on his election to Speakership in October 1959, pledged his service to the cause of Parliament. It would be his whole ambition in life, he said, to serve the House faithfully "to maintain in full vigour those traditions that have made this House at once the origin and the example of parliamentary institutions throughout the world.[14]

The Speaker is, in brief, the impartial custodian of the rights of the members of the House. For him, the humblest back-bencher is no less than a Member, and the greatest Minister is no more than a Member. The essence of his impartiality lies in the way he maintains an atmosphere of fair play by ensuring that the Opposition have an opportunity to express their views and criticisms, yet at the same time seeing that there is no parliamentary obstruction to hinder the Government in its task of governing the country. "It is Mr. Speaker's function to safeguard the privileges and rights of the Members of the Commons not only against the Crown and Lords but as between each other, to the end that the whole basis of Parliament, as a forum in which the elected representatives of the people speak their minds and say what they think—popular or unpopular should be reserved."[15] The Speaker's conduct reflects the spirit, as Briers says, which is ultimately more important than the forms of

14. As cited by Ronald Young. *The British Parliament*, p. 125.
15. Brown, W. J., *Guide to Parliament*, p. 61.

Government. "In some measures he is responsible for the continued existence of the House of Commons, for it will survive only so long as its procedure and facilities are adequate for the functions it has to perform; and the adjustment of established procedure to novel conditions is the Speaker's task."[16] The Speaker must, accordingly, possess high and varied qualities of character and intellect. He should be able, vigilant, imperturbable, tactful, enthusiastic for and interested in the institution of Parliament. Sir William Harcourt said of the Office: "We expect dignity and authority, tampered by urbanity and kindness; firmness to control and persuasiveness to counsel: promptitude of decision and justness of judgment; tact, patience, and firmness; a natural superiority combined with an inbred courtesy, so as to give by his own bearing an example and a model to those over whom he presides; an impartial mind, a tolerant temper, and a reconciling disposition; accessible to all in public and private as a kind and prudent counsellor." The Speaker seldom speaks, but when he does "he speaks for the House, not to it."[17]

The varied qualities needed in an ideal Speaker are not commonly found. But the ideal is recognisably there and for all these burdens the Speakership carries compensation in social status and material well-being. In the official precedence he ranks before the Prime Minister and just after the Archbishop of Canterbury. He is the only subject of the Queen who holds levees at which court dress must be worn, and to which invitations are in the nature of commands . On retirement, he gets a handsome pension and is created a Peer. Speaker Whitley (1921-28) was the first to refuse peerage. On his retirement Labour Members opposed the grant of his pension. They thought that the Speaker's pension was too much whereas his salary too little.

FUNCTIONS OF THE HOUSE

The House of Commons has, broadly speaking, three functions: legislation, financial business, and deliberation and criticism or controlling the Government. The Clerk of the House of Commons once defined the functions of the House as follows : "(1) Representation of popular opinion, (2) the control of finance, (3) the formulation and control of policy, (4) legislation." The Clerk of the House, as well as Walter Bagehot, listed legislation last, and that, too, for cogent reasons. Legislation developed from the practice of petitioning the King. Financial functions were the original and the procedure involved therein originated in the practice of granting "aids". The critical and deliberative functions are the earliest, rudimentary in the beginning but the most essential feature of the governmental system in Britain. It is, perhaps not always realised that the prime task of the House of Commons is not to govern or legislate, but to criticise and control the executive government and it is the essence of parliamentary democracy. John Stuart Mill illustrated this point in his own characteristic way. "The meaning of representative government is, that the whole people, or some numerous portion of them, exercise through deputies periodically elected by themselves the ultimate controlling power, which, in every constitu- tion, must reside somewhere....The proper duty of a Representative Assembly in regard to matters of administration is not to decide them by its own vote, but to take care that the persons who have to decide are subject to its constant control." We, however, for obvious reasons take legislation first.

LEGISLATION

Process of Legislation

The process of making laws is the business of Parliament as a whole; King, Lords and Commons. The House of Commons can by itself do nothing. But, in practical terms, the role of the Monarch in Parliament is just formal, and in a number of respects the legal power and political authority of the House of Lords is subservient to that of the Commons. Today, the Commons composed of the 635 elected representatives of the people, is the dominant element in Parliament, so that in almost all practical (though not legal) respects Parliament and the House of Commons are interchangeable terms. The House of Commons can initiate any measure, ordinary and financial, and most of the great contentious and important laws originate there and the verdict of the House of Commons finally determines their fate.

Every law begins as a Bill[18] which is read three times in each House of Parliament and after receiving the King's assent becomes an Act. Why the Bill is read three times, it is difficult to say.

16. Briers, P. M., *Papers on Parliament: A Symposium* p.27.
17. Speaker Lenthall said to Charles I in 1842 that he had "neither eye to see nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am."
18. A Bill is a draft Act of Parliament.

It may only be assumed that if the House has given its assent to a measure three times there can be no question of unpremeditated acquiescence to it. The practice of reading a Bill three times dates from medieval times, "when the number three was regarded with especial reverence; and by the end of the sixteenth century it appears to have become invariable."[19] It is, indeed, a sensible practice, but it is only a practice and not a legal necessity.

Bills, in Britain are classified in accordance with two important distinctions. In the first place, Bills are divided on the basis of a difference of *substace*, into *Public Bills* and *Private Bills*. Public Bills are of general application and contain subject-matter applicable uniformly to the public as a whole or to large parts of it. On the other hand, Private Bills affect particular local or private interest and are concerned with establishing legal arrangements that will apply to specific person, corporation, group, community or the like. They are not generally of public concern and are passed by a special procedure distinct from Public Bills. Most Private Bills come from local government authorities.

Public Bills are subdivided, according to a formal distinction, into Government Bills and Private Members' Bills. Both Government and Private Member's bill are, as far as subject-matter is concerned, Public Bills but their origin is different. A Government Bill, as its name implies, is a Public Bill introduced by a Minister on behalf of the Government. [20] A Private Member's Bill is a Public Bill promoted by a Member of Parliament, who is not a member of the Government. Public Bills run between 90 to 150 per year as finally enacted laws, of which a very small numbers originate from Private Members. Public Bills may originate in the Commons or in the Lords, but usually they find their origin in the Commons.

A Public Bill, in becoming law passes through three readings but five stages in the House of Commons. The five stages are: (1) First Reading; (2) Second reading; (3) Committee stage;(4) Report stage; and (5) Third Reading. If there are financial clauses in a Bill, and most Bills have succh clauses, there will be two extra stages, either before or after the Second Reading. A financial resolution is moved and debated in the Committee of the Whole House (the House without the Speaker) and report to the House itself; the Speaker presiding.

Before a Public Bill begins its career in the House of Commons, the Cabinet discusses the proposal to introduce a Bill at the initiation of the Minister concerned. If the Cabinet accepts the proposal, a memorandum is sent to the Office of the Parliamentary Counsel, a subordinate department attached to the Treasury set up in 1869 and staffed by non-practising lawyers, containing a general description of the scope of the Bill. The Parliamentary Counsels are the skilled lawyers who draw up the Bill on the lines suggested by the memorandum. Then , the draft Bill is laid before the Cabinet for approval, printed and discussed with the representatives of the various interests affected. No Government can afford to ignore or trample upon the various groupings of opinion. There is the next general election to be always remembered. It means that there are endless negotiations, deputations and interviews before even a final draft of the Bill is settled. The Bill may have to be redrafted many times and this process may occupy a considerably long time. At the end of such consultations the Bill may have to receive Cabinet approval once again.

When the Bill has been finally approved by the Cabinet, it stands its turn for introduction. There are two ways of introducing a Bill. It may be introduced on a motion, or it can be introduced on written notice. The former procedure has now fallen into disuse as far as Government Bills are concerned. The normal method of introducing a Bill is on written notice and is prescribed in Standing Order No. 35 of the House of Commons. On the day appointed, of which notice had been given, the introducer merely comes forward and hands to the Clerk of the House a "Dummy Bill" . The Clerk reads out the title of the Bill. The "Dummy" does not contain the text of the Bill. It is just a special form of stationery officially furnished on which the title of the Bill is written down. There is no debate and discussion and that finishes the first reading of the Bill. The Bill is printed as soon as it is ready and Members get its copies to study. The measure then waits its turn for the Second Reading. The First Reading is this a formal stage.

The crucial stage in the life of a Bill is the

19. Taylor, E., *The House of Commons at Work*, p. 131.

20. Proposals for legislative changes are set out by the Government in White Papers which are debated in Parliament prior to introduction of a Bill. Since the late 1960's the Government has also adopted the practice of publishing 'Green Papers' from time to time setting out for public discussion major ministerial proposals which are still at the formative stage.

Second reading and, *ipso facto,* the second stage in its career. On a day fixed in advance, which varies between one day and several weeks depending on the nature of the Bill by an order of the House, the Minister-in-charge of the Bill will rise and move that "the Bill be now read a Second time." He will explain, elaborate and elucidate what the proposed measure will do, and how the necessity of such a measure is important and urgent. Some leading Members of the Opposition will follow the minister. He might move to amend the Minister's motion and say that "the Bill be read a second time this day six months hence." Or he might propose a substantive amedment to the policy embodied in the Bill. Then would ensue a general debate in which many Members on both sides of the House would participate, and it would end with the Minister winding up for the Government. Upon the conclusion of the debate there would be a division. If the Government were defeated it would have to resign. But it would never be defeated so long as it commands a majority. In the Commons noncontroversial Bills may be referred to a Second Reading Committee to recommend whether it should be taken as read a second time. Likewise, a Public Bill relating exclusively to Scotland, may, in certain circumstances, be referred by the House of Commons to the Scottish Grand Committee at the second reading stage. When this happens, the Committee must consider the Bill in relation to its principles and report that it has done so. The Bill thus returned to the House has not been read a second time, but when it comes up for the second reading again a motion may be made to commit it to a Scottish Standing Committee. If this motion is carried the Bill is deemed to have been read a second time.

The second reading is not the time for detailed discussion or amendments and vote upon the clauses. It is the Bill as a whole, its merits and principal policy issues involved, which are discussed and amendments are proposed not to the Bill, but to the motion that "the Bill be now read a second time." The object is to approve the Bill or throw it out entirely. The second reading in Britain, corresponds more exactly to the Continental practice of "discussion generale," which usually precedes passage to the specific articles. Erskine May, the former Clerk of Parliament, said that "The second reading is the most important stage through which the Bill is required to pass: for its whole principle is then at issue, and affirmed or denied by a vote of the House"[21]. But the truth is that one stage in the course of the Bill is as important as the other. In fact, decisions are made in the Committees and not in the second reading. The organs of opinion and interested groups, as Herman Finer maintains, are "extremely vocal from now onward and seek to exert influence upon the Minister-in-charge of the Bill. They obtain their opportunity for concrete amendments in the states of cogitation which immediately precede, and operate during consideration in committee."[22]

Upon being read a second time, ordinary Public Bills[23] go automaticaly to one of the Standing Committees unless some member rises immediatelly after the second reading and moves that the Bill be committed to a Committee of the Whole House or to a Select Committee or to a Joint Committee of Lords and Commons. Public Bills to which Cabinet attaches great importance are often sent to the Committeee of the Whole House. In the House of Lords, unless otherwise ordered a Bill is committed to a Committee of the Whole House.

The Committee stage provides the occasion for a detailed discussion of the Bill. Every clause must be put separately to the Committee and accepted, amended or rejected, with or without debate. Discussion is generally of a very restrained, persuasive character. "The Minister is generally terse and quiet and the speeches of the critics have something of the same dry, business like flavour." The government maintains with persistence its guiding hand throughout the Committee stage. It does not relinquish its leadership to a Reporter, as in France or to a "member-in-charge" as in the United States. A Minister, in Britain, sponsors the Bill in Parliament and pilots it through all stages. The fate of the Bill depends almost exclusively upon him. He must guide the Bill through the Committee with tactful, and if necessary forthright firmness in respeet of principles, and with the appearance of amiable resignation and broad-mindedness in connection with unimportant detail.

A member of Committee may speak any number of times to the same question without

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21. As cited in Herman Finer, *The Theory and Practice of Modern Government*, p. 485.
22. *Ibid.*

being exactly repetitive or demonstrably irrelevant. To avoid such obstructionists, the Government may be forced to apply a 'guillotine' motion, or by moving the Closure on every amendment. This is a salutary if not a drastic remedy and yet it cannot prevent obstruction. If the Opposition feels inclined they will force a division on every clasue.[24]

But once a Bill is passed through the second reading, its fundamental principles are supposed to have been accepted. It is out of order to propose an amendment in a Committee intended to negative the effect of the Bill. Similarly, amendments which are not strictly relevant to the subject-matter of the Bill, and amendments which are not in conformity with the general intention of the Bill are out of order. Then, the amendments must not be inconsistent with whatever has already been agreed to in the Committee on the Bill, and "they must not be trifling, vague or jesting."

The Committee stage has existed for centuries. The Commons had in the past, when the Spekaer was the servant of the King and "an office-seeking spy" always wanted to discuss affairs without the presence of the Speaker. Now the Committees derive their importance and utility from the increased legislation and inability of the House to spend time on its detailed discussion. The modern Committee system was established in 1882. "It was ," as Finer says, "one answer (the other was Closure) to the congestion of the House with business, aggravated at that time by the ingenious obstructive tactics of the members from Ireland, who had made up their minds that if Ireland was not to be freed to govern herself, they would not let England govern herself." The main purpose of the Committee system was decongestion to save the time to the House of Commons by devolving its business to other bodies of the House which functioned at other times.

There are five types of Committees : (1) Committee of the Whole House ;(2) Standing Committees; (3) Select Committees; (4) Joint Committees; and (5) Private Bills Committees. The Private Bills Committees are for the discussion of private and local legislation and have nothing to do with the Public Bills. The Joint Committees are Select Committees of the House of Commons and the House of Lords and consist of an equal number of members from each House to consider Bills or other matters in which both Houses are interested.

The Committee of the Whole House is the first in importance. It consists of all the members of the House of Commons. But it is distinguished from the House itself that it is presided over not by the Speaker, but by a Chairman of the Committee or in his absence by the Deputy Chairman.The Mace which is the symbol of authority of the Speaker is placed, so long as the Committee is in session under the Table. Then, the Rules of Procedure in the Committee are relaxed. The motion need not be seconded and the members are allowed to speak any number of times on the same question. There is no restriction on speech in the Committee of the Whole House and all devices which aim at cutting off debate cannot be moved.

Committee of the Whole House meets for four distinct purposes. There is the Ordinary Committee of the Whole House on a Bill; the Committee of the Whole House on a Money Resolution; the Committee of Supply and the Committee of Ways and Means. The first comes into being whenever the House resolves that an ordinary Bill shall go to the Committee of the Whole House rather than to a Standing or Select Committee. When the work of the Committee is done, it rises. The House of Commons again comes into session, and the Speaker occupies the Chair and the Mace is placed on the Table. The Chairman of the Committee, then, approaches the Chair and says, " I beg to report that the Committee have made progress in matters referred to them, and ask leave to sit again." The Speaker asks when the Committee is to sit again and one of the Government Whips answers him. The appointed day is announced from the Chair and it becomes an order of the House. If a Committee has completed its assigned task, its Chairman says,"The Committee have come to a certain resolution." The Committee of the Whole House is not set up permanently. It is a temporary body appointed from day to day.

The Committee of the Whole House on a Bill is rare. If it is desired to send the Bill to a Committee of the Whole House, a motion to that effect must be moved immediately after the Bill is read a second time. Other- wise the Bill will go

24. "In Standing Committee on the Cinematograph Films Bill 1927, a minority of six Members divided the Committee no fewer than three hundred times, and prolonged the Committee stage from April to July: twenty-five sitting days. In 1948, the Opposition prolonged the debate on the Gas Bill for months in Committee and even forced several all-night sittings on the Bill—the only case where a Standing Committee had sat all night." Taylor, E., *The House of Commons at Work*, p. 139.

automatically to a Standing Committee. The Committees of Supply and of Ways and Means are Committees of the Whole House of Commons which discharge the financial duties of the House concerning the grant of public money and the levying of taxation.

After the Second Reading automatically a Bill, other than a Money Bill, goes to one of the Standing Committees, unless the House resolves that the Bill would go either to the Committee of the Whole House or to a Select Committee. "Constitutionally important Bills" are referred to the Committee of the Whole House, because the House has always preferred to deal with them directly rather than in smaller Committees. A Bill is referred to a Select Committee when examination of expert evidence is necessary to carry the legislation with technical efficiency involved therein.

Most Bills, therefore, go to the Standing Committees. Originally, there were two Standing Committees. In 1907, their number was raised to four; in 1919; to six; and in 1947 to "as many as shall be necessary." Currently, there are seven such Committees appointed, though the number can be increased at need. The Committees are not named as in other Legislatures by subject-matter, for example, Education, Health, Armed Services, etc. In the House of Commons they are distinguished only by a letter of the Alphabet: A, B, C, D. Only four Committees—the Second Reading Committee, Scottish Standing Committee, the Scottish Grand Committee and the Welsh Committee—are distinctly named. The Standing Committees are appointed by the Selection Committee, a body normally consisting of eleven members drawn from the main parties in the Commons at the beginning of each session. The members of a Standing Committee are constantly changing, from session to session. Each Committee consists from sixteen to fifty members, who are specialists and experts in the subject which is the substance of the Bill. The parties are represented in proportion to their numbers in the House. Chairmen of Standing Committees are appointed by the Speaker from a Chairmen's Panel consisting of not less than ten persons nominated by the Selection Committee. The Committees meet in the mornings from 10.30 a.m. to 3.30 p.m., with the recess, and may continue even afterwards. The House has now admitted that a Committee might sit while it is in session. The "guillotine" form of closure has more recently become applicable to Standing Committees. The Government may also use its power to move the Closure on each amendment. The procedure of a Standing Committee is generally similar to that of a Committee of the Whole House.

Bills come to the Standing Committees quite arbitrarily, according to their order on a calendar and according to which Committee finishes its work first. There is no specialisation on different topics. The Standing Committees are composed of members of Parliament and have no vestige of executive power. They cannot summon persons and papers before them. They cannot debate or discuss matters irrelevant to the actual text of the Bill before them. They are legislative Committees and not investigative Committees. All information that is needed is supplied by the Minister-in-charge of the Bill. The Opposition supplies the contrary information. The public are admitted to meetings of a Standing Committee, unless the Committee decides to exclude them.

In addition to the normal Standing Committee, there are three others, the Scottish Standing Committee, the Scottish Grand Committee and the Welsh Grand Committee. The Scottish Standing Committee consists of thirty members nominated from Scottish consituencies with up to twenty other nominated members; in its plenary form, as the Scottish Grand Committee, it comprises all the members for the Scottish constituencies and not less than ten or more than fifteen others. These Committees have three functions: to discuss for two days of each session matters of exclusively Scottish concern; to consider for six days such estimates as refer exclusively to Scotland; and also to consider the principles of any Bill which the Speaker certifies as relating exclusively to Scotland. Such a Bill can then, on the motion of a Minister, be referred to its Committee stage to a Scottish Standing Committee. The Welsh Grand Committee consists of 36 members for constituencies in Wales and Monmouthshire, with up to 5 other nominated members. The Committee considers the Annual Report for Wales and certain selected subjects for debate.

Select Committees are appointed to inquire into and report to the House on special matters of great importance or to give special consideration to Bills that are controversial and propose radical changes. They are employed on specialised tasks which the House itself is unsuited to perfom. They chiefly carry out inquiries rather than discuss [illegible] Since Select Com-

tees are specialised Committees they seldom have more than fifteen members who are more or less technical experts adequately familiar with matters referred to them for investigation. They hold hearings, collect evidence examine witnesses, sift evidence, and draw up reasoned conclusions to report to the Commons. As soon as the investigation conducted by a Select Committees is completed and its report submitted to the House, the Committee passes out of existence. The findings of a Select Committee are not binding . It simply makes recommendations to the House.

Apart from temporary Select Committees of this kind, a number of perennial Select Commitees on various topics are appointed every year and they remain in existence throughout the session of Parliament. Hence, these are called Sessional Select Committees. Examples of Sessional Select Committees are : the Selection Committee, the Committee of Privileges, the Committee on Public Petitions and Committees on Public Accounts, on Estimates, on Statutory Instruments, on Nationalised Industries and European Legislation. In addition, a number of 'specialist' committees have been set up: The Committee on Agriculture, the Committee on Science and Technology, the Committee on Education and Science, the Standing Orders Committee and the Committee on Race Relations and Immigration which considers matters affecting immigrants and race relations in Britain.

But in 1980 Mrs. Margaret Thatcher's Government, backed by the Opposition Labour Party, brought about a radical change, despite the stiff opposition from some members of Parliament, in the Committee system, by establishing twelve Select Committees and phasing out the existing Select Committees, except the Public Accounts and European Legislation Committees. These Select Committees, consisting of nine to eleven members selected by an all-Party group of nine Members of Parliament, are of the nature of special "watchdog" committees endowed with investigative powers and keeping constant control on the working of the Department to which a Committee is attached. But, unlike the Congressional Committees in the United States they have not the power to amend Bills. Nor can they compel Ministers to attend their meetings. The Government is publicly pledged to co-operate with the Committees and it is, accordingly, presumed that Ministers will not refuse to appear once invited to do so. The Government is also committed to give more powers to these Committees if deemed expedient and necessary.

Joint Committees are committees composed, usually of an equal number of Members of each House appointed to consider either a particular subject or a particular Bill or Bills, or to consider all Bills of a particular description, for instance, Bills dealing with statute law revision and consolidating Bills. A Joint Committee to consider a particular subject may be appointed at the instance of either House, but the proposal that a particular Bill should be committed to a Joint Committee must come from the House in which the Bill originated.

The members of a Joint Committee are usually chosen in equal numbers by the respective Houses. The Committee has only such authority as both Houses agree to give it. The time and place of its meetings are also fixed by agreeement between the two Houses. The Chairman is elected by the Committee itself from among its members. Decisions are taken by vote and the Chairman votes like any other member of the Committee.

The Report of a Joint Committee is presented to both Houses—by the Chairman to the House of which he is a Member, and by a member selected by the Committee for the purpose to the other House.

Finally, are the Private Bill Committees. The constitution, functions and procedure of the Committees on Private Bills depend on whether a Bill is opposed or unopposed. An opposed Bill, in this sense, is not a Bill which has been opposed in Parliament, but a Bill against which a petition has been deposited, or a Bill which the Chairman of the Ways and Means or the Lord Chairman of the Committees report should be treated as unopposed Bill, athough no petition has been presented against it. The Committee on an opposed Bill before the House of Commons consists of four members of the House (appointed by the Committee of selection) who must have no personal or local interest in theBill. For an unopposed Bill, the Committee consists of the Chairman of the Ways and Means and a deputy Chairman and three other members chosen by the Chairman from a panel appointed by Committee of Selection at the beginning of each session. In the House of Lords, Committees on opposed Bills consist of five members, unopposed Bills are referred to the Lord Chairman of Committees.

The Committee System

In Britain as early as the reign of Queen

Elizabeth I it was not unusual to refer a Bill after the second reading to a committee which can be compared to a Select Committee of our times. The Committee system, in its present form was established to relieve the congestion of business in the House of Commons, caused partly by the obstructive tactics of the Irish Nationalists, as mentioned earlier. They have, consequently, no resemblance whatever between the Committees of the American or Continental type. The Committees in the United States and European countries are bodies of relatively stable membership specialising in particular aspects of public policy. In the United States there are Committees of Congress which formulate policy, and intervens in the actions of the Government. In the Third Republic of France a system of elven Commissions, chosen by lot from the Chamber of Deputies, performed the same functions to an even greater extent. The Fourth Republic constitutionalised Commissions. Article 15 of the Constitution provided that "the National Assembly should study in its Committees the Bills laid before it.........." They were nineteen in number and were powerful enough to find themselves often in conflict with the Government.

But such a conception of Committee system is entirely foreign to the spirit of the British Constitution. The Committees of the House of Commons are not small expert bodies undertaking special studies of the merits of the Bills and possessing the power of life and death over them. They are rather miniature editions of the House headed by a Chairman whose powers and functions are very much like those of the Speaker including the Closure rules. They have no permanence or individuality. Their members are constantly changing. The Standing Committees of the House are distinguished only by a letter of the alphabet, and they have no special subjects to deal with.[25] The Speaker assigns Bills to them more or less at will. The purpose of the Committees is to put the Bill into final shape for adoption after its general character has already been approved at the second reading and before it has to be reported out. Public hearings are not conducted by Standing Committees and they take no evidence.[26] The House of Commons still jealously guards its responsibility of making laws and criticising policy in full session. Its Committees are only auxiliaries, "the mere accessories of the legislative and critical machine".

The Committee system, as it obtained in Britain, had engaged the attention of parliamentarians and public men and they had been advocating since long for the creation of specialized committees of the House of Commons, each concentrating on the affairs of a department or group of Departments. The advocates of specialized committees included Lloyd George, L.S. Amery, Sir Stafford Cripps, Sir Ivor Jennings, Harold Laski, D.W. Brogan and two recent Clerks to the House of Commons, Lord Campion and Sir Edward Fellowes.The many reforms that have been suggested along these lines vary in details. But all are agreed that specialised committees would enable Members to acquire the detailed information about the work and problems concerning the Department if they are to conduct diligent and useful debates on administrative matters and on legislation necessary to meet administrative needs of the Department. Secondly, specialised committees would enable Members to acquire information about and criticise those aspects of defence policy whch "are now shrouded in secrecy." Members are generally ignorant of the defence policy of the country during peace time and, accordingly, it is free from parliamentary control, although it involves the expenditure of 20 per cent of Government's annual revenue. Thirdly, specialised committee would discuss administrative matters in a non-partisan way and, finally, membership of the committees would help Members of the Opposition not only to criticise the Government "in an informal way, but also to prepare themselves to take over responsibility for the departments if they should win an election."

The suggestions for reform of the committee system have been widely discussed in the press, platform, books, in debates in the House of Commons, and before the Select Committees on Procedure of 1930-31, 1945-46, 1958-59, and 1964-65. But "they have met unyielding opposition from the spokesmen of whatever government to be in power." [27] The Government point

25. The Public Accounts Committee and the Estimates Committee have special functions in connection with the expenditure of public funds.
26. The Public Accounts and Estimates Committees have the power to send for persons and papers. In some ways they have functions like Congressional investigating committees, though they act in a non-partisan manner and within the policy limits laid down by the House.
27. Birch, A. H., *Representative and Responsible Government*, p. 161.

of view had been that Britain should not try to copy the institutions of foreign countries and if American or French pattern was adopted, "we would be doing something absolutely opposite to British constitutional development."[28] Herbert Morrison, in his evidence to the Select Committee of Procedure, 1945-46, maintained that Parliament "is not a body which is organised for current administratio–not in this country. They have had a go at it in France and the United States, and I do not think too much of it." It had further been maintained that specialised committees would constitute a radical constitutional innovation, which would be a challenge to the responsibility of the Minister that he is individually accountable to the House as a whole for the work of his Department.

But Birch remarks that it is no answer to say that reform would constitute a breach of traditional practice. "because this is what the reform is intended to." He is of the opinion that most of the arguments by the opponents of the proposed reform are irrelevant. He even suggests that it will be appropriate to consider the nature of responsible government in Britain, if ministerial responsibility blurs by the creation of specialised committees.[29] Whatever be the merits or otherwise of specilised Committees it cannot be denied that the British Committee system was defective and Parliament could not control administration because M.Ps lacked knowledge about administrative affairs, and the House lacked time for detailed discussion. To remedy the position partially three specialized Committees were set up : the Committee on Agriculture, the Committee on Science and Technology, and the Committee on Education and Science. They were in addition to Public Accounts Committee, the Select Committee on Estimates and the Select Committee on Statutory Instruments. All these Committees are set up at the beginning of each session of Parliament, but are in effect a permanent feature of the House of Commons Commiittee system. R.H.S. Crossman, Leader of the House of Commons, while pleading for reform in the Parliamentary procedure gave a note of warning. He said, "....we must take care to see them up in the right way. We cannot make the American-style Committees. They must be in our tradition. We must take trouble and care on this. We are on the edge of getting it right, but do not let us set up too many committees."[30]

The M.Ps Committee charged to look into the procedure of the House of Commons submitted its report in December, 1979 and suggested radical reforms. When the Conservative Government came into office in May,1980 the Government accepted the Committees' recommendations and backed by the Labour Opposition brought forward the most important changes in Parliament during the present century. The Government believed that the proposed reforms would assert the historic role of the Commons in checking and controlling the Executive and bringing members of Parliament into the heart of Government's decision-making process. It refuted the argument of the critics of reform that the creation of special "watchdog" committees to oversee the work of each Government department would mean usurpation of the role of the Government itself, and asserted that the administration would, in fact, benefit from the constant scrutiny of the work of Ministers and Civil Servants.

In pursuance of the recommendations of the MPs Committee twelve Select Committees, each comprising between nine and eleven members of the House, selected by an all Party group of nine members of the Commons, were established. They cover : agriculture, defence, education, employment, energy, envioronment, foreign affairs, home affairs, industry and trade, social services, transport, and all Treasury and Civil Service matters. Another Committee supervises the work of the independent Ombudsman who investigates complaints of maladministration brought up by MPs on behalf of individuals. There could also be up to four sub-committees looking into such matters as overseas aid, immigration, and State-owned industries. The hitherto, existing Select Committees are to be phased out except for the vital Public Accounts and European Legislation Committees.

The new investigative committees meet in public or on occasion in private if members agree that that is expedient. They have the power to send for persons, papers, records and any other material relevant to the matter at issue. But they do not possess the authority to compel Ministers to attend their meetings, though it is certain that

28. R. A. Butler in a debate in the House of Commons in 1958 and as cited in Birch's *Representative and Responsible Government*, p. 162.
29. Birch, A. H. *Representative and Responsible Government*, p. 164.
30. Extract from Parliamentary Speeches on Reform given in Bernard Crick's *The Reform of Parliament.*, Appendix D, p. 308.

once invited they shall not refuse to appear. The Government is publicly pledged to co-operate with these committees and, if need be, to ask Parliament to make them stronger. Yet they do not have, unlike the United States Congressional Committees, the power to amend or pigeonhole the Bills.

To enable each Committee to function smoothly and efficiently provision has been made to appoint special staff to weigh and assess evidence and deal with other routine work. Previous committees lacked such support, with the result that MPs themselves had to perform time-consuming administrative chores instead of concentrating on their main investigating role.

Opinion, however, still exists that the "watchdog" committee might weaken the central constitutional primacy of the full House of Commons and some MPs have still not reconciled to the change, though it has full support of the Government as well as the Labour Opposition. There are others who feel that the "watchdog" powers to the new Select Committees are too circumscribed. The majority, however, regard the new system as a major step towards greater democratic control. When the MPs were given the freedom to vote on the procedure reform Bill according to their conscience they did so by a vast, 200 plus majority in support of the change.

The next stage in the career of a Bill is called the Report Stage, when the bill is reported back to the House by the Committee. If the Bill has been dealt within the Committee of the Whole House, the report stage is formal. Where it has been dealt with "in Committee upstairs,"[31] debate may arise and amendments may be moved on the Report. The Government sometimes avails itself of the opportunity to make amendments which were promised at an earlier stage, but could not be drafted or could not be moved or amendments which it is felt are so important that they ought not to be in a Committee. There is always a tendency for the Report stage to lengthen out "the tendency of a parent body", as Finer puts it, "to re- consider the discretion it gave its offspring." To save the time of the House , the government resorts to motions for Closure and " the Speaker assists by keeping the debate to the clauses rather than generalities."

The third stage in the House is that of the Third Reading of the Bill. The rules governing Third Reading are substantially those which apply to Second Reading. There is a debate again on the principles of the Bill as a whole. The idea of the debate at this stage is that the Bill "having been approved in principle on the Second Reading, having been licked into shape in detail on the Committee stage, the House should take one more look at the Bill as amended before it finally gives its approval." Only amendments involving verbal alterations are accepted. When the motion that the Bill be read for the third time is carried, its career in the House of Commons comes to an end. "The Third Reading", remarks Herman Finer, "is a political mustering : the Government expresses its thankfulness that it has been able to do the country some good in spite of the Opposition; and the Opposition replies by claiming that it has made a bad bill better than the Government first presented it, and that, even so, it has doubts for the future of the country's prosperity."[32]

The Bill passes through much the same stages in the House of Lords. If the House of Lords has no amendments to offer, then it becomes an Act of Parliament after receiving the formal assent of the King. The House of Lords may amend the Bill or even throw it out altogether. But overthrowing a Bill by the Lords makes operative the Parliament Act of 1911, as amended in 1949. In case of amendments, they have to be approved by the Commons. On the day appointed for the consideration of amendments, the Speaker puts the question : "That the Lords' amendments be now considered." As such amendment is read by the Clerk, the Minister-in-charge of the Bill rises and moves : "That the House doth not agree with the Lords in the said amendment" or "That this House doth agree with the Lords in the said amendment." In case of disagreement, a Committee is appointed to "draw-up reasons" for not agreeing to amendment. Then, an exchange of messages takes place between the two Houses. If there is no agreement and both the Houses insist on their own plea, the Bill is lost unless the Commons invoke the Parliament Act of 1911, as amended in 1949. That shows that the House of Lords an delay the passage of Bills and even kill them occasionally.

The ceremony by which Bills receive the Royal assent represents one of the many exam-

31. 'Upstairs' signifies that the Standing Committee meets in a Committee Room on the floor above the Chamber, so the phrase commonly used.

32. Finer, Herman, *Governments of the Greater European Powers*, p. 119.

ples of ancient parliamentary pageantry. It is sometimes given by the King in person, but more often by a Royal Commission. It takes place in the House of Lords. The King is represented by Lords' Commissioners, who sit in front of the Throne. At the bar of the House stands the Speaker of the House of Commons who has been summoned from that House. The Clerk of the Crown reads out the title of each Bill and the Clerk of Parliament pronounces the Royal assent—*Le Roy le veult*, the King (or Queen) wills it. With the Royal assent the Bill has become a law.

The procedure for the Public Bills introduced by Private Members is slightly different. What actually happens is that before the beginning of session the Private Members send their Bills to be introduced in Parliament. Then, ballots for precedence are drawn. Private Members' Bills must be introduced on a Friday, for the Government monopolises the time of the House on the earlier days of the week. The Members who are successful in the ballot for precedence on Friday present their bills upon written notice. There is another method to introduce the Bills under the "Ten Minutes Rule." This method gives to the sponsor of the Bill an opportunity to make a short speech, for ten minutes, in favour of the Bill. This will usually be followed by an equally brief speech from a Member or Members who oppose the Bill. After that the Speaker will put the question that leave be given to bring in the Bill. If the motion is carried the Bill is presented and has its first reading. However, Private Members' Bills are not always debated owing to pressure on parliamentary time. Many of those which are debated proceed no further than second reading; but a few succeed in becoming law.

Private Members' Bill may be introduced by Peers in the House of Lords at any time during the session, without notice. The time that can be given to the Commons is, however, strictly limited, and few become Act of Parliament.

The Private Members's Bill suffers from certain important disabilities. In the first place, the time allotted is absolutely insufficient. The time allotted for all stages of all Private Members' Bill is ten days in the session. Secondly, the Private Members, in comparison with Members of Government, lie under a heavy disadvantage in the drafting of the Bill. Finally, even if it is well drafted, its passsage depends on a combination of various circumstances. If the Government is opposed to the Bill, it will have no chance. If the Government is indifferent, various procedural difficulties stand in the way. If the Government definitely approves it, as to make its own, the Bill would, of course, become a Government Bill. "However, it would appear that if the Private Member is popular or at least not unpopular; if the Bill is popular or at least not unpopular, and if the member possesses some skill in respect of parliamentary procedure the Bill will have a fair chance of being passed into law."

Apart from these rather restricting circumstances, Private Members' Bills follow exactly the same course of Public Bills promoted by the Government.

Private Bills

Private Bills are quite different from Private Members' Bills. A Private Bill is a measure only which affects specific private interests as opposed to the general classes of the community which are affected by most Public Bills. They deal with a special situation or a limited locality, and the great majority of such Bills concern the rights and powers of local authorities. Private Bills resemble Public Bills in that most of the work is done before the Bill reaches Parliament. There are lengthy negotiations, conference on disputes between the interested parties and every effort is made to 'settle' opposition before the Bill is presented in order to reduce the expenses to which parties are liable and in case of contested Bills they are enormous.

A Private Bill is presented in the form of a petition by the promoters and it is deposited in the Private Bill Office of the House of Commons. The promoters are not the members of Parliament, but outside persons or bodies acting through a firm of parliamentary agents. Thereafter the agents must appear before the Examiners[33] of Petitions for Private Bills and prove that they have observed the provisions of all the Standing Orders relative to giving notice to interested persons and the general public. The Examiners report to both the Houses simultaneously and if their report is favourable the Bills are presented in one or the other House within the dates prescribed by Standing Order, and read a first time.

The presentation and first reading of Private Bills are mere 'book entries' and the Members of Parliament normally have nothing to do with them until they come up for Second Read-

33. The Examiners are permanent officials appointed jointly by the two Houses.

ing.The Second Reading is also likely to be entirely a formality, except in the rare case where an important new principle is contained in the measure. The real hearing takes place at the Committee stages. Opposed Private Bills go to an ordinary Private Bill Committee—a Committtee known as a "Private Bill" group, *i.e.*, a Committee on a group of Private Bills. It consists of four members, chosen in the Lords by the House and in the House of Commons by the Committee of Selection. Members selected on the Committee must sign a declaration that they are not personally interested in the Bill before the Committee, and that their constituents are not locally affected by it.

In Committee the semi-judicial nature of private legislation is seen at its plainest. A Committee on a Private Bill is to decide whether the Bill is justified at all; whether the promoters really need it; whether it is the only way of furthering their ends. The Committee must decide whether it is to the public advantage that the Bill should pass into law. Above all, it must also assess the claims of the opponents of the Bill who appear before them. Persons who are interested in the passage of a Private Bill support it before the Committee. Those who oppose it, marshal their objections. Both sides are presented by expensive legal lawyers, expert in this kind of work.

The Committee, then, makes a report which for practical purposes is its decision. This is normally accepted as a matter of course by the House. The Report and Third Reading Stages are, therefore, with few exceptions, formalities. After Third Reading the Bill passes to the other House, and in due course, if no mishap occurs, becomes an Act.

Private Bills which are unopposed go to an unopposed Bill Committee consisting of five members. The proceedings of this Committee are brief and usually formal. The senior partner of the firm of parliamentary agents appears before the Committee, explains the general purpose of the Bill, produces the formal evidence, and accounts for any clauses of an unusual nature. In fact, most of the work is done in private conferences between the Speaker's Counsel and the parliamentary agents.

Provisional Order Bills

Instead of promoting of Private Bill, the company or Local authority may in some cases obtain an order from a Government Department allowing them to proceed. In all such cases the Department concerned holds a local inquiry, and if it is satisfied that the application is justified, issues the order and presents a Bill in Parliament to confirm the Provisional Order. Most ofthe work has, thus, been done before the bill, which is called a Provisional Order Bill, reaches Parliament. Almost all Provisional Order Bills are unopposed as the Department is not likely to make an order to which Parliament would object. If there is opposition, the Bill goes to a Select Committee, but the chances of its being defeated are negligible.

Delegated Legislation

Delegated legislation is a term used to describe the Statutory instruments–Rules, Orders, and Regulations–issued by Government Departments to supplement, amplify and apply statutes passed by Parliament. We have seen how slow and complicated is the process of law-making. This is in order that every detail of the Bill may be carefully examined by the representatives of the people, and British legislation is always lengthy and detailed. Although the draftsmen of a Bill try to provide for all contingencies, but there is a limit to the details which a Bill can contain. And, then the conditions vary and circumstances change. To meet those varying conditions and circumstances Parliament delegates through its statutes power to Ministers and their administrative assist ants to make Orders and Regulations in their discretion, that is, to apply the provisions of the statutes to the situations they are intended to regulate. "Much of our social and economic legislation", L.S. Amery said, "covers so vast and detailed a field that no statute, however, cumbrous and many of them are already cumbrous and unintelligible enough–could possibly provide for all contingencies. Some power of ministerial variations or interpretations is obviously necessary, subject to the attention of Parliament being drawn to what is being done."[34]

The main purpose for which powers are delegated by Parliament to the Executive are : to allow the amendment of existing legislation in order to bring it up to date; to create machinery to administer the Act; or, most generally, to allow the Departments to decide details within the framework of legislation that consists only of broad principles. This often also involves, sub-delegation, whereby the Minister is empowered by the Act to delegate these powers to his De-

34. Amery, L. S, *Thoughts on the Constitution*, p. 50.

partmental officials, subject to his confirmation. In this way, two or three tiers of delegation can be involved in the granting of delegated power.

Delegated legislation, accordingly, means the function of sub-legislation by the Executive. It is legislation not by direct functioning of Parliament, but by powers conferred on the Executive by an Act of Parliament (or, more rarely, by Royal Prerogative). The Committee on Ministers' Power defined it "as the exercise of minor legislative power by subordinate authorities and bodies in pursuance of statutory authority given by Parliament itself." It is not an original power of the Executive itself, but delegation of authority by Parliament and strictly subordinate to the terms of the Statute authorising delegation. It is, as such, termed delegated legislation and sometimes subordinate legislation. If it is inconsistent to the parent law, or is in excess of the power granted, it is void. Otherwise, it has the force of law and the law courts cannot interfere therein. What a supreme body delegates no other agency of Government can abrogate. Parliament, being sovereign may delegate powers to whomever it wills and may similarly withdraw the powers that it has delegated. This is unlike the powers of the American Congress. Congress there is itself a delegated agency and the Constitution forbids a delegated agency to delegate any further on.

The power to legislate when delegated, is normally confined to matters of detail bordering upon administration, but in case of sudden emergency power may be delegated to legislate on major matters. In 1931 the Gold Standard (Amendment) Act empowered the Treasury to legislate for the control of the Exchange. The National Economy Act empowered the King-in-Council to effect reductions, including cuts in salaries, in certain public services.The Foodstuff (Prevention of Exploitation) Act authorised the Board of Trade, subject to annual resolution by either House of Parliament, to control supply price of certain foodstuffs.

Prof. Laski points out that " the habit of delegated legislation is not new."[35] The Report of the *Committee on Ministers' Powers*[36] gives examples of delegation of legislative powers in the sixteenth, seventeenth and eighteenth centuries. It existed even in the fourteenth century; a Statute ordered that "no wool should be exported until the King and his Council do otherwise provide." It delegated to the King-in-Council the specified power of deciding when to end the ban on exporting wool. But it is only during the last century and half that the bulk of delegated legislation has enormously increased to meet the ever increasing needs of a modern State. For example, in 1800, 168 of such Instruments (till 1946 called Rules and Orders) were issued ; in 1913, 444; in 1937, 1,500; and never less until in 1945 it rose to 1,706; it then fell from 1,166 in 1951 to 706 in 1952 and now again they run into four figures. The factors which are responsible for this over accelerated pace are:

So long as the functions of the State were limited and it existed mainly for maintaining internal order and external security, Parliament had few laws to make and, accordingly, it could provide conveniently the necessary legislation. Nowadays the province of the State has increased considerably and so have the activities of govern- ment. Schemes of social welfare and economic problems of a national and international character form the primary functions of the State. The provision of social services, like national health insurance, unemployment insurance, town and county planning, involve the making of detailed regulations to provide for industrial benefits. The exercise of economic control involves the imposition of a variety of restrictions and positive duties. It is obvious that when we are using duties, quotas, bounties, licences and various other expedients as instruments of policy, some accurate, flexible and speedy means must be found to give effect to the policy of Parliament. And whenever it seemed clear to the House of Commons that it was a convenient way of operating a statute, it has never hesitated to grant such a power through the means of delegated legislation. Jennings rightly points out, "The power to make delegated legislation must grow in number as the scope of Government power increases through the development of collectivism. Although such a system was not unknown in the 18th century and not uncommon in the early 19th century, it has grown in number and importance with the development of the period of collectivism which is usually said to begin from 1870. Formerly, the legislation used to deal with local government and public utility services but since 1906, the Central Government has been given many direct administra-

35. Laski, H., *Reflections on the Constitution*, p. 43.
36. The Committee was appointed in 1929 under the Chairmanship of Lord Donoughmore.The Committee submitted its Report in 1932.

tive functions, and there has consequently been an increase in the Rules and Regulations issued by the Departments to supplement the legislation applying to their own Centrally administered services."

Moreover, Parliament no longer has the time, nor, indeed, the necessary data to enable it to produce the mass of detailed regulations which the present functions of government required. Delegated legislation relieves the pressure on Parliamentary time by removing details of administration to settle broad principles without entering into highly technical details. The Committee on Ministers' Powers noted : "The National Insurance Act, 1946, contained 79 clauses and schedules, "but if it had not provided for ninetynine sets of regulations, it would have contained at least three hundred clauses."[37] Delegated legislation has, thus, the merit of shortening Bills and consequently the time of considering them. "The province of Parliament", wrote Lord Thring, Parliamentary Counsel to the Treasury, in 1877, "is to decide material questions affecting the public interest, and the more procedural and subordinate matters can be withdrawn from their cognisance, the greater will be the time afforded for the consideration of more serious questions involved in legislation." This is probably "the only mode in which Parliamentary government can with respect to its legislative functions be satisfactorily carried on."

Delegated legislation enables the Executive to provide for all unforeseen contingencies without having to return to Parliament for amending Acts or additional powers. The details can be regulated after a Bill passes into an Act with greater care and minuteness, and to better adaptation to local or the special circumstances. Besides, Statutory Instruments mitigate the inelasticity which would often otherwise make an Act unworkable. Even the smallest and most uncontroversial amendment of an Act requires the passage of another Act going through all the parliamentary stages in both the chambers. It may also happen that no parliamentary time may be available to push the amending Bill through. This would frustrate the object of the original legislation. Delegated legislation, on the other hand, can rapidly be revised by the issue of another Statutory Instrument. Parliament has the same rights over such a changed Instrument as over the original.

Delegated legislation is ideal in an emergency. It is the means by which the Executive can be armed with power to take immediate action and without public discussion. The Economy Act of 1931, enabled the Government to effect economies they deemed necessary by Orders-in-Council. The Defence of the Realm Act, 1914, and the Emergency Powers (Defence) Act, 1939, and 1940, empowered the Government to do whatever it deemed necessary to meet the wartime emergencies. The Committee of Ministers' Powers, while dealing with this aspect, reported : "In a modern State there are many occasions when there is a sudden need for legislative action. For many such needs delegated legislation is the only convenient or even possible remedy."

Sir William Graham Harrison, First Parliamentary Counsel to the Treasury, assigned another reasons in favour of delegated legislation. He says, "I should like also to emphasise a side of the question which appeals to me particularly as one who has drafted, not only a large number of statutes, but also a very large number of Statutory Rules and Orders, *viz.*, the superiority in form which, as a result of the different circumstances and conditions under which they are respectively prepared and completed, delegated legislation has over statutes. In most cases the time available for drafting Bills is inadequate, and their final form when they have passed both Houses is generally unsatisfactory. On the other hand, Statutory Rules can be prepared in comparative leisure and their subject-matter can be arranged in a logical and intelligible shape uncontrolled by the exigencies of Parliamentary procedure and the necessity for that compresion which every Minister (however much in debate he may use the draftsman as a whipping boy) invariably requires in the case of a Bill."[38] Delegated legislation, thus, provides a speedy, convenient and accurate means of giving effect to the policy of Parliament and also to meet the ever-increasing need to speed in the governmental process.

Delegated legislation is quite inescapble. But delegated legislation, its critics point out; is a clear threat to Parliamentary system of government as it offends the principle that legislation should be made in Parliament. If Parliament uses its unlimited legislative powers to delegate that

37. Molson, Hugh, *Papers on Parliament, A Symposium*, p. 97.
38. As cited in W.I. Jennings in Parliament, pp. 457-58.

power to another body, parliamentary government itself is suspended. In Germany, this was, in fact, the method used by Hitler. Long before the collapse of France in 1940, the Government had been authorised to issue decrees by French Parliament which thereafter scarcely ever met. It means that Parliament abdicates its own proper functions to the Executive. Then, the ever-expanding scope of Government action has resulted into an inconceivable regulation of the citizens' life. "Bureaucrats tend to exalt administrative convenience and the national advantage at the expense of the individual and his freedom. The official in his zeal to achieve a desirable result may impose an unreasonable burden upon the subject. The power under a statute to make rules gives him just the opportunity that he wants." The Committee on the Ministers' Powers pointed out that delegated powers might be so wide as to deprive the citizens of protection by courts against action by the executive which is harsh or unreasonable. The courts can declare delegated legislation *ultra vires* only when the rule is against the delegation of power or when proper procedures have not been used. They cannot ensure that powers are exercised reasonably in the wide sense.

Some public anxiety at the practice of delegating legislative power was occasioned on the publication in 1928 of a vigorously written book, the *New Despotism,* by Lord Chief Justice Hewart. Lord Hewart claimed that the Old Despotism of Royal domination had been replaced by the New Despotism of Executive domination of Parliament, which was proving to be just as big a threat to Parliament's authority and to public liberties, with Parliament being used as a cloak for Executive Despotism. Similarly, W.A. Robson in his book, *Justice and Administrative Law,* emphasised the constitutional problems involved in these developments. Much of the concern of the critics was not over the delegation of powers to Ministers, but was over the sub-delegation of powers to civil servants. The disquiet that was thus aroused led to the Government in 1929 to set up a committee under the Chairmanship of the Earl of Donoughmore to consider the powers exercised by or under the direction of (or by persons or bodies appointed by) Ministers of the Crown, and to report what safeguards were considered necessary. It was a distinguished Committee and its recommendations were of great importance. The Committee on the Ministers' Powers reported in 1932 and came to the conclusion that whether good or bad the development of the practice of the delegated legislation was inevitable. The system of delegated legislation, the Committee concluded, was "legitimate......for certain purposes, within certain limits, and under certain safeguards." Nothing was done to implement the recommendations of the Donoughnmore Committee until the War, when the Select Committee on Statutory Instruments was set up in 1944.

In 1946, the Select Committee on Procedure criticised the existing machinery for Parliamentary scrutiny and in 1952 the Select Committee on Delegated Legislation made a more detailed analysis of the problem. The main criticisms that emerged from these post- war enquiries were that the Executive was assuming the legislative role of Parliament to an extent that endangered liberty, and that many of the powers that were delegated to Ministers were too loosely defined. It was pointed out that prior consultation with those affected by delegated legislation was not always possible, and that the protection of the courts was denied by many of the regulations.

The post-war period also witnessed a further spate of literature, for example, Christopher Hollis's : *Can Parliament Survive? and G.W. Keeton's : The Passing of Parliament,* which criticised the effect of delegated legislation in increasing Parliament's subservience to the Executive. In recent years, however, concern over the question of delegated legislation has been less marked.

Dangers of delegated legislation are not inherent in it. With proper safeguard they can be avoided. The validity of the Statutory Instruments can be questioned on the ground that they conflict with the parent laws and are *ultra vires.* This is a most important safeguard. The fact that there are special draftsmen for these instruments is another important technical safeguard. Moreover, acutest care is taken to consult representative interests who are likely to be effected by rules and orders and this procedure of prior consultation before the Bill is introduced is deemed considerable protection against arbitrariness. But the real safeguard against the abuse of power to legislate must be sought in Parliamentary control. Herbert Morrison said, "The principle of delegated legislation is, I think right, but I must emphasise that it is well for Parliament to keep a watchful and even jealous eye on it at

all stages."[39]

Thus, Parliamentary scrutiny of the actual granting of delegated powers remains the most important safeguard. The existing methods of scrutiny are based primarily on the Statutory Instrument Act, 1946. The Act clarified and modified the existing method of control. The term 'Statutory Instrument' was used to describe the documents that grant delegated powers (replacing the multiplicity of Rules and Orders that had existed before), and the Select Committee that had been set up in 1944 to scrutinize the process of delegated legislation, was put on a permanent basis as the Statutory Instruments Committee. Now the methods of Parliamentary control rest partly on the activities of the Statutory Instrument Committee and partly on the initiative of individual Members of Parliament.

All Statutory Instruments are published by Her Majesty's Stationery Office and are placed on general sale for the information and use of the public. They are formally presented to Parliament, with copies being sent to the Speaker and the Lord Chancellor, and to all Members of Parliament who asked for them. A Member of Parliament can take action according to the prescribed procedure. There are three distinct procedures which can be used for the presentation of Statutory Instruments, the parent Act defining the procedure to be adopted. The first is, simply to present the Statutory Instruments to both Houses of Parliament. They become operative immediately after presentation to Parliament. Neither of the Houses has the power to annul them. Nor any positive acceptance of the Instrument is necessary. It is only a method of publicity and generally it is used for minor matters. This method, accordingly, affords little chance of Parliament control.[40]

The second procedure is for the Statutory Instruments to be laid before both Houses of Parliament for a period of forty days. Under this procedure no Statutory Instrument can come into operation until it has been approved by the affirmative resolution of both the Houses. The third and the most used procedure is for the Statutory Instrument to be laid before both Houses for a period of forty days and the Instrument is operative until, or unless, it is annulled by a prayer for annulment in either House in this period. It may, however, be noted that an Instrument can be annulled, but it cannot be amended. The difference between the second and third procedure is obvious. According to the second procedure the Instrument does not become operative unless the Government takes the initiative and secures by a resolution of both Houses its positive approval. According to the third procedure, the Instrument becomes automatically operative unless there is successful move to stop it.

Another safeguard is the process of scrutiny. The Committee on Ministers' Powers recommended "the appointment of a small Standing Committee of each House to consider the report on Bills conferring lawmaking powers and on regulations and rules made in pursuance of such powers and laid before Parliament." In 1944 a Select Committee on Statutory Instruments–known as the Scrutiny Committee–was established and its existence is renewed each session. The Committee consists of eleven members based on party composition in the Commons, with the Chairman coming from the Opposition. The function of the Scrutiny Committee is to consider every Statutory Instrument or draft instrument laid before the House and draw the attention of the House to provisions that impose a charge on the public revenues; that are made under an enactment which excludes challenge in the law courts; that appear to make some unusual or unexpected use of the powers conferred by Statute; that have been withheld from publication by unjustifiable delay : that call for elucidation of their form or substance.

In the House of Lords the Special Orders Committee examines and reports on all statutory Instruments which require on affirmative resolution of the House. The Committee does not report the expediency of an order but reports its opinion as to whether the order raises important questions of policy or principle and how far the order is founded on precedent; it also advises the House whether the order can be passed without special attention, or whether there ought to be a further enquiry before the House proceeds to a decision.

The Select Committee on Statutory Instruments is reputed to spend much and useful time on shifting those instruments which ought to be brought to the attention of the House of Commons. The Speaker and his Counsel assist the Committee with advice. It may summon civil servants for explanation what it cannot under-

39. Morrison, Herbert, *Government and Parliament*, p. 151.
40. Punnett, R. M., *British Government and Politics*, p. 322.

stand, and finally reports to the House within the time limit for action. From 1944 to the end of 1954, 19,400 Instruments were made and out of these 10,250 had to come before Parliament. The Select Committee scrutinized 7,000 and drew the attention of the House to 93 of them. In other words, as Finer says,"over eight years about1,000 public[41] instruments per year were made; about 900 a year were scruitinised; and on an average of 11 per year were brought to the attention of the House."[42]

It follows from the supremacy of Parliament that no Court of Law can question the validity of a Statute. But the same does not apply to Statutory Instruments. They are only valid if they comply in substance and in form with the provisions of the parent Acts. It must, however, be emphasised that the courts cannot consider the wisdom or otherwise of a Statutory Instrument, "If it is bureaucratic, vexatious, embarrassing and harassing to the subject, it is for Parliament to take a decision and object in whatever way is appropriate."[43]

Moreover, powers are delegated to the Queen in Council or to authorities directly responsible to Parliament, *i.e.*, to Ministers of the Crown, to Government Departments for which Ministers are responsible, or to organisations whose legislation is subject to confirmation or approval by Ministers who thereby become responsible to Parliament for it. Certain Acts also require direct consultation with organisations which will be effected by delegated legislation before such legislation is made.

Laski maintained that "the protest against the growth of delegated legislation collapses as soon as it is submitted to serious scrutiny."[44] The existing safeguards offer Parliament, the court, and the public the chance to keep delegated legislation in its proper place. No administration, much like the one in Britain, can remain oblivious of the reactions of Parliament and pressure groups when it is formulating regulations. In fact, there is always some form of prior consultation between a Department exercising legislative powers and the interests most likely to be affected, although it is not a formal obligation. Nonetheless, here, too, as it is in so many other activities of Government, the price of liberty is eternal vigilance. It is wise to delegate power of legislation but Parliament must ensure that the powers given to Ministers are not abused and the law courts must retain their power to see that they are not abused and the law courts must retain their power to that they are not exceeded. There is, however, one missing element in the whole scheme of parliamentary control. When a proposed instrument is debated in the House it has no power to amend it. It can only pass or reject it as a whole. The House, accordingly, has to accept the part, that is objected to, in order that the rest, which it approves, may be passed.

FINANCIAL FUNCTIONS

Money Bills

"Who holds the purse holds the power", wrote Madison in the *Federalist.* It was through the control of the nation's purse that the House of Commons rose to supremacy. Hence, it is no matter of surprise that Money Bills should occupy a large portion of time that the House devotes to its work. The Parliament Act, 1911, defines Money Bill as a public bill, which in the judgment of the Speaker of the House of Commons, contains provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such changes; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them.

The enactment of Money Bills is somewhat different from that of others. In the first place, they must originate in the House of Commons and in the Committee of the Whole. The House of Commons cannot vote money for any purpose nor impose a tax except at the demand and responsibility of the Crown, which in effect means the Cabinet. The Government, thus, has complete and undivided power of initiative in financial matters. Likewise the power of the House of Commons is complete and decisive. The Parliament Act of 1911 prescribes that Money Bill passed by the House of Commons and sent to the House of Lords one month before the ending of

41. Public Instruments are those which had to come before Parliament.
42. Finer, Herman, *Governments of Greater European Powers*, p. 134.
43. *Hansard Society, Papers on Parliament : A Symposium*, p.107.
44. Laski, H. J., *Parliamentary Government in England*, p. 350.

session, may be submitted to the Royal assent and become law after one month whether passed by the House of Lords or not. The role of the House of Lords in matters of Money Bills is, accordingly, formal.

The principal financial function performed year to year is the preparation, consideration, and authorization of the Budget. "Budget" is an old word meaning a bag containing pages or accounts. The use of the word in public finance originated in the expression "The Chancellor of the Exchequer opened his Budget," which was applied in Parliament to the annual speech of the Chancellor of the Exchequer explaining his proposals for balancing revenue and expenditure.

The Budget speech is the main occasion of the year for reviewing the Exchequer finances and the economic state of the nation, and its formal basis is the Chancellor's proposals for raising money by taxation. Viewed in simple outline, it involves, on the one hand, estimates of annual financial expenditure and, on the other, a calculation of anticipated revenue. The formal action by Parliament that renders legal the expenditure of public money takes the form of an act of Parliament. Such an Act authorises the payment of money out of the Consolidated Fund. Consolidated Fund is a great reservoir into which all the revenues of the Kingdom are poured and out of which all the money required for public expenditure is drawn. Consolidated Fund has no physical existence. It is just an account lodged with the Bank of England and money is paid out from it when authorised by Acts of Parliament.The principal Act of this kind is the Annual Appropriation Act.

The Consolidated Fund is replenished through money paid into it by the authority of an Act of Parliament which gives legal validity to the raising of revenues. The principal Act in this respect is the Annual Finance Act. Annual Budget prepares a way for the passage of Appropriation Act and Finance Act.

The financial year begins on April first. The estimates for the coming financial year are presented to the House of Commons somewhat in the second or third week of February. A little later the Chancellor of the Exchequer makes his Budget speech reviewing the finances of the past year and detailing the financial programme of the current year, particularly as regards new taxes, or increased taxes, or reduced taxes. The estimates are discussed in the Committee of the Whole on Supply. This Committee, like Committee of Ways and Means, meets under the Chairman of Ways and Means, or his Deputy, in place of the Speaker. The precedure is more informal than in a sitting of the House. Motions do not have to be seconded, debate cannot be cut off by Closure rules and members may speak any number of times.

The estimates are presented in sections and each section is taken up in "votes" or groups of items. The number of days allotted to consideration of the annual estimates are fixed at twenty-nine, all of which must be taken before August 5. The debates in Supply on the Estimates are very seldom devoted to properly financial matters. They are almost invariably general debates on the policy of the Government to the services provided for. This gives an opportunity to the Ministers to explain and defend their proposals and to the Opposition an opportunity to air their grievances or to criticise the general policy of the Government. The Members may propose to strike out or reduce any item of expenditure, but they have no right to add or increase any amount. The debates must be concluded within the allotted time. When the estimates have all been debated, the whole is then embodied in an Appropriation Bill and put through the usual stages and passed by the House.

But the Appropriation Bill is not passed until July or August. It follows that money must be provided for the Government between April 1, and the passing of the annual Appropriation Act. So the Departments draw up provisional estimates of the money they are likely to require during those four months. These estimates are presented to Parliament as a *Vote on Account* and considered as expeditiously as possible. In the case of Service Departments—Army, Navy and Air force—no Vote on Account is usually necessary. The item 'Pay, etc., of Officers and Men' is brought up, and debated which is invariably passed before the beginning of the financial year. Unlike the Civil Departments, Service Departments may use for one purpose money voted for another. It must, however, be noted that the Committee of Supply sanctions all expenditure of public money which is not (a) otherwise sanctioned by an Act of the same session, or (b) paid directly out of the Consolidated Fund."[45]

The Committee of Ways and Means has

45. Certain high officials are paid out of the Consolidated Fund, *e.g.*, Judges, the Speaker, the Comptroller and Auditor-General. This means that their salary has not to be voted annually. They are supposed to be above political considerations. Interest on the National Debt is also paid directly out of the Consolidated Fund, and it is by far the largest of the amounts so paid.

two functions to perform. In the first place, before any money voted in the Committee of Supply can be withdrawn from the Consolidated Fund, it must be authorised by a resolution of the Committee of Ways and Means. But the second and more important function of the Committee of Ways and Means is the raising of revenues. Revenue, like expenditure, is partly raised under statutes that continue until repealed, partly under the authority of annual statutes. The bulk of the revenue is raised by the former method. Proposals are taken up in groups or sections and approved by the Committee in the form of resolutions. The rules prevent private members from moving any increase in the taxes or imposition of any new tax. Their action is only restricted to approving, striking out, or lowering the taxes proposed by the Government. After the Committee of Ways and Means have voted all the revenue proposals, its resolutions are embodied in annual Finance Bill, just as the resolutions of the Committee of Supply are emobodied in the Appropriation Bill. The Finance Bill is, then, introduced and put through the different stages prescribed for an ordinary public Bill. After passing through the Commons the Finance Bill goes to the House of Lords. The Lords debate the Finance Bill in general terms. They do not examine it in detail, nor do they suggest any amendments. The Parliament Act, 1911, requires that it must be returned to the House of Commons before the expiry of a period of one month.[46]

CONTROLLING THE EXECUTIVE

A third great function of the House of Commons is that of controlling the Executive. The responsibility of the Ministry to the House of Commons involves a constant control of the House over the Government. Control and responsibility go naturally hand in hand. Since responsibility of Government means its resignation from office whenever the policy of Government proves fundamentally unacceptable to the House of Commons, "an obligation rests upon the House of Commons to exercise a day-to-day control over the Ministry in such a way that fundamental disagreement between the executive and the representatives of the people will be clear and manifest." If the actual and possible mistakes of government were not apparent, the Government might become irresponsible. Control by the House of Commons prevents this. It tends to keep the Ministers constantly conscious of the fact that they will be called upon to give an account of what they do. "A Government," says Laski, "that is compelled to explain itself under cross-examination will do its best to avoid the grounds of complaint. Nothing makes responsible government so sure."[47]

The House of Commons maintains its control in two ways. The first is the constant demand in the House for *information* about the actions of Government; the second is the *criticism* that is constantly aimed at the government in the House. These two methods are closely related to each other and take various froms.

Question Time

The most effective instrument by which the House of Commons seeks information from the Executive is the oral or written question. "Parliamentary Government," asserts Laski, "lives and dies by the publicity it can secure not only on governmental operations, but on all the knowledge it can obtain on the working of social processes."[48] Any member of the House of Commons may, by following prescribed regulations, direct questions at Ministers and for four days in a week–Monday, Tuesday, Wednesday and Thursday–at the beginning of the sitting of the House, Ministers devote almost an hour to answering questions which have been put to them. An average of 15,000 questions are asked every year. Except for "Private Notice" questions, which are questions of an urgent character of which the normal advance notice is not given, two days' notice of a question is normally required. Questions may be answered orally or in writing. A member cannot put down more than two questions for oral answer on any one day. Supplementary questions arising out of the original answer may be allowed at the discretion of the Speaker. Questions either seek for information or press for action. The person to whom they are addressed, must be officially responsible for the sub- ject-matter of the question. They may deal with the grievances of individual citizens or with great issues of public policy. The former relate to specific Departments of the Government and are answered by their Ministry. Questions relating to public policy are answered by the Prime Minister or his deputy who leads the House of Commons.

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46. *See ante.*
47. Laski, H. J., *Parliamentary Government in England,* p. 149.
48. *Ibid.*,p. 159.

The device of asking questions has important results. In the first place, it brings the work of the various Departments of Government under the public scrutiny. This fact makes all concerned with the working of the machinery of Government realise that their efficiency and honesty are being regularly tested. Secondly, it mitigates the danger of bureaucratic habits, because "men who have to answer day by day for their decisions will tend so to act that they can give account of themselves."[49] Finally, it is the most effective check on the day-to-day administration. Questions, in brief, bring to light the activities of Government and subject Government to the public scrutiny, and this is, according to Herman Finer, "the fundamentally characteristic British way of keeping the Cabinet painfully sensitive to public opinion."[50]

Debates and Discussion

The House of Commons is also a debating assembly. "A society that is able to discuss," writes Laski, "does not need to fight ; and the greater the capacity to maintain interest in discussion, the less danger there is of an inability to effect the compromises that maintain social peace."[51] If the original meaning of the word Parliament is not used opprobriously, it is really a place where people talk about the affairs of the nation. This is done when laws are made and policy of the government is under review. The most important function of His Majesty's Opposition is to criticise matters of administration and policy-making and make the Government to defend its intentions and practices. The best opportunity for the Opposition to criticise governmental policy as a whole is when it debates the reply to the King's "Gracious Speech". At the beginning of each Session of Parliament, the Government's legislative programme is announced in the King's or Queen's Speech—known as Speech from the Throne. An address in reply to the Speech from the Throne is moved and seconded and followed by a debate, usually lasting six days, on the policy of the Government as outlined in the Speech and on amendments from the Opposition regretting that the Speech contained no reference to some matter, or was in some other way unsatisfactory. Then, discussion of public finance, more especially of proposals for expenditure, offers a very real opportunity for discussion and criticism. If the Opposition disapproves the Government's foreign policy, it uses the debate on appropriations for the Foreign Office as an occasion for criticism. Indeed, the House of Commons devotes to criticism of the Government the whole time allotted to the examination of the estimates.

Adjournment Debates

The normal occasion for criticism of the Executive is a debate on a motion for adjournment. A Member may, during a sitting, between the time when all questions have been answered and the time for the beginning of the public business, move adjournment of the House for discussing a definite matter of urgent public importance. If the motion is supported by forty members and the Speaker has agreed that the matter is definite and urgent, the sitting is suspended until evening when a full debate on the issue is held. What is important to note is that even a Government which commands an overwhelming majority in the House of Commons cannot prevent the ventilation of an important grievance. Even the weakest Opposition can conveniently command the support of at least forty votes and once the Speaker, who is an impartial and non-party man, recognises the urgency of the matter, the debate is assured. "Such motions", says Herman finer, "are roughly only twice a year. Yet the possibility of instantaneous arrangements keeps the Government alive to opinion in the House of Commons and efficient and lawful relationships with the millions who are under its democratic power."[52] What has been called the "Half-Hour" adjournment debate takes place at the end of each day's regular business—between 10 P.M. and 10.30 P.M. A Member may raise a matter of which he has given informal notice, but which does not involve new legislation. A short reply from the Government follows. This enables a grievance to be ventilated without a formal motion and without a vote. Immediately before Parliament adjourns for recess there are a series of general debates similar in character to the regular "Half-Hour adjournment debates." In addition to these, the most extreme form of Opposition attack on government policy is the vote of censure which is tantamount of expressing lack of confidence in the Ministry. Such a motion is really a crucial occasion in the life of a Govern-

49. Laski, H. J., *Parliamentary Government in England,* p. 151.
50. Finer, H., *Parliaments of Greater European Powers,* p. 162.
51. Laski, H. J., *Parliamentary Government in England,* p. 155.
52. Finer, H., *Governments of the Greater European Powers,* p. 162.

ment, because it decides its fate. So long as a Government can command a comfortable majority, it is not possible for such a motion to get through. But still it creates embarrassments in the ranks of the Ministry and shakes its prestige.

The Commons, therefore, spearheaded by the Opposition, possess adequate and effective opportunities for controlling the Government. And such a control is more urgent today than before, for the functions of the Government are so extensive now that they touch the very bones of individual lives. "The government departments", remarks Finer, "are virtually forty great monopolies; they need a strong force outside them to shake them up,"[53] and this the Opposition does on so many counts. It is Her Majesty's Opposition, now statutorily recognised. It has its own leader, who is "the obverse of the leader of the House,"[54] with its own 'shadow Cabinet'. Her Majesty's Opposition is prospective government. According to Tierney, the duty of Her Majesty's Opposition is "to propose nothing, to oppose everything and to turn out the Government.

Investigation Committees

Then, there is the technique of investigation committees. "Investigation by committees," says Laski, has been one of the most vital techniques contributed by the parliamentary system to the methodology of representative government: and it has been possible only by the fact that the parliamentary system exists." The answers given to questions and the information supplied therein often disclose a sorry state of affairs and a general resentment is expressed. The Minister in a bid to placate a special or general public opinion, which insists for more information, may appoint a Select Committee of the House, a departmental committee or a Royal Commission to report upon the problem. He may also appoint such a committee on his own initiative when he thinks that some question ought to come into the public view, on which there is inadequate knowledge, or confused or irritated public sentiment. A Committee will investigate, find out the facts and make recommendations upon which, at a later stage, Government may take necessary action. This process of investigation has been in operation for a sufficiently long time now and quite a few reports issued by these bodies have created landmarks in the history of their subjects. "In education, in the improvement of factory conditions, on poor-law reform, on the machinery of government, on the reorganisation of the army, on the limits of ministers' powers, on the principles of local administration, we have reports that have profoundly affected the contours of our policy."[55]

The twelve newly established perennial Select Committees of Parliament have added new dimension to the process of overseeing the working of Whitehall departments. Over the past one hundred years the constitutional balance had tilted diametrically from the House of Commons to an increasingly powerful Civil Service and Government. These special "watchdog" committees meet in public and are empowered to send for persons, papers and records. Armed with specialist staff to weigh and assess evidence, they re-assert the historic role of the House of Commons in checking and controlling the executive.

Scrutiny of Expenditure

The House of Commons is assisted in discharging the responsibilities for the national finance by the Comptroller and Auditor General and by the Public Accounts and Expenditure Committees. The Comptroller and Auditor General, who holds a permanent appointment, as an officer of the House of Commons, is charged with controlling the entries and issues of public money to and from the Exchequer account and the National Loans Fund, with auditing departmental accounts, and with the submitting reports on the appropriation of parliamentary grants, as required by Statute, to Parliament. He has also been encouraged by successive Committees of Public Accounts to examine departmental expenditure with a view to drawing attention to any cases of extravagance or waste.

The Public Accounts Committee was first set up in 1861 to ensure that expenditure was properly incurred for the purpose for which it had been voted and in conformity with any relevant Act of Parliament. These terms of reference have been widely interpreted by successive committees which have investigated whether full value has been obtained for the sums spent by the departments, and examines cases in which the administration appears to have been faulty or negligent. The Committee has therefore, become an instrument for the exposure of waste and inefficiency. It embodies its findings in reports

53. *Ibid.*, p. 132.
54. Jennings, W. I., *Parliament*, p. 162.
55. Laski, H. J., *Parliamentary Government in England*, p. 152.

which are regularly debated each session in the House of Commons. Its recommendations are considered by the Treasury in consultation with Departments, and put into effect, so far they are accepted, according to Treasury instructions. If the recommendations are not acceptable, a reasoned reply has to be submitted to the Public Accounts Committee which may either accept the objections or return to the charge in subsequent reports.

The Expenditure Committee was established in 1971 to replace the former Estimates Committee, following a recommendation of the Select Committee on Procedure in the session in 1968-69. The work of the Committee is designed to effect an improvement in the control by the House of Commons over the pattern of public expenditure, and involves the examination of any public expenditure, and papers on public expenditure represented to the House by the Government, and such of the estimates as seem fit to it. In particular it is charged with considering : (a) how the policies implied in the figures of projected expenditure and in the estimates could be carried out more economically, and (b) the form of the papers and estimates presented.

The Committee has established a Steering Sub-Committee and six functional Sub-Committees on Public Expenditure (General), Defence and External Affairs, Trade and Industry, Education and the Arts, Employment and Social Services, and Environment and Home Office. Its most important reports, like those of the Public Account Committee, are debated in the House.

Parliamentary Commissioner (Ombudsman)

There is the Parliamentary Commissioner (Ombudsman), an officer of the House of Commons independent of the Executive. His function is to investigate complaints of maladministration brought to his notice by members of Parliament on behalf of members of the public. His powers of investigation extend to actions taken by Central Government Departments in the exercise of their administrative functions, but not to policy decisions. Certain administrative actions are also outside his jurisdiction. These include matters affecting relations with other countries and the activities of British officials outside the United Kingdom. In the performance of the functions, the Parliamentary Commissioner has access to all departmental papers, and reports his findings to the member of Parliament who presented the case. The Commissioner reports annually to Parliament and may submit such other reports as he thinks fit. A permanent Select Committee now exists to supervise the work of the Parliamentary Commissioner.

Parliament and the Nationalised Industries

Public corporations operating the nationalised industries are appointed by an appropriate Minister and are responsible to him, and through him to Parliament. Such Ministers can give the corporations general directions, can call for information, and have extensive powers over the use of capital funds, but they do not normally use these powers to interfere in the day-to-day operations of the industries, and have refused on grounds of public policy to answer questions on day-to-day administration.

In general, therefore, Ministers may be questioned in Parliament on the general policies of the Government towards the nationalised industries but not on routine administrative matters. Debates on the nationalised industries may take place on the presentation to Parliament of the annual reports and accounts of the various public corporations, on the reports of the Select Committee on Nationalised Industries, on questions by Private Members, on adjournment motions or on Bills affecting one or more industries.

Parliament and the European Community

Following British accession to the European Community at the beginning of 1973 arrangements have been made in both the Houses of Parliament to keep members informed about Community developments and to enable them to scrutinise and debate matters which are to be decided in Community institutions. Members of the House of Commons can obtain copies of, and information about, European Community documents. In addition, to the information of the House, explanatory memoranda are provided by the Government on each legislative proposal made to the Council of Ministers by the Commission of the European Community. A monthly list of subjects likely to be dealt with at the next meeting of the Council is also prepared by the Government, and is accompanied by an oral ministerial statement. When community business of a substantial nature has been transacted a Government Minister makes a statement to the House of Commons and answers Members' questions.

Government reports on Community matters generally are to be made twice a year to Parliament, and are debated on two allotted dates. Four further days are allotted to general Commu-

nity matters, and a place for parliamentary questions related to Community affairs has been specifically allocated in the question rules. The normal opportunities for debates are also available for discussion of European Community business, and, if necessary, special adjournment motions can be moved under the rule providing for such motions on specific and important matters that should have urgent consideration. So that Parliament may be involved in the consideration of proposals for European Community legislation before decisions are taken by the Council of Ministers, a Committee on European Secondary Legislation (set up in May, 1974) helps members of the House of Commons to identify important proposals which affect matters of principles or policy or involve changes in United Kingdom law. Ministers are available to give evidence to the Committee about particular proposals, and a senior official of the House has been appointed to help the Committee to deal with the legal implications of proposals.

The Government has assured the House that debate of any proposal which the scrutiny recommends for debate should take place before a final decision is taken in the Council of Ministers. Procedures are broadly similar in the House of Lords, and there is a special Select Committee for the scrutiny of European Community instruments.

DECLINE OF PARLIAMENT

Parliament an Instrument of Government

According to Ramsay Muir the growth of Cabinet dictatorship "has, to a remarkable extent, diminished the power and prestige of Parliament, robbed its proceedings of significance, made it appear that Parliament exists mainly for the purpose of maintining or somewhat ineffectually criticising an all good but omnipotent Cabinet and transferred the main discussion of political issues from Parliament to platform and the members." In 1934 Sir Ivor Jennings published a book on Parliamentary Reform in which he observed that "during the past fifty years Parliament has become progressively less effecient,"[56] and noted that the back bench member " is almost impatient in the House."[57] In 1935 Sir Bryan Fell regretted that the spirit of independence among MPs was "nearly dead" and that the Executive was becoming more and more impatient of criticism. He thought that the Government's control over the time of the House "was not without dangers which might even threaten the very existence of our Parliamentary institutions."[58]

In 1949 Christopher Hollis pointed, in his book, *Can Parliament Survive?*, that Members of Parliament had become servants of the party machines, and observed that it would be "simpler and more economical if a flock of tame sheep, kept conveniently at hand, were driven through the division lobbies in the appropriate numbers at agreed times."[59] Lord Cecil of Chelwood moved, in 1950, a resolution in the House of Lords that the growing power of the Cabinet was "danger to the democratic constitution of the country."[60] Sir Arthur Salter remarked in a public lecture that the British Parliament "has a past glory, a present of frustration, a future of uncertainty. Our destiny turns largely I think upon our ability to restore the traditions and the authority of Parliament so that it can be once more the effective guardian of our liberties."[61] But the most sweeping of all attacks came from Professor G.W. Keeton. In his book, *The Passing of Parliament*, he criticises the growth of party discipline, the decline in the independence of Parliament, the extension of delegated legislation, the erosion of the Rule of Law and the general lack of effective checks on the powers of administration. He observed that the nineteenth century assumption that Parliament, strengthened by successive extensions of franchise, could effectively control the Executive had "proved completely fallacious"[62]; and described the twentieth century developments as involving "the relentless advance of administrative tyranny."[63]

The pith of all this criticism is that Parliament has merely become an instrumnent in the hands of the Government and it simply endorses its decisions so long as the Government can command majority. A Private Member has neither any will of his own nor initiative of any kind.

56. Jennings, W. I., *Parliamentary Reform*, p. 7.
57. *Ibid.*, p. 9.
58. Refer to A. H. Birch, *Representative and Responsible Government*, p. 79.
59. Christopher Hollis, *Can Parliament Survive ?*, pp. 64-65.
60. Quoted in Hansard Society, *Parliamentary Reform*, 1933-1958, p. 158.
61. Reprinted in Campion's *Parliament : A Survey, p. 199.*
62. Keeton, G. W., *The Passing of Parliament*, p.199.
63. *Ibid.*, p. 201.

There had been an inconceivable growth of the power of the Party Whips and the Party machines over the individual Members of Parliament. The result is that there is neither freedom nor spontaneity in speech and vote to the back-benchers who belong to a party. Take, for example, the Labour Party. The Parliamentary Labour Party works under a set of rules which regulate the conduct of its members. A Labour Party candidate is required to pledge in writing that he would scrupulously observe the rules of the Party and one of which lays down that a Labour Member of Parliament may not vote in a sense different from that determined by the Party. This is not objectionable, if the whole party were to meet to determine the course of voting. But the Party meets only once a week for an hour or so, "and plainly cannot deal with more than a fraction of the business which will come before Parliament in the following week."[64] In practice, it means that a Labour Member of Parliament must vote according to the behest of the Party Leaders who decide the issues and whose orders the Party Whips obey. There is all the difference in the world between voluntary general cooperation in pursuit of agreed political ends and a dull mechanical discipline which reduces Members of Parliament to the level of robots. This is, in fact, "robotizing" of politics, M. Ostrogorski, in his monumental study of *Democracy and the Organisation of Political Parties,* has painted an alarming picture of the consequences of the growth of caucuses. He says that they dominate Parliament, destroy the independence of the backbenchers, convert Parliamentary leaders into party dictators, and act as an arbiter "between Parliament and outside opinion."[65]

A hundred years or so ago, the number of electors in any constituency was very small. It did not require a highly organised policical machine to establish contact between the candidate and his electors. The candidate could keep and, in fact, he did keep personal contacts. But a typical constituency today possesses sixty or seventy thousand electors, and it is, for all practical purposes, impossible for a candidate to keep the old bonds of personal contact. He must, accordinlgy, if he is to fight with any prospect of success, need the support of a powerful local and national political machine. And the machine gives its support on its own terms. The terms are that the member should, if elected, do as he is told and he is told to religiously follow the Party Whip. Almost every vote taken in both the Houses of Parliament is governed by a strict system of Party discipline. Any one recalcitrant in duty towards the Party to which he belongs is to pay a heavy price of expulsion and if it is not felt politically convenient, then to refuse his adoption at the next election and both the eventualities entail the end of his political career. This is not the way of democracy and more so of Parliamentary democracy.

The Party discipline has certain obvious ad- vantages. But its results are too obvious. It helps to determine the Party policy in the "back room of the party caucuses, imposed by this disciplinary set-up on the House of Commons, and by the House on the country. In principle, policy should spring from popular need, be freely ventilated in Parliament, and then express itself in Government action." Secondly, it makes for irresponsibility in Government. If "a government knows that sane or silly, right or wrong, drunk or sober, it can force its proposal through the House by virtue of this disciplinary set-up, it is under a lessened necessity to exercise its powers with the maximum of care and responsibility. This makes for slack, careless and bad government." Finally, rigid Party discipline makes Members of Parliament cow- ards and subservients, as they lose honesty, courage and independence. It is practically unheard for a Member to vote against his Party. On a small number of questions of no political significance when government "takes off the whips" that the Members vote according to their personal convictions. All this had diminished the independence of Parliament both as a legislature and a body that made and unmade ministers.

The reforms in the procedure of the House of Commons, too, have considerably diminished the importance of a Private Member and the authority of the Government has correspondingly increased. The timetable for Bills, the guillotine, the selection of amendments and other devices which aim to cut short debate are, undoubtedly, a requirement of an efficient legislative procedure. But they reduce to the minimum the influence of Members. The legislative initiative has gone from the Private Member and it now belongs to the Departments under the direction of the Cabinet " which together have become in practice the first chamber in our law-making mecha-

64. Brown, W.J., *Guide to Parliament,* p. 162.
65. Ostrogorski, M., *Democracy and the Organization of Political Parties,* Vol. I, pp. 215-216.

nism."[66] This is partly due to the technicality of modern legislation which ordinary Members of Parliament are quite incompetent to understand. It is reported that only two Members understood the Local Government Bill of 1928, and one of them was the Minister who presented the Bill and who had been very minutely instructed by the civil servants who drew it up.[67] The result is that the Parliamentary process becomes a dull, meaningless and routine affair. The actual work is done by the permanent civil servants and legislation becomes their concern.

Another result of the technicality of modern legislation is that legislative powers are freely delegated by Parliament without the Members of the two Houses fully realizing what is being done. Orders made in pursuance of these powers have, it is true, generally to be submitted to Parliamentary scrutiny, but their quantity and complexity are such that it is no longer possible to rely for such scrutiny on the vigilance of Private Members acting as individuals. It was argued before the Donoughmore Committee,[68] and the critics of delegated legislation still argue , that the real danger lies in the volume and character of delegated legislation : that the delegation of legislative power has passed all reasonable limits and assumed the character of a serious invasion on the sphere of Parliament by the Executive; and that no standardization of practice or use of procedural device can alter the fact that delegated legislation essentially threatens the sovereignty of Parliament and the Rule of Law. Lord Hewart, in his frontal attack on the increasing pace of delegated legislation and as a consequence the growth of Executive powers, observed : "The citizens of a State may indeed believe or boast that.......they enjoy.........a system of repre sentative institutions ......But their belief will stand in need of revision if, in truth and fact, an organized and diligent minority equipped with convenient drafts, and employing after a fashion part of the machinery of representative institutions, is steadily increasing the range and power of departmental authority."[69]

The control of public finance is the prerogative of the House of Commons. But of all the functions of the House of Commons this is the least efficiently performed. "When it deals with legislation, if it does not initiate, it does at least substantially alter the Bill submitted to it, and often makes a mess of them. When it deals with the general policy of the Cabinet......its debates even if not leading upto any definite resolution or decision, exercise a very important influence. But when it deals with the all-important subject, its own special subject or finance it seems to be almost impotent."[70] The initiative in finacial matters, as in other fields of policy, is taken by the Cabinet, and Parliament may only criticise and attempt to alter what is proposed by the Government. The Ministerial majority in the House of Commons ensures to sustain the Cabinet's financial programme and to vote down threat of any kind from the Opposition. Then, Parliament has little time to delve deep into the Government's financial proposals. The twenty-nine days of debate allotted to the estimates allow only a superficial examination of most of them. The result is that the debate is centred on policy issues rather than on financial aspect involved in the Budget.

The Expenditure Committee, the successor of Estimates Committee, was set up in order to have a more searching examination of the estimates, and to suggest, if any, economies consistent with the policy implied in those estimates. But the Committee has so far only had a limited success. Although the Committee is even working through sub-committees, yet it cannot consider all the Departmental estimates every year. It chooses for examination those estimates which, for one reason or another, have aroused some special interest or concern. The work of the Public Accounts Committee is restricted. All that the nation can be sure of is that money which had been voted for a particular item was spent on that item. But it cannot be sure that it has been spent properly on that item. There is another direction in which the finance of the country has escaped almost entirely from the con- trol of Parliament and that is with regard to the National Debt. A very large part of the revenue of the State goes to pay interest on the National Debt and it is paid directly out of the Consolidated Fund under permanent legislation and needs no annual sanction

66. Greaves, H. R. G., *The British Constitution*, p. 31.
67. One was Neville Chamberlain, the Minister of Health, and the other was Sidney Webb, who had made a detailed academic study of grants-in-aid. Refer to W. I. Jennings, *Parliament Must be Reformed*, p. 43.
68. The Committee on the Ministers' Powers. (1929).
69. Hewart, Lord, *The New Despotism*, p. 12.
70. Muir, R., *How Britain is Governed*, p. 221.

from Parliament. It is true that since it is paid under legislation, and Parliament being the legislature, it must have determined that it should be so. "But it must be remembered that huge loans raised in time of national emergency and coming eventually to swell the National Debt to fantastic figures are rushed through Parliament on the strength of that national emergency which results in a general mitigation of scrutiny; and also that the cumulative effect of several Acts of Parliament, and of many transactions performed under Acts of Parliament, may be very different from what a Parliament would be justified in sanctioning if it had to vote the money annually."[71] Inevitably, as expenditure increases and borrowing too increases, the opportunities for real financial scrutiny diminish and the control of the House of Commons becomes less effective.

Criticism Answered

But the "years during which procedure was being worked out." said Lord Kennet, "were the years of struggle between the legislature on one hand and the Crown on the other . The chief care of the Commons was at first to prevent the Crown from getting money except through Parliament, and in later years to prevent it from spending money on purposes other than those for which Parliament had provided it. Their procedure was planned to act as a check on the Crown in the interests of themselves, the economizers. But times have changed. The rule of Parliament is established, and the power of the Crown is gone. A check upon the Executive's power over the purse is still needed by the Commons as much as ever, but the Executive upon whose power the check has to be exercised is now not the Crown but its Ministers responsible to Parliament. Procedure planned to check the Crown is out of date."[72] For that purpose it is certainly out of date. And yet it is essentially desirable if the financial procedure could be made an effective control of national finance. The procedure, as it stands, is still extremely useful. "It provides the cue on the soundest constitutional basis that redress of grievances should precede supply of money—for debates which must take place, and which need a motion of sufficient gravity to register the feeling of the House, without tying the hands of Executive."[73] Instead of trying to pit its judgement against the experts responsible for working out the details of estimates and expenditure, the House of Commons very wisely concentrates on the political aspects of the Government proposals, which are singled out by the Opposition. The functions of the Commons are, in fact, one aspect of their control over the general policy of the Government. The Government cannot behave in a completely arbitrary fashion. It must take account of the political situation and public opinion.

There are various devices which help Parliament to keep proper scrutiny of expenditure. There is the Treasury to control expenditure and it derives its power from the responsibility to Parliament of the Chancellor of the Exchequer for the financial policy of the Government. Control over issues of money to Departments and the audit of accounts is exercised by the Comptroller and Auditor-General, who holds a permanent appointment with the status of an officer of the House of Commons. As Comptroller of the Exchequer, he controls receipts and issues of public money to and from the Exchequer Account, and as Auditor-General he audits Departmental Accounts and submits his report on the Appropriation Accounts and other accounts, as required by law to Parliament. His statutory function is to ensure that all expenditure is properly incurred. In addition, he has been encouraged by successive Committees of Public Accounts to examine Departmental expenditure with a view to drawing attention to any cases of apparent waste or extravangance.

The accounts of each Department and the reports on the accounts made by the Comptroller and Auditor-General are considered by a Select Committee called the Public Accounts Committee. The business of the Committee is to ensure that expenditure is properly incurred in accordance with the purpose for which it was voted and within relevant Act of Parliament. It is a powerful instrument for the exposure of waste and inefficiency. The Expenditure Committee is another Select Committee and its functions are to examine the Estimates, to report, how if at all, the policy applied in the Estimates can be carried out more economically and to consider the principal variations between the Estimates of the current year and those of the previous year and the form in which estimates should be presented.

It is true that the Public Accounts Commit-

71. Taylor, E., *The House of Commons at Work*, pp. 222-23.
72. Young, E. H., *The Finance of Government*, p. 42.
73. Taylor, E., *The House of Commons at Work*, p. 225.

tee and the Expenditure Committee can only partially remedy the present incomplete supervision of national finance, but it must be conceded that the Government Departments are really nervous of these Committees. Herbert Morrison illustrated it from a personal experience. He had an argument with his Permanent Secretary of the Home Office, Sir Alexander Maxwell, when he was keen on spending a little money for a public purpose. Sir Alexander Maxwell told Morrison that it would be *ultra vires* of law as he had no power to spend money "out of our estimates on that particular subject." Morrison argued that he had the power and did not agree with his Permanent Secretary. Sir Alexander Maxwell replied, "Secretary of State, the matter could become serious. I may be called before the Public Accounts Committee, and the Committee might ask me why did I allow it when it was *ultra vires?* Am I then to say that I advised the Secretary of State that he could not, but he insisted on spending it. Whereupon, Home Secretary you will be in an awful trouble in the House." Morrison had to yield. Summing up, Morrison says, "This is one of those devices whereby a Minister who is trying to do something that in strict law he is not entitled to, even the civil service can pull him up, which is a good thing."[74]

"It is fashionable now-a-days," wrote Prof. Laski, "for critics of the present position to lament almost with tears over the decline of his (Private Member) status." But, "the lament," he said ,"is wholly misconceived. It mistakes the functions the modern House of Commons has to perform; it mistakes the purpose of parties in the modern State; it is an anachronistic legacy of a dead period in our history when politics was a gentleman's amusement; and the sphere of governmental activity was so small that an atomistic House of Commons was possible. The only way to restore to the Private Member the kind of position he occupied eighty or even fifty years ago, is to go back to the historic conditions which made that position possible. History does not permit us to indulge in such luxuries."[75] The old days of *laissez- faire* do not exist any longer. Every Government introduces proposals for legislation which Gladstone and Disraeli alike would have described as "socialisitc" and which "would have shocked Cobden or Peel."[76] The immensely greater area of functions with which the modern Government is to deal, and the growing concentration of economic power necessitate that legislation, if it can be real, co-ordinated and intergrated legislation, must become Government legislation. It cannot be left to the uncoordinated action and vagaries of Private Members. This is not all. The problem of modern Government is a problem of time and this is, according to Laski, the basic reason why the initiative in legislation has passed from the Private member.

Saving of time, as it is generally demanded, to consider the increased volume of legislation is much more difficult to effect. The frequent attempts made by the Select Committee on Procedure, consisting of experienced Parliamentarians, to find a solution suggest that there is likelihood now of anything except slight changes. The Select Committee on Procedure of 1958 approved in general only those suggestions which involved fuller use of Committees, reduction in the volume of oral questions, and greater opportunities for back-benchers to speak in debates. These suggestions were debated in the House of Commons in July 1959, and February 1960 but for variety of reasons few changes were made. The House of Commons generally shows a determination to keep most stages of its business in the hands of the House as a whole. This may be due to the innate conservatism of the parties over Parliamentary procedure. But on its own side " the Government has to consider the possibility of its work being hampered by procedural changes which might lessen its authority."[77] And the Government alternates in Britain.

But the Private Member in spite of his loss in the legislative function, has still many important functions to perform. The ventilation of grievances, the extraction of information, the criticism of administration, and initiation of debate still remain with him and he can make a great contribution in representing the direction of public opinion. He can also serve on Committees of enquiry. If Parliament needs to be reformed[78] and Private Member to get a due place then, as Laski suggests, let it be done "without treading upon the essential right of Government to initiate legisalation." The function of legislation is not the only function of Parliament. Its real function is to watch the process of administration and to

74. Morrison, Herbert, *British Parliamentary Democracy*, pp. 88-89.
75. Laski, H.J., *Parliamentary Government in England*, pp. 165-66.
76. Jennings, W. I., *Parliament Must be Reformed*, p. 40.
77. Brasher, N. H., *Studies in British Government*, pp. 81-82.
78. Refer to Jennings, *Parliament Must be Reformed*, p.40.

safeguard the liberties of private citizens. "In the proper scrutiny of delegated legislation, in the improvement by analysis, by criticism, by suggestion, of departmental work in the enlargement of the place of the Select Committee of enquiry, in our system, there is a wide range of service awaiting the private member of which we do not, in the present organisation over the House, take anything like full advantatge."[79]

It does not, however, mean that such an enlargement of Private Member's functions should in any way interfere with the Cabinet's control of the mainstream of parliamentary activity. If it is to amcunt to an interference of the Cabinet's control "coherence of policy would at once be lost and with it the ability to place responsibility where it truly should lie." The real success of the British system of Government, in the opinion of Prof. Laski, "lies precisely in the exact allocation of responsibility that it makes possible."[80]

Nor does it amount to the dictatorship of the Cabinet or domination by the permanent Civil Servants. The chief task of the House of Commons is to maintain a Government. For this there must be a coherent majority in agreement wilth the general policy of the Cabinet, "willing to entrust it with vital decisions, looking to it for leadership, and broadly having confidence in the persons who compose it."[81] It is now admitted on all sides that administration is at the centre of the modern State. A vast sphere of the activities of Government is beyond the control of Parliament. Administrative discretion must, accordingly, exist and decisions rest with the Minister. At the same time, the Cabinet is a Government by consent. It has to conduct its operations in full publicity. It is subject to constant criticism, both within and without Parliament and sometimes the criticism is devastating. Its main problem, therefore, is to maintain the loyalty of its supporters despite the impact of this criticism upon them. It means that the Cabinet must diligently follow the drift of public opinion and always remember the next General Election.

The Government is at all times alive to the fact that in the making of every policy there are limits beyond which it must not go. A serious lapse or blunder may easily disturb the foundation of its majority. A clear drift of electoral opinion away from its support may sow a spirit of rebellion in the House before which even a Government with vast majority is impotent. "Maintaining a majority, "remarked Laski, "is never a simple and straightforward matter; the discipline of followers is not the obedience of private soldiers to their commanders. There enter into its making a host of subtle psychological considerations the accurate measurement of which is vital to the Cabinet's life."[82] Ramsay MacDonald had to give way on the Unemployment Assistance Regulations in 1934. Baldwin had a thumping majority, but he had to sacrifice Sir Samuel Hoare in the Abyssinian crisis of 1935. Similarly, Chamberlain had to yield on his National Defence Contribution of 1937. An unpopular policy always creates the fear that it may lead to defeat at the next General Election, and Members are unwilling to serve under a Government which does not recognise that it is leading them to a defeat. Had Baldwin refused to withdraw the Cabinet's proposals on Abyssinia, it was evident that a large majority of his followers in Parliament would have voted against him with the obvious result that either he would have resigned or would have asked the King for dissolution. Laski had convincingly said that "it is dangerous to run the House on too tight a rein. Excessive secrecy, grave discourtesy, continuous threat of resignation or dissolution, inability to quell an angry public opinion outside, always breed revolt. A Cabinet maintains control in the degree that it is successful in not going too far beyond what the House approves. It must know when to yield: and it is important to yield gracefully. A Cabinet that tries to carry off its policy with too high a hand is almost always riding for a fall."[83]

There is, as Herbert Morrison says, "balance of power" between the Government and the House and that is the essence of British parliamentary democracy. The Government in introducing its legislation or administering its policy always tries to be reasonable, rational, polite, and considerate. If it conducts itself as if it is the master of the House, which really it is so long as it has a majority, it is asking for trouble. "Ministers must take into account the forces that are against them, the possible critics–public opin-

79. Laski, H. J., *Parliamentary Government in England.* p. 167.
80. *Ibid.*
81. Greaves, H. R. G., *The British Constitution,* p. 44.
82. Laski, H. J., *Parliamentary Government in England,* p. 172.
83. *Ibid.*

ion, the Press, and above all, the House of Commons; at times the House of Lords. Therefore, the Cabinet tries not to ride for a fall. It tries to develop a sense of what it can get the House to accept and what it cannot get the House to accept."[84] If the Government is defeated, it means some of its own sup- porters have gone against it. It also leads to a General Election and the party in power goes to the country divided and the people know all about it. It damages the prestige of the party and injures the prospects of the Government at the election. "So the Cabinet has to be careful. Ministers have to look ahead.......They may get to know that the House won't stand for it," and will make a concession.[85]

Parliament, thus, stands unique and by no means deprived of its political significance. Parliament now works harder than it did before, and there has been no formal decree depriving it of its ancient rights. If the governmental control has widened, Parliamentary controll too has also been widened with the introduction of new established Select Committees which assume the role of "watchdog" Committees over the Departments and wherever there are loopholes efforts are made to plug them to save administration from the vigilant scrutiny of these Committees which are vested with investigatory powers. But one thing is certain that in parliamentary democracy as in Britain, there is no question of Cabinet dictatorship. Jennings has very aptly said that dictators who have to appeal to the country at frequent intervals are the servants of the people and not their masters. There is the periodic and daily assessment of their actions. The House of Commons compels the Government to be responsive to the public opinion at all times. The Opposition is there to remind it of the vulnerability of its position and the weakness of its policies. There are, therefore, very strong and exceedingly democratic forces within Parliament to restrain the Government from acting arbitrarily. That is, its responsiveness and responsibility as the constitutional system, according to L.S. Amery " is one of democracy by consent and not by delegation."[86] There is, therefore, not much justification[87] in Richard Crossman's statement that Parliament "has declined, is declining, and should not decline any further."[88] In a Welfare State leadership of the Executive is its sine qua non, but constitutionalism is its most vital and effective restraint.

Subordination of Parliament

The House of Commons has gradually become more and more subservient to various external influences exerted by the organised interest groups. Several members of Parliament represent personally or socially the industrial, banking, landowning or trade union interests and plead the cases of organised social classes in the House and its various committees with natural eagerness. Big business corporations engage salaried barristers to advocate their interests before the Ministers and influential members of the House to affect the course of legislation in their favour. There is an element of truth in Lenin's critique : " The whole history of bourgeois democracy, particularly in the advanced countries, has transformed the parliamentary tribune into the principal, or one of the principal, arenas of unprecedented fraud, of the financial and political deception of the people, of careerism, hypocricy, and the oppression of the toilers". (Quoted in *The British State*, James Harvey and Katherine Hood, p. 56).

Nevertheless, the House of Commons does retain a certain degree of influence. While major interests tend to consider Parliament as an auxiliary instrument in the advancement of their purposes, they still find it worth- while to exert their pressures through elected representatives. In this instance too, however, corporate interests are much better placed than their competitors. For one thing, it is conservative parties of one denomination or another which have continued, throughout the outgoing century, to dominate the House of Commons and other legislatures in the major capitalist countries. These conservative majorities in parliament have for the most part consisted of men drawn from the upper and middle classes, who have taken a favourable view of capitalist activity and correspondingly an unfavourable view of policies detrimental to it.

While the extreme case in this respect is the U.S. Congress, even in the British House of Commons "it is normally interests associated with business and property which have had the

84. Morrison, H., *British Parliamentary Democracy*, pp. 70-72.
85. *Ibid.*, p. 74.
86. Amery, L.I., *Thoughts on the Constitution*, p. 12.
87. Refer to Ronald Butt, *The Power of Parliament*, p. 412.
88. Extract from Parliamentary Speeches on Reform as given in Bernard Crick's *The Reform of Parliament*, Appendix D, p. 307.

big parliamentary battalions on their side."

Moreover, the Parliamentary Labour Party and its trade union leaders and officials have often acted, at the behest of their rightwing leaders, " on a view of 'national interest' which required them, not to advance working class interests but to help subdue them." Most of the Labour Party members have easily succumbed to the disease of parliamentary 'cretinism', causing them to see the world through parliamentary haze which blurred their class perspective on relevant issues. "Of all the forces which have contained socialist parliamentarians in social-democratic parties, none has been more effective than their own leaders and fellow parliamentarians". (Ralph Miliband, *The State in Capitalist Society*, p. 149). In fact, "The Parliamentary Labour Party is a classic example of this phenomenon". (*Ibid.*, footnote). Notwithstanding universal suffrage and competitive politics, the House of Commons has remained much more the instrument of the dominant classes than of the subordinate classes. It may help to attenuate the pattern of class domination, but it also remains one of its means.

Today, the House of Commons has become synonymous with British Parliament as the role of the House of Lords has continuously declined and is further declining in the British parliamentary system of governance. Morover, the House of Commons has acquired a universal dimension as it has evolved conventions which have become globally applicable in various countries opting for parliamentary institutions.

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