# The Table

BEING

THE JOURNAL OF

THE SOCIETY OF CLERKS-AT-THE-TABLE

IN COMMONWEALTH PARLIAMENTS

EDITED BY

J. M. DAVIES AND R. B. SANDS

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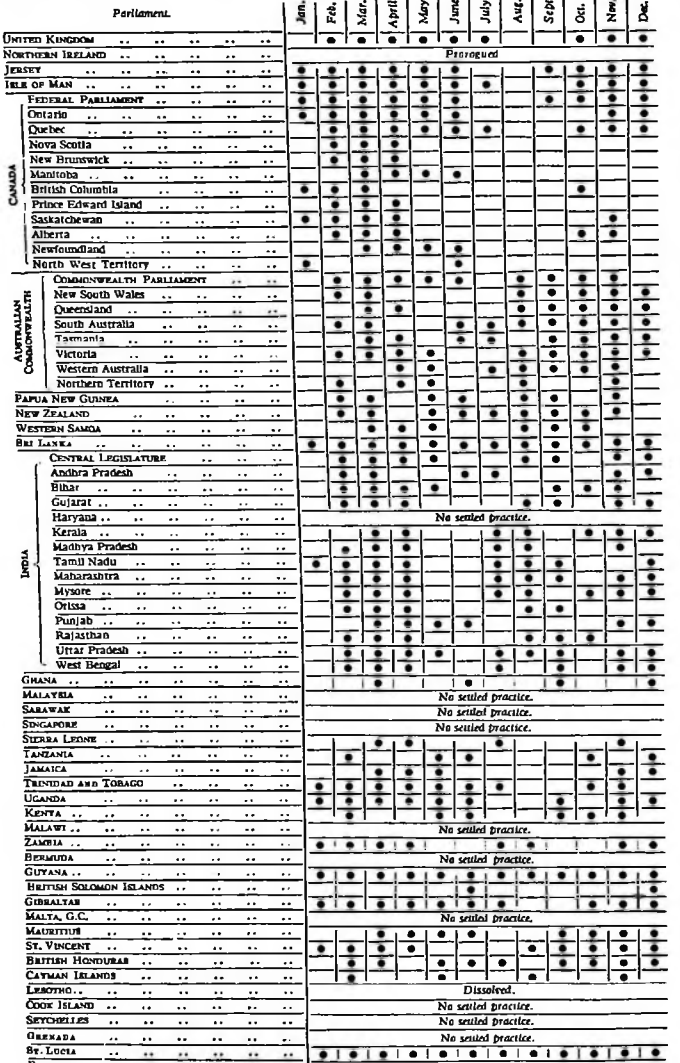
# USUAL PARLIAMENTARY SESSION MONTHS



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## THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

### I. EDITORIAL

The present Volume of THE TABLE is, as readers will see, considerably shorter than any volume for several years. The 1971 Volume was, of course, exceptionally long due partly to the need to include in it a decennial index to Volumes XXXI–XL. Nevertheless over the past few years efforts to restrict the length of each volume have not proved very successful. This has not mattered particularly while the Society's income remained able to absorb the ever-increasing costs of producing the Journal; but over the next few years production costs are likely to begin to outstrip income. It will therefore be necessary for the Editors to try and set very stringent limits for the length of future volumes. More constructive ways of reducing production costs are also being pursued with the printers. These include possible changes in the layout of the Journal and a reduction in the typography, which would allow us to include more material in a shorter volume.

It should perhaps be made clear that this Volume is a little shorter than the Editors would have liked but it represents all the material which was received. They would stress that, if each volume of THE TABLE is to continue to be of high quality, many more articles should be submitted each year. This will allow them to exercise a proper editorial function and to try and make the Journal as balanced and representative of the Commonwealth as a whole as is possible.

Readers will notice that this Volume is entitled *Volume XLI for 1972–73*. At the Ninth General Meeting of the Society in 1972 it was agreed that the Journal should bear the date of the year of its publication rather than the date of the year to which its contents refer. But in order to preserve the continuity of the series, the Editors thought that it would be better to make the change-over in two stages. Next year's volume will, however, bear the date of publication, 1974.

**Mrs. Owen Clough.**—Members of the Society will be sorry to learn of the death in Cape Town in April 1973 at the age of eighty-seven of Mrs. Owen Clough. She was the widow of Owen Clough, the founder of the Society of Clerks-at-the-Table in Commonwealth Parliaments and the Editor of this JOURNAL for twenty years, who died nearly ten years ago.

**Mr. G. D. Combe, M.C.**—Appointment as South Australia's first Ombudsman brought to a somewhat abrupt end the parliamentary career of Mr. Gordon Combe, Clerk of the House of Assembly in the South Australian Parliament. After thirty-three years as a servant of Parliament, the last twenty of which were as Clerk, Mr. Combe left the service of the House on 14th December, 1972.

Joining the staff in 1940, Mr. Combe's early years with the South Australian Parliament were interrupted by the Second World War. He enlisted with the Second 43rd Australian Infantry Battalion as a private, rose through the ranks to captain and saw service at Tobruk and El Alamein and in the New Guinea and Borneo campaigns. He was twice wounded and was awarded the Military Cross in 1944 for bravery at Satelberg during the New Guinea campaign. He was also co-author in 1972 of a detailed history of the Second 43rd Battalion.

On his return to the South Australian Parliament in 1946, Mr. Combe, after a short period with the House of Assembly, transferred in 1948 to the Legislative Council as Clerk-Assistant and Sergeant-at-Arms. He returned to the House of Assembly as Clerk-Assistant in 1952 and the following year was appointed Clerk of the House, a position he held until his resignation.

In 1963, Mr. Combe became the first overseas Parliamentary Officer to take part in the House of Commons Exchange Scheme initiated by Sir Barnett Cocks. Mr. Combe made significant contributions at the Conferences of Presiding Officers and Clerks in Australia. His new appointment forced him to relinquish his post as Clerk-elect of the important Australian Constitutional Convention.

An erudite student of, and writer on, matters parliamentary, Mr. Combe is the author of two books related to the South Australian Parliament: the first published in 1957 and entitled " Responsible Government in South Australia ", is a listed reference work for students of constitutional law at the University of Adelaide; the second book " The Parliament of South Australia " is distributed throughout schools and elsewhere in this State and is widely used for instruction purposes.

Mr. Combe took up his appointment as Ombudsman a short time after the last sitting day of the Parliament and it was not known when the House rose that it was, in fact, also the last sitting day of the Clerk. While it has not been possible for mention to be made in the House of Mr. Combe's service, the Attorney-General, in making the public announcement on the appointment of Mr. Combe as Ombudsman,

stated that he was " delighted that such a distinguished South Australian had been willing to accept this important appointment ".

(*Contributed by the Clerk of the House of Assembly.*)

**Mrs. Ursula Raveneau.**—Mrs. Raveneau, Clerk of the House of Assembly, St. Lucia, retired at the end of 1972. She was appointed to the House of Assembly in 1967. In 1969 she pursued a three-month course on a Clerk's Attachment to the House of Commons at Westminster and in Belfast, Northern Ireland, becoming the first Clerk in St. Lucia to benefit from this training.

During her term of office as Clerk of the House of Assembly, Mrs. Raveneau attended three Conferences of the Commonwealth Parliamentary Association in the Caribbean as Secretary to the St. Lucia delegations. She was Secretary to the Ninth Caribbean Regional Conference held in St. Lucia in July 1972. (The first occasion on which a C.P.A. Conference has been held in St. Lucia.)

In the work of the House of Assembly she has been of great help to Members, ensuring that they are given every assistance for the proper execution of their responsibilities. Beside her work at Sittings of the House, Mrs. Raveneau has carried out duties as Secretary to the House's Committees and the St. Lucia Branch of the Commonwealth Parliamentary Association. In connection with the C.P.A. the many favourable comments heard about the success of the Ninth Caribbean Regional Conference were motivated by Mrs. Raveneau's untiring efforts to ensure that it was properly organised and serviced.

(*Contributed by the Clerk of the House of Assembly.*)

## II. PEERESSES AT THE OPENING OF PARLIAMENT

By George Chowdharay-Best

Pictures of Queen Victoria opening Parliament show the body of the House of Lords filled with ladies, and it is natural to inquire how they came to be there, so long before the days of life peeresses and the admission of peeresses in their own right, at this the most formal occasion in the parliamentary year.

The matter was considered by a Joint Select Committee which reported in 1901,[1] but no firm conclusion was reached on the question of how peeresses came to be admitted at the State Opening of Parliament to the body of the House. This article attempts to answer the question left unanswered by the 1901 Committee, and although its conclusion must remain somewhat tentative, it is hoped that some light may be cast on the general history of the participation of women in public life as a whole.

So far as royal personages are concerned, it is interesting that as early as 1254 Queen Eleanor, consort of Henry III, summoned a gathering of magnates in the King's absence and would appear to have been personally present.[2] There is evidence that Queen Eleanor also acted in a judicial capacity.[3] However, the presence of a Queen Consort *with her husband* when he opened Parliament has not been demonstrated in early records, though Queens Regnant certainly did open Parliament in person. According to Speed's *History of Great Britain*, Henry VI was taken into Parliament by his mother in 1425, and sat there upon her lap.[4] The entry in the Parliament Roll confirms his presence, but not that of his mother; and although the silence of the official record cannot be taken as conclusive, her presence cannot be said to have been proved.[5] Nevertheless there does not appear any actual bar against Queens Consort being present in Parliament, with or without their husbands, at this early period. The truth is that in those days Parliament partook much more of the nature of what we should nowadays regard as a conference than of a legislative body continuously in session. Roughly speaking, it met about once a year and lasted for a fortnight. The obvious analogy which springs to mind is the Commonwealth Prime Ministers' Conference of the present century. The situation is, however, complicated by the fact that at times when the influence of the Church was all-pervasive, certain doctrines of the Roman Law, and indeed of the Church itself, were held to limit, if not absolutely to prohibit, the participation of women in public life as a whole and hence, by implication, in the work of Parliament.[6] The fact that women in certain circumstances might hold property and be

taxable of course militated against these doctrines, which were indeed never rigorously pursued to their ultimate conclusions. Nevertheless, they were there in the background to add the force of legal sanction, if need be, to the practical demands of the age. The Middle Ages were a time of continuous upheaval and civil strife, when issues were settled not so much by reasoned argument in Parliament or the courts of law as on the field of battle; and since men are generally more prominent in such activities, what more natural than that they should settle the great issues of the day in Parliament too? Of course there were notable exceptions: warrior Queen Margaret of Anjou, wife of Henry VI, being an example; but, broadly speaking, it was a man's world, and whilst a lady might preside over a joust or at a feast, mundane questions of State policy, or who was to fight whom, were not expected to concern her.

With this background in mind, then, it is easy to account for the fact that, as Bishop Stubbs stated in 1880, " no lady of any rank whatever was ever summoned either in person or by proxy to a full and proper parliament. There are instances of countesses, baronesses, and abbesses being summoned to send proxies to council, or to furnish their military service, but not to attend parliament as peeresses. The nearest approach to such a summons is that of four abbesses [Barking, Wilton, Winchester and Shaftesbury] who in 1306 were cited to the great council held to grant an aid on the knighting of the Prince of Wales; an assembly which, although not properly constituted, exercised some of the functions of a parliament."[7] In a dispute over precedence in the Parliament of April 1425 the Earl Marshal stated that during the reign of Richard II the arms and inheritance of Thomas of Brotherton were held by his daughter Margaret, Countess of Norfolk, " to whom no place in parliament might appertain because she was a woman ".[8] The Countess of Rutland's case (1605) has been cited on the point that a woman was not qualified for a seat in the House of Lords.[9]

This does not, of course, mean that ladies were never politically active during the Middle Ages. Indeed, from Stow's *Annals* we learn that among the requests made at the Good Parliament of 1376 was one by the Commons " to have removed out of the kings house, a certaine proude woman called Alice Pierce, who by overmuch familiaritie that shee had with the king, was cause of much mischiefe in the realme, shee exceeding the manner of women, sate by the Kings Justices, and sometimes by the Doctors in the Consistories, perswading and disswading in defence of matters, and requesting things contrary to laws and honestie, to the great dishonour of the king ".[10] According to Daines Barrington, a petition of Robert Pickerell in the time of Richard the Second complained that she had retained all the advocates in Westminster Hall, so that he could have no advice except by paying an exorbitant sum of money.[11] An account of her order of banishment and its subsequent revocation is in Barnes's *History of Edward III* (1688). Barnes denied that she was King Edward's concubine: she married Lord William Windsor, afterwards Lieutenant of Ireland.[12]

The case of Alice Pierce or Perrers may well have been exceptional. Nevertheless, from Stow we also learn of letters delivered to the Duke of Gloucester and other peers by " one mistris Stokes with divers other stout women " who went to the upper house in 1428. Their complaint was that the duke had allowed his wife Jacqueline to remain imprisoned by the Duke of Burgundy " whilst he kept another adultress ". The Commons tacked to a subsidy granted to the duke a petition in favour of the duchess.[13] In the nineteenth century case of Chorlton *v.* Lings, Coleridge, for the appellant, drew attention to a number of cases in which Members of Parliament were returned by indentures signed by women, in the reigns of Henry IV, Henry V, Edward VI, and Phillip and Mary.[14] However, at least from the beginning of the seventeenth century, it was clearly the law that women did not have the vote at parliamentary elections, although three women are said to have been burgesses of Lyme Regis in the time of Elizabeth I, and during the same reign a return for the borough of Aylesbury is said to have been signed by Dame Dorothy Packington, widow.[15] In the course of the same case, Lambarde's *Eirenarcha*, written before 1601, was cited on the point that women could not sit on juries, and Coke as stating that they could not be judges.[16] On the other hand, in Olive *v.* Ingram, a case decided in 1739, it was held that not only could women vote in the election for a sexton of a parish church, but they could also hold this office. There were said to be then many women sextons in London. Reference was made to a woman having been appointed Governor of Chelmsford Workhouse, and to " Lady Broughton, keeper of the Gatehouse ".[17]

So much, then, for women outside Parliament during the mediaeval and early modern period. Within Parliament itself, it was as we have seen quite clearly the law that women could not sit, with the exception of Queens Regnant and, occasionally, of Queens Consort. What happened, then, when a Queen Regnant brought her ladies in waiting? We have no record of any dispute or legal argument upon the point, but it is quite clear from the detailed descriptions of Sir Simonds D'Ewes that at the opening of Parliament by Queen Elizabeth I in 1562/3 and again in 1566 ladies in waiting were present.[18] Not, however, it would appear, very comfortably situated; for on the former occasion there were three or four of them sitting on the ground at the Queen's right, and on the latter occasion they were kneeling on her left. However, there they were; and although the pictorial evidence, formalised as it was, does not include them, there seems no reason to doubt the word of Sir Simonds D'Ewes. They were not, however, present as peeresses; and we cannot therefore take these occasions as providing precedents for the admission of peeresses to the body of the House, not only for this reason but because the steps of the throne and the woolsacks are, for most purposes at least, considered to be outside " the floor of the House ".

For the next authoritative reference to ladies being present in the

House of Lords we have to jump nearly a century and half, to 13th March, 1700/1, when the following entry appears in the Journal:

> The House taking notice of the irregularities in the House, when His Majesty was present here, by the Crowds of Ladies and others suffered to come within the Bar; the following Orders were made (*videlicet*). It is ORDERED, by the Lords Spiritual and Temporal in Parliament assembled, That no Person whatsoever (except the Members and Assistants of this House) be suffered to come within the Bar, when His Majesty is present.
>
> It is ORDERED, by the Lords Spiritual and Temporal in Parliament assembled, That no Ladies or Men be suffered to come into the House, when the King is present, at any of the Doors, unless some Lord doth move the House for such by Name, except those that attend the King's person.[19]

Here, then, we have a tremendous contrast between the " three or four ladies, and no more " of 1563, and the " Crowds of Ladies and others " here mentioned. How is the discrepancy to be accounted for?

First, it might be said that ladies were present in the body of the House in 1563, but that their presence was not recorded. Against this, the silence of both official and unofficial accounts of the opening of Parliament on this point up to 1701 must be noted. However, before 1701 it is certainly true that we have abundant evidence of disorder at the opening of Parliament extending right back through the reign of King Charles II. Thus the House had found it necessary to make somewhat similar sessional orders to that quoted above in 1667/8, 1676/7, 1696, and 1696/7.[20] In none of these orders, however, were ladies specifically mentioned. On the other hand the last of them may have provided, or been thought to provide, a loophole, for it read as follows:

> it is ORDERED by the Lords Spiritual and Temporal in Parliament assembled, That, when His Majesty shall please to be present in this House, no Men shall come in but those who have a Right to be admitted; and that no Person whatsoever be then suffered to stand upon the Throne. . . .

By the word " throne " is of course here meant the dais on which the Chair of State was placed, not the Chair of State itself.

It is conceivable that the use of the word " men " in the first part of this order, and of " person " in the other, might have been read as implying that while both sexes were excluded from the " throne ", women could come on to the floor of the House, whilst men could only come there if they had a right. Where else indeed could they go if they wished to watch the ceremony? There was no gallery in the House at this time, and the space beyond the Bar would be filled with Members of the House of Commons summoned to hear the Speech from the Throne. Bearing in mind the then physical circumstances of the House, it is not in fact difficult to account for the admission of women into the body of the House, if once we accept that their interest in watching the proceedings was felt to be legitimate at some historical epoch. That this is likely especially to have been the case during the reign of Charles II we know from the character of that monarch and the nature of his court.

If then we accept that at this period ladies, and especially peeresses, were felt to be entitled to have a view of the proceedings, it is equally obvious that their presence at these gatherings was causing overcrowding. Indeed, the hubbub was frequently so great that Members of the House of Commons could not hear the King's Speech and had to have a copy read out to them on their return from the House of Lords.

What then could be done to mitigate the situation? It was clear that the situation could not be allowed to continue indefinitely, for despite the 1701 order we are told that in June of the same year, at the prorogation, " the King stayed near two hours before he could be admitted into the House of Lords; at last almost forced his way in ".[21] Something had to be done, and with a new Queen on the throne in the person of Queen Anne, on 9th November, 1703, following further disturbances, the House ordered Sir Christopher Wren to attend in his capacity as Surveyor-General.[22] When he attended, on 11th November, Wren was asked " what way he could propose to prevent the great Inconvenience by Crowds, when Her Majesty is present in this House, and for the Reception of those that shall be admitted to see the Queen upon the Throne ". He replied, inviting a committee of two or three peers to " discourse with him ", and a committee was accordingly appointed.[23]

On 7th November, 1704, notice being again taken of the " great inconvenience and Irregularities which have happened, by the great Concourse and Crowds of Persons in this House when Her Majesty is present . . .', the matter was referred to the Committee for Privileges to consider methods.[24] Sir Christopher Wren was again called in; the order of 23rd April, 1696 was renewed, and Wren was instructed to make " a Gallery over the Lobby Door, across the House, with Four Benches ".[25] This was not the end of the matter, however: some of their Lordships clearly did not like the idea of a gallery, and in March 1705 attempts were made to have it taken down. Although the " exclusionists ", as we may perhaps call them, were not at this time successful, on 5th March, 1710/11, the gallery was ordered to be taken down at the end of the session.[26] The exclusionists had won, but not altogether, for Caroline of Anspach, Princess of Wales, afterwards consort of George II, appears to have attended debates in 1716.[27] Precisely where the Princess sat is not clear, but it is tolerably clear that whereas some objectors to the gallery could not face the idea at all, there were others who were prepared to compromise, for on 12th May, 1735, officers of works were summoned to consider ways and means of erecting another.[28] It may even be that during the intervening period another gallery was put up, for in 1725 Cesar de Saussure described a " big projecting gallery, where the foreign ministers and the ladies of the Court usually sit on those eventful days when the King goes to Parliament".[29] This was situated above the space below the bar. It may even be that Wren's gallery was not taken down in 1711 as ordered, but we cannot be certain of this. At any rate, it is pretty certain that in May 1735 there was no gallery. A committee under the Earl of

Strafford was appointed, whose proceedings are in the House of Lords Record Office and whose report is embodied in the Journals. What had by then become a standing order " has not been found effectual to prevent Crowds in the House when His Majesty is present " and it was proposed that a gallery be erected (not " another gallery " be it noted). The ever-resourceful Office of Works thereupon suggested, no doubt having in mind their Lordships' by then established habit of blowing by fits hot and cold upon the matter, a " Flying Gallery ", which might be put up and taken down as there should be occasion, in three hours time if need be, " as firm and strong as any fixed gallery ".[30] Suitably impressed, the Committee reported back in favour of this proposal on 14th May, but their report was not approved.[31]

This was not the end of the matter, however, for on 24th February, 1736/7, the House ordered a gallery on similar lines to that erected by Sir Christopher Wren in 1704 to be put up.[32] On 21st April a committee was appointed to consider who should be admitted into it, and although no record of further proceedings in respect of this committee has been found, it is fairly certain that it was used by peeresses, for Lady Mary Wortley Montagu gave a lively account of a " siege " of the House by certain peeresses in March 1739, when it was resolved to exclude them for a particular debate. The doors were locked against them, but they continued hammering. Ultimately they are said to have gained entry by relapsing into silence until the Lords, assuming that the tumult had subsided because they had gone home, had the doors opened, only to be deluged by an inrush into a gallery already full with Members of the House of Commons.[33] It may have been partly as a result of this incident that on 19th January, 1740/1, the door of this gallery was ordered to be locked up and the gallery itself ordered to be taken down at the end of the session.[34] We hear no more of galleries until 1778, when an order to the Surveyor-General was made to erect one, which was however discharged later the same year.[35]

In 1782 the matter was considered in much greater detail. A committee was appointed to consider a plan which differed from earlier ones in that it envisaged constructing over the lobby rather than within the House itself. This gallery was to have six rows of benches seating fourteen persons each, as opposed to Sir Christopher Wren's four rows of benches, and was to be used for the accommodation of ladies when the King came to the House, and for Members of the House of Commons and Irish peers at other times.[36] Their report was however rejected, paragraph by paragraph, by the House on 18th June.[37] A necessary corollary of their proposals which did not, however, fall to be considered, was that so much of the Standing Order as related to the admission of ladies into the body of the House would have to be vacated, so that peeresses only would, if the gallery were to be erected, be able to go into the body of the House, leaving the gallery for other ladies.[38] In 1801 the House moved into the Court of Requests, where

in 1820 a temporary gallery appears to have been erected for the accommodation of peers at the trial of Queen Caroline,[39] and in 1831 another was ordered to be built at the lower end of the House to the design of " Mr. Smirke ";[40] but it is not until after the fire of 1834 that unequivocal evidence has been found of galleries being in use on a regular and continuous basis.

So much, then, for the galleries. The subject has been dealt with in considerable detail, partly because no other account of it seems to be available, but also because it is important for understanding the position of peeresses at the State Opening and similar occasions. In the absence of a gallery there was nowhere else for them to sit but in the body of the House, and even when a gallery was built the crowd, particularly at the State Opening and similar occasions, had by the end of the eighteenth century become so great that even in those circumstances the 1782 Committee envisaged that peeresses would still have to sit in the body of the House, leaving the proposed gallery to such other ladies as might be permitted to come in.

What then of the Standing Order? *In limine* the question arises: why, after all the disturbances we have recorded in the later seventeenth century, was not a Standing Order made to put a stop to them, instead of the various *ad hoc* sessional orders that were passed? One view is that the reason was basically quite simple: when the King or Queen Regnant were present in person, it was their responsibility to keep order through the Lord Great Chamberlain or other officer appointed for the purpose, not the responsibility of the Lords themselves acting collectively and as a body through Standing Orders. At any rate it is clear enough that the Palace of Westminster, being a royal palace, admission to that part of it in which the monarch himself is personally present might well fall to be regulated, in theory at least, rather by his immediate servant the Lord Great Chamberlain than by the body of magnates whom he summons to " treat and have conference " with him. To put it at its lowest, if you were summoning a group or party of people to meet at your house, you might expect to have some control over whom they brought with them, even though, if you left them alone for long periods to deliberate, you might think it reasonable that they should devise their own means for preserving order and decorum in your absence. Some such theory as this seems to underly the fact that in the earliest Roll of Standing Orders we possess, the introduction reads: " Remembrances for order and decency to be kept in the upper House of Parlyament by the Lords when His Maiestie is not there leaving the Solemnities belonging to his Maiesties coming to bee marshalled by those Lords to whome it more properly appertaines."[41]

Equally clearly, however, is it apparent that in the face of persistent crowding and disorder the theory broke down. As we have seen, the crowds were so great that it was necessary to pass sessional orders, beginning in 1668, to mitigate the problem. While these earlier, pre-1701 orders, do not mention ladies in terms, the idea cannot, simply

for that reason, be ruled out that they were gaining admission on these occasions throughout the reign of Charles II. The evidence is not conclusive, but falls to be examined at this stage.

First, let us consider the House of Commons. In the time of Sir Edward Coke, the House of Commons would not allow a woman to attend as a witness, Sir Edward himself citing " St. Barnard " (apparently St. Bernard of Clairvaux) on the point that a woman was not to speak in the congregation.[42] This may have been a slip of the tongue for " St. Paul ", for St. Bernard of Clairvaux does not apparently write of women speaking in churches but only of them not being allowed to enter churches in certain circumstances.[43] At any rate the reference appears to have been considered persuasive in the quondam ecclesiastical surroundings of St. Stephen's Chapel. Not so, however, after the Restoration, for in 1666 it does appear that the mother of a party to an Estate Bill was admitted as a witness after debate.[44] Another piece of Restoration evidence of more direct relevance to the House of Lords comes from the report of a speech by Lord Shaftesbury in Timberland's debates. " Pray, my Lords, forgive me ", he is reported as saying, " if, on this occasion, I put you in mind of Committee dinners, and the scandal of it; those droves of ladies that attended all causes; it was come to pass, that men even hired, or borrowed of their friends, handsome sisters or daughters to deliver their petitions."[45]

Secondly, we may consider naturalisation Bills. In general, naturalisation required a special Act of Parliament before 1844, and an Act of 1609 prescribed that the oaths of allegiance and supremacy be taken between the First and Second Readings of the relevant Bill. It was not, until 1844, settled law that married women automatically acquired the nationality of their husbands, so that peers marrying foreigners tended to arrange for a naturalisation Bill to be introduced in respect of their wives. Commoners also took the oaths before the House of Lords or before the House of Commons, depending on where their Bill had been introduced.[46] Although it would be stretching the evidence to say that more ladies were allowed within the bar of the House of Lords to take these oaths after the Restoration than before it, nevertheless the mere fact that on occasions they were allowed in may have helped to allow them in at the State Opening and prorogation by creating some sort of precedent. Thus in January 1641 Ester and Magdalin Bogan took the oaths " at the End of the Wool-sack where the Lord Keeper sits, in the Presence of the Speaker; the Clerk of the Parliaments reading the Oaths ".[47] Although it is not altogether clear from this entry whether the House was technically in session or not, there is no doubt that when the Countess of Derby and Lady Colepeper took the oaths " kneeling " on 27th August, 1660, " at the end of the Lord Chancellor's Woolsack ", the House was sitting.[48]

Another factor which may have helped to ensure the admission of peeresses at the Opening of Parliament was their performance during the Civil War. Lucy, Countess of Carlisle (1599–1660) is said to have

saved the five Members from arrest by King Charles I, and afterwards played a notable part on the Royalist side, being described as a " stateswoman " by Clarendon.[49] Charlotte Stanley, Countess of Derby (1599–1664) held out at Lathom House in Lancashire for the King against the Parliamentarians in 1643, " declaring that she and her children would fire the castle and perish in the flames rather than yield ".[50] In the same year the women of London paraded to the House of Commons to present a peace petition, which was duly considered by a committee appointed by the House.[51] The period is also notable for that almost legendary character Anne Clifford, Countess of Dorset, Pembroke and Montgomery (1590–1676), who was " High Sheriffess " of County Westmorland by right of succession. As early as the reign of Edward I, her ancestor, Isabella de Clifford, is said to have exercised it in person. Lady Anne entertained the judges at Assizes in 1653 and other years, and sat with the judges on the bench at Appleby.[52] She is chiefly known, however, for her " cartel of defiance " addressed to the Secretary of State after the Restoration, when he was " presuming to put forward a candidate of his own " for the representation of Appleby.[53] As rendered by Horace Walpole, writing nearly a century later, the letter reads: " I have been bullied by an usurper, I have been neglected by a Court, but I will not be dictated to by a subject. Your man shan't stand. ANNE DORSET, PEMBROKE, and MONTGOMERY." Her actual letter to Lord Arlington of 6th February, 1667/8, which is in the State Papers Domestic, while using milder language, is to a similar effect and will be quoted, showing as it does how a peeress, even at this date, could exert as much influence over the election of a Member of the House of Commons as a peer in respect of a seat in which she was interested. The Secretary of State had written asking her to exercise her patronage in favour of Mr. Joseph Williamson, his secretary, a burgess's seat at Appleby having become vacant by death. The reply reads, in part:

> . . . I must confess to your Lordship that it was myself, and not my daughter of Thanet, nor any of her children, that made me attempt the making of one of her younger sons a burgess for Appleby, she having four that are all of them past 21 years old a piece, and are capable and fit for it, so that I think I am bound in honour and conscience to strive to maintain my own deed as far forth as it lies in my power, but if it should happen otherwise, I will submit to it with patience, but will never yield my consent. I know very well how powerful a man a Secretary of State is, throughout all our King's dominions, so I am confident your Lordship, by your favour and recommendations, might quickly help this Mr Joseph Williamson to a burgess-ship, without doing wrong or discourtesy to a widow that wants but 2 of fourscore years old, and to her grandchildren, whose father and mother suffered as much in their worldly fortunes for the King as most of his Majesty's subjects did.

The letter is signed " Anne Pembroke ".[54]

Of course the House of Lords, as the highest court in the land, has a tradition of public access and availability somewhat different in kind from that of the House of Commons. One finds it difficult to imagine

Pepys, for example, going to the House of Commons in the same way as he described going to the Lords on 7th April, 1662, and standing " within the House, while the Bishops and Lords did stay till the Chancellor's coming, and then we were put out, and they to prayers ".[55] Part of this relative freedom of access may have been a reflection of lack of order, though one must be chary of imputing lack of order to an assembly which by the middle seventeenth century had nearly four centuries of historical evolution behind it.

So far then, we have established that ladies-in-waiting have been present at the State Opening of Parliament by Queens Regnant at least since 1563, and that peeresses, and possibly other ladies too, have been present on these occasions in the body of the House at least since 1701. We have also discussed some of the reasons why they came to be admitted. In the remainder of this article it is proposed to discuss the development of the Standing Order relating to their admittance and the seating of the wives of foreign envoys and other ladies.

The earliest sessional " order " relating to unauthorised admissions to the body of the House when the sovereign was present appears to be that of 21st February, 1667/8, when the House found it necessary to order, following on a report by the Committee for Privileges, " that it is hereby referred to the Lord Great Chamberlain of *England*, to take care, that when His Majesty is to come to this House, none be admitted to come into this House before His Majesty cometh, but the Peers, and the Eldest Sons of Peers, and the Assistants and necessary Attendant; belonging to this House ".[56] It will be noted that this is not in form an order but a " reference ": the buck is being passed firmly to the Lord Great Chamberlain, for it was to that official, as we have seen, that the peers looked under the old theory for the maintenance of order when the sovereign was present in person. The " order " of 17th February, 1676/7, is in similar terms, and it is not until we reach the order of 23rd April, 1696, that we find the reference to the Lord Great Chamberlain omitted. Even in this order, however, he is brought in by implication, but it is nevertheless true to say that in this order the Lords as a body accept responsibility for the maintenance of order in the presence of the sovereign. The 1696 order also introduces us to the Master of the Ceremonies. It reads as follows:

> When His Majesty is present . . . no person whatsoever (except the necessary Officers attending) shall then be permitted to come into this House, other than the Master of the Ceremonies, and such as he shall certify to the Lord Great Chamberlain to be Foreigners; and that no Lords sons, or other Person, be suffered to stand on the Throne, or Steps thereof, but such as bear the Regalia, and carry His Majesty's Train; and that no Lords sit on the Woolsacks.[57]

The orders of 1696/7 and of 1700/01 have already been discussed.[58] In 1720 the whole subject was gone into again by a committee under the Earl of Clarendon, which considered the earlier precedents, including one of 27th June, 1717, when, notice being taken that " divers Persons were in the House, who had no Right so to be, They were

thereupon directed immediately to withdraw. Which some of them neglecting or refusing to do

ORDERED, that the Gentleman Usher of the Black Rod do forthwith take into his Custody such Persons who are now in the House contrary to their Lordships' Orders.

ORDERED, also, That the Door-Keepers and other Officers attending this House do acquaint the House with the Names of such Lords as shall command or oblige them to admit any Persons into the House, in breach of their Lordships' Orders."[59]

It is of interest in this connection that it was only in January 1973 that the powers of Black Rod to take persons into custody were defined in Standing Orders. So much is parliamentary practice a matter of custom.

In committee, on 15th December, 1720, after the various precedents had been read, it was " Proposed, That none be admitted when His Ma^tie^ is present unless they shall have a ticket to produce under the Ld Great Chamberlain's Hand & Seal. Proposed Likewise; that no Lady be admitted without any Motion for her by Name according to the Presidents of y^e^ 13th of March 1700 . . . '[60] The Order, as made by the House on 22nd December, 1720, accordingly read as follows:

when His Majesty shall come publickly to this House, all the Lords shall be in their Robes, and sit in their due Places.

That at such solemn Times, before His Majesty comes, all the Doors of this House, and those leading thereunto, shall be kept shut, and no Person whatsoever (except the Lords and Assistants of this House, the Eldest Sons of Peers who have a Right to Sit and Vote in this House, and the Officers and Attendants thereto belonging) shall be suffered to come within the Doors thereof, other than the Master of the Ceremonies, and such as he shall certify the Lord Great Chamberlain to be Foreign Ministers, or other Foreigners of Distinction; nor shall any Ladies or Men be permitted to come into the House at any of the Doors, unless some Lord doth move the House for such by Name; and that no person whatsoever do presume to stand upon the Throne, or Steps thereof, but such as carry His Majesty's Train, who shall stand behind the Chair of State; and those that bear the *Regalia*, upon the second Step of the Throne.[61]

In 1733 the Order was slightly modified, the words " particularly to the Prince's Chamber " being inserted after " thereunto ", and the following words after " move the House for such by Name ":

And on the First day of a Session, none but such as shall apply by Name to the Lord Great Chamberlain, or his Deputy, and be admitted by his Lordship's Directions.[62]

In this form the order continued virtually unchanged until 1954, when it was altered to read as follows:

| | |
|---|---|
| Arrangements when Her Majesty is present. | When Her Majesty comes publicly to the House, the Lords shall be attired in their robes or in such other dress as may be approved by Her Majesty, and shall sit in their due places.<br>At all such solemn times, before Her Majesty comes, no |

person other than a Lord shall be allowed on the floor of the House except

1. Such members of the Royal Family as Her Majesty may direct.
2. Judges summoned by writ and the officers and attendants of this House.
3. Such peeresses and members of the Diplomatic Corps as are in possession of an invitation issued by the Lord Great Chamberlain.

No person whatsoever shall presume to stand upon the steps of the Throne but such as carry Her Majesty's train and those that bear the regalia.[63]

So much then for the history of the Standing Order. Although no ladies are to be discerned in the John Pine engraving of 1749, purporting to show the House of Lords at the end of the session of 1741/2, with the King on the throne, nor can they be seen in the 1755 engraving by B. Cole showing the House at the end of the Session of 1755,[64] it is nevertheless tolerably certain that they were being admitted on these occasions. Thus on 9th December, 1761, Lord Royston wrote to Hardwicke that the House of Commons " was hot and crowded, as full of ladies, as the House of Lords, when the King goes to make a speech ".[65] From 1774 we have newspaper reports which speak of the House being " cleared of the ladies " after the King had retired after delivering his speech.[66] At the prorogation on 11th July, 1782, soon after, it will be recalled, a proposal for a gallery had been rejected, the House was " uncommonly crowded . . . with both ladies and gentlemen ",[67] and in January 1785 at a sessional opening, " the House of Peers never was better attended by females . . . and it was with some difficulty that the Lord Chancellor and his suite could reach the woolsack ".[68]

From the 1720 Standing Order it seems likely that on occasions such as the prorogation of Parliament and when the monarch came to the House in the course of a session to give the Royal Assent in person to Bills, ladies would be admitted if moved for individually by a peer, whilst under the 1733 amendment, on the " first day of the session ", that is, at the State Opening, application had to be made to the Lord Great Chamberlain. However, it would appear that at least by 1802 it had become customary for application to be made to the Lord Great Chamberlain even on occasions such as the prorogation, presumably because these occasions too had become overcrowded, as we have seen, and the 1720 Order was eventually modified to read " except with due permission " for " unless some Lord doth move the House for such by Name ".[69] There is no doubt that by July 1813 ladies were being seated on the benches of the House on these occasions, and in a few years we hear also of a " peeresses' bench " on the opposition side of the House.[70] As we have seen from the 1782 Committee's report on a gallery, ladies who were not peeresses were also being admitted on these occasions.[71]

Ambassadors had, of course, been present at the State Opening of Parliament and similar occasions at least from 1523, when their presence is noted in the Venetian State Papers.[72] In 1812 they were placed behind the bishops, standing up in a tribune or box; there was no room in the tribune for their ladies, who frequently had to take pot luck. In 1744 the Venetian ambassadress had been seated with the Duchess of Richmond on one of the woolsacks,[73] but it appears to have been decided by William IV that no one had a right to sit on the woolsacks at the State Opening but " descendants of George the [?] 2 Male and Female who are in Succession to the Throne ".[74] In 1795 the Princess of Orange was seated on the woolsack.[75] William IV's rule appears not to have been adhered to in Queen Victoria's reign.[76]

It appears that the House of Lords in 1829 was still without a permanent gallery. During the debates on the Catholic Emancipation Bill of that year, Greville noted in his diary that " the House of Lords was very full, particularly of women; every fool in London thinks it necessary to be there. It is only since last year that the steps of the throne have been crowded with ladies; formerly one or two got in, who skulked behind the throne, or were hid in Tyrwhitt's box, but now they fill the whole space and put themselves in front with their large bonnets without either fear or shame ".[77] Pictorial evidence for the presence of ladies in the body of the House when the monarch was present is provided by a picture of the Royal Assent to the Catholic Emancipation Bill in the same year,[78] and at the prorogation on 23rd July, 1830, 'the numbers of ladies who had obtained tickets of admission to the body of the house, and who sat on those benches usually occupied by peers, was greater than we ever before witnessed. The whole of the peers' benches, except part of the front rows, and that part allotted to the Foreign Ministers, was crowded as closely as ladies could be placed, and yet numbers of peeresses and other ladies of distinction were obliged to take their places below that part reserved for the sons of peers, and were there accommodated with chairs.'[79] The picture dated 1845 by Alexander Blaikley, together with two of the pictures painted by Nash in the 1850s, provide abundant evidence of the House being almost exclusively occupied by ladies at State Openings of Parliament by Queen Victoria.[80] According to James Grant, at Queen Victoria's first State Opening in 1837, the interior of the House was nearly filled by twelve noon by peeresses and their daughters. There were galleries by then, the House having moved to the Painted Chamber after the fire of 1834, and these too were filled " with the female branches of aristocratic families ". In most cases they had " procured a lord-chamberlain's [*sic*] order of admission; but several of them effected an entrance by the persuasive eloquence of their pretty and fascinating faces, accompanied by a few honied words, which the officers could not resist. . . . But this was not all . . . some of them carried the joke still further, and actually took forcible possession of the front seat in the gallery, reserved for reporters." Only three reporters were, he states,

able to gain admission, and then only because they had reached their places as soon as the door was opened.[81]

In August 1854, at the last prorogation by the sovereign in person, " the body of the house was filled with ladies attired in the lightest textures and gayest hues of summer millinery . . . " The Queen bowed as a signal for the Lords to be seated, but on this occasion " the female portion of the assemblage seemed to be made up of the younger relatives and friends of noble families who . . . took no heed of the gracious signal ". The Earl of Aberdeen, then Prime Minister, was summoned to assist and by a wave of his hand " succeeded in communicating the gracious wish of Her Majesty to her fair subjects ".[82] During ordinary debates at this period, the ladies lined the side galleries, occasionally overflowing into the House itself.[83] In 1886, at the last opening of Parliament by Queen Victoria in person, there seem to have been relatively few visitors present, for ladies were asked to come down from the gallery to fill vacant spaces in the body of the House.[84]

The opening of Parliament by King Edward VII and Queen Alexandra in 1901 was notable for several reasons. In the first place, " for the first time in English history, perhaps, a Queen Consort was to accompany the King in equal state for the opening of Parliament ".[85] Secondly, there was such a rush through the lobby to see the new King and Queen that several Members of Parliament were injured, and a Joint Select Committee, whose report we have already mentioned, was set up.[86] Phillip and Mary are known to have attended Parliament together, but they were reigning jointly.[87] So far as can be ascertained, William III always went to Parliament alone, never with his wife. One anomaly remained, even as late as 1950, for the Journals do not record that Queen Alexandra was present with her husband in 1901, nor do they record the presence of Her Majesty Queen Elizabeth, the present Queen Mother, when she went to Parliament with her husband in October 1950.[88] On that note of a battle still unfought we may perhaps conclude.

*Notes and References*

[1] *Report from the Joint Select Committee of the House of Lords and the House of Commons on the Presence of the Sovereign in Parliament.* 1901 (111), VIII. 205. See paras. 8–12.

[2] M. Powicke, *Handbook of British Chronology* (1961 edn.), p. 500 and authorities there cited.

[3] Madox, *History of the Exchequer*, Vol. 1, pp. 69, 102.

[4] 1650 edn., p. 663.

[5] *Rotuli Parliamentorum*, Vol. IV, p. 261.

[6] *E.g.* 'feminae ab omnibus officiis civilibus vel publicis remotae sunt ' (Justinian's *Digest*, cited *Rhondda Peerage Case, Appeal Cases*, Vol. 2, 1922, pp. 339 *et. seq.*).

[7] *Constitutional History of England*, Vol. III (1880), p. 474. See also Vol. II, p. 445.

[8] Cited J. E. Powell and K. Wallis, *The House of Lords in the Middle Ages* (1968), p. 454.

[9] Coke's Reports, Vol. 6, p. 52b, cited *Rhondda Peerage Case*, note 6, *supra.*

[10] 1592 edn., p. 423.
[11] *Observations on the More Ancient Statutes* (1775 edn.) p. 294.
[12] Pp. 872–3. The plea in *Rotuli Parliamentorum* (Vol. II, p. 329) asks for her banishment out of the kingdom for bringing vexatious actions.
[13] *Annales* (1631 edn.) p. 399.
[14] Law Reports, 4 Common Pleas, p. 374.
[15] *Ibid.* See also A. Luders, *Reports upon Controverted Elections*, Vol. II, 1789, p.13.
[16] Coke, 2 Institutes, 119: W. Lambarde, *Eirenarcha*, 1614 edn., p. 396.
[17] Sir John Strange, *Reports* (1755), Vol. II, pp. 1114–5.
[18] *Journals of the Parliaments in the Reign of Queen Elizabeth* (1682), pp. 59, 96–7.
[19] *Journals*, XVI, 621a.
[20] *Journals*, XII, 182a; XIII, 44; XV, 742b; XVI, 55 (11th February, 1667/8; 17th February, 1676/7; 23rd April, 1696; 11th January, 1696/7).
[21] Coke Mss. 25th June, 1701, in Historical Manuscripts Commission, Twelfth Reports, Appendix II (1888), Cowper Mss., II, 430 (Robert Jennens to T. Coke).
[22] *Journals*, XVII, 332a.
[23] *Journals*, XVII, 334b.
[24] *Journals*, XVII, 572b.
[25] *Journals*, XVII, 579b.
[26] *Journals*, XIX, 246a.
[27] *Diary of Mary, Countess Cowper* (1865), p. 105.
[28] *Journals*, XXIV, 550.
[29] *A Foreign View of England in the Reigns of George I and George II*, ed. Van Muyden, 1902, p. 61.
[30] *Journals*, XXIV, 555a; *Proceedings at Committees on Bills and Other Matters* (1734–41), p. 38 (13th May, 1735), in House of Lords Record Office.
[31] *Journals*, XXIV, 555a.
[32] *Journals*, XXV, 29a.
[33] *Complete Letters*, ed. R. Halsband (1966), Vol. II, pp. 135–7. See also A. S. Turberville, *The House of Lords in the Eighteenth Century* (1927), pp. 14–15. Lady Mary is also a notable figure in the history of women's journalism, having begun a weekly political paper entitled *Nonsense of Commonsense*. See A. Adburgham, *Women in Print* (1972), p. 86.
[34] *Journals*, XXV, 571b.
[35] *Journals*, XXXV, 511b, 530b.
[36] *Journals*, XXXVI, 524–5. See also Minute Book, pp. 99, 110, reporting proceedings in Committee.
[37] *Journals*, XXXVI, 533.
[38] Minute Book, 10th June, 1782, p. 110; *Journals*, XXXVI, 525a.
[39] *Journals*, LIII, 364a.
[40] *Journals*, LXIII, 1096a.
[41] Roll A (1624), printed in M. Bond (ed.) *Manuscripts of the House of Lords, 1712–1714*, N.S. Vol. X, pp. 22–5, 1953. In Roll B of 1664 the preamble is the same, except that the second " Lords " is omitted.
[42] *Commons Journals*, I, 519a (13th February, 1620/1).
[43] St. Paul, I Corinthians 14, 34, 35; St. Bernard of Clairvaux, *Opera Omnia*, Paris, 1719, Vol. I, p. 256.
[44] *Commons Journals*, VIII, 651b (19th November 1666).
[45] *Lords Debates*, I, 165, at p. 171, 20th October, 1675 (Timberland, 1742).
[46] Holdsworth, *History of English Law*, IX (1926) pp. 89–90; C. Parry, *Nationality and Citizenship Laws*, I (1957), p. 47.
[47] *Journals*, IV, 129 (12th January, 1640/1).
[48] *Journals*, XI, 145a.
[49] *Encyclopaedia Britannica*, 11th edn. (1910), Vol. V, p. 340.
[50] *Dictionary of National Biography*.
[51] *Commons Journals*, III, 199b.
[52] G. C. Williamson, *Lady Anne Clifford* (1922).
[53] G. W. E. Russell, *A Pocketful of Sixpences* (1907), p. 18.
[54] *Calendar of the State Papers Domestic*, pp. 234–91.
[55] *Diary*, 7th April, 1662.
[56] *Journals*, XII, 182a.
[57] *Journals*, XV, 742b.
[58] Page 13. Notes 19 and 20, *supra*.
[59] *Journals*, XX, 516b.

[60] Minute Book: *Proceedings at Committees on Bills and Other Matters.* In House of Lords Record Office.

[61] *Journals*, xxi, 379b.

[62] *Journals*, XXIV, 355: Lord Great Chamberlain's papers, series II, Vol. 1, No. 52 (p. 97). As printed in Sessional paper (74) of 1954 there are some small changes from 1733, including the substitution of " except with due permission " for " unless some Lord doth move the House for such by Name " and " person " for " Ladies, or Men ".

[63] The current edition is that of 17th February, 1972, though there have been further amendments since that date, not, however, affecting this particular order.

[64] There is a copy of the Pine engraving in the British Museum Print Room, and of the Cole version, probably merely a modification of it, in the Guildhall collection (W2/PARL). See also R. J. B. Walker, *Catalogue of Paintings, Drawings, Sculpture and Engravings in the Palace of Westminster*, Part II, 1960, etc. (cyclostyled copy in House of Lords Record Office).

[65] Hardwicke Papers, Vol. IV. British Museum, Add. Mss. 35, 352, fo. 212v.

[66] *Morning Chronicle and London Advertiser* (Burney Collection, British Museum), 1st December, 1774, p. 2 col. 3; 1st November, 1776, p. 1, col. 4.

[67] *Morning Herald and Daily Advertiser*, 12th July, 1782, p. 2 col. 2.

[68] *Morning Chronicle and London Advertiser*, 26th January, 1785, p. 4, col. 1.

[69] L.G.C. Series II, vol. 1, no. 173, p. 180; *supra*, note 62.

[70] *The Times*, 23rd July, 1813, p. 2, col. 5; L.C. 5/8, pp. 25–6; L.G.C., Series II, Vol. 1, No. 195, p. 189.

[71] See also L.G.C. Series II, Vol. 1, No. 208, p. 191 (request for cards of admission for " Mrs. Harris & Miss Pearce . . . Mrs. Lane & Miss Farington ").

[72] Antonio Surian in *Calendar of State Papers . . . of Venice* (III, 1869, No. 663).

[73] L.G.C. Series II, Vol. 1, No. 55 (p. 99). The Duchess of Richmond was Lady-in-Waiting to the Queen (information from Mr. R. W. Perceval). The wife of the Marquis d'Orleans, French Minister, " with her friends " was, in 1817, placed on the " peeresses' bench " (L.G.C. Series II, Vol. 1, No. 195, p. 189).

[74] Public Record Office reference L.C. 5/10, under date 23rd July, 1847.

[75] L.G.C. Series II, Vol. 1, No. 156, p. 161. William IV's ruling did not prevent Dhuleep Singh, deposed ruler of the Punjab, being seated on the woolsack in 1854 (*The Times*, 14th August, p. 5/2).

[76] See preceding note.

[77] C. C. F. Greville. *A Journal of the Reigns of King George IV and King William IV*, ed. H. Reeve, vol. I, p. 199 (1875 edn.)

[78] Walker, *op. cit.*, Supplement, No. 458. I am grateful to Mr. R. W. Perceval for showing me this picture by G. Jones.

[79] *The Times*, p. 2, col. 1 (24th July, 1830).

[80] Walker, *op. cit.*, Part II, Portraits, No. 194, p. 136 (Blaikley); Nos. 348 and 349 (Nash). I am indebted to the Rt. Hon. the Earl of Selkirk and to Mr. Perceval for showing me these portraits.

[81] James Grant, *Sketches in London* (2nd edn., 1840), pp. 135 *et. seq.*

[82] *The Times*, 14th August, 1854, p. 5/2. It was then the custom for Mr. Speaker to deliver an " harangue " at the end of each session. It is stated in Sir Sydney Lee's *Queen Victoria* (1902, p. 246) that although his address was on this occasion " quite respectful in tone and comparatively brief, the Queen disliked receiving instruction in public, and being never unwilling to break with precedent which oppressed her, she omitted to prorogue Parliament in person again ".

[83] Lord Malmesbury, *Memoirs* (1885 edn., p. 362).

[84] Joint Select Committee Report (*supra*, note 1), p. ix.

[85] *The Times*, 15th February, 1901, p. 12, col. 2.

[86] *Supra*, note 1.

[87] *E.g. Lords Journals* I, 465 (12th November, 1554). The heading reads " Pres. REX et REGINA" .

[88] *Journals*, CXXXIII, 8b; CLXXXIII, 1. I am grateful to the Rt. Hon. the Earl of Selkirk for suggesting this piece of research and for much valuable advice and criticism; to Mr. R. W. Perceval, Clerk Assistant, House of Lords, for much detailed information and advice; and to the staffs of the House of Lords Record Office, the Public Record Office, the British Museum, the London Library and the Guildhall Library for their ready provision of relevant material. The responsibility for any errors and omissions remains my own.

## Appendix

### *Women in the Scottish Parliament before the Union*

It has not been possible to extend the scope of this study in any systematic way to cover parliaments other than the English. It seems fairly clear, however, that somewhat similar rules operated in the Scottish Parliament before the Union in regard to peeresses, as in the English. There is some evidence that Queen Joanna, consort of David II, attended Parliament at Scone in 1331 immediately following their coronation, but the evidence is not conclusive that she actually sat there.[1] In April 1554 we are told that Mary of Guise " took her place below the throne " before being proclaimed Regent and conducted to the Chair of State.[2] When Mary Queen of Scots opened Parliament in May 1563, Miss Strickland informs us that " the hall of Parliament in the Tolbooth was fitted up with galleries for the accommodation of the ladies, who wore full dress in honour of the senatorial recognition of a Sovereign of their own sex . . . all was gay and glorious in the crowded hall . . . when Mary Stuart took her seat . . . surrounded by a glittering train of the ladies of her household . . .".[3] This account appears ultimately to rest on a letter from the English Ambassador Randolph to Cecil who refers to the Queen coming to Parliament with " all her nobles, and above 30 of ' the chocen and picked ' ladies in this realm ". There is, however, no mention here of them being seated in the galleries.[4] The display must, however, have been striking enough, for it drew the following comment from Knox: " Such stinking pride of women as was seen at that Parliament, was never seen before in Scotland ".[5]

As for legal provisions, it is stated in Rait's *Parliaments of Scotland* that there was no statutory sex disqualification for peeresses in their own right, the disqualification being implied in the arrangement by which the husband of a peeress bore the title and sat in Parliament.[6] The equivalent of the English Standing Orders were " Articles Agreed Upon by the Estates for Ordering the House of Parliament ". In the earliest of these, dated 1641, it is ordained that, with certain exceptions for officials, " none be admitted to remain in the Parliament house with the estates but only the members of parliament ".[7] These were followed by Acts of 1662 and 1693, more precisely defining the seating arrangements. Whilst ladies are not in terms excluded, it is difficult to see how they could have come within any of the various categories allowed to be " admitted to stay in Parliament ".[8]

## *References*

[1] *Exchequer Rolls of Scotland*, ed. J. Stuart and G. Burnett, I (1878), p. 382. The item refers to expenses 'domini regis et regine transeundo ad parliamentum, et redeundo'.

[2] E. M. H. McKerlie, *Mary of Guise-Lorraine* (1931), pp. 172–3, citing Knox.

[3] A Strickland, *Life of Mary Queen of Scots* (1873), I, 143.

[4] J. Bain, *Calendar of the State Papers Relating to Scotland*, etc. II (1900), pp. 9–12. Also in English *Calendar of State Papers* (Foreign) (1563), pp. 381–2.

[5] *History of the Reformation in Scotland*, ed. W. C. Dickinson, 1949, II, 77.

[6] R. S. Rait, *The Parliaments of Scotland* (1924), pp. 193–4.

[7] *Acts of the Parliaments of Scotland*, Vol. V, p. 313, cited C. S. Terry, *The Scottish Parliament: its Constitution and Procedure 1603–1707* (1905), pp. 186–9.

[8] Id., Vol. VII, p. 371; Vol. IX, p. 247.

# III. GOING INTO EUROPE

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The process by which the United Kingdom became a member of the European Communities was in essence the process by which any treaty is made and given effect. The Government makes a treaty in the exercise of a prerogative power of the Crown, which does not in itself require the approval of Parliament. The making of a treaty consists of two acts—

(1) the signing of the treaty by a minister of the Crown, and
(2) the ratification of the treaty by the exchange of instruments between the parties to the treaty.

When these two acts have been done the treaty is validly made and is binding upon the Government of the United Kingdom.

Since, however, the Government of the United Kingdom is responsible to the House of Commons, it is constitutionally proper that that House should have an opportunity of expressing its views on the treaty. Consequently it is the practice of the Government to lay the text of a treaty before Parliament and not to proceed with ratification until a period of twenty-one days thereafter has elapsed. This practice is known as the Ponsonby rule and originated in a departmental minute of 1st February, 1924, which was signed by Mr. Arthur Ponsonby, then Under-Secretary of State for Foreign Affairs.

The treaty by which the United Kingdom became a member of the European Communities was the Treaty of Accession. This Treaty was signed by Mr. Heath as Prime Minister and the representatives of Denmark, Ireland and Norway on the one hand and the representatives of the Six existing member countries on the other in Brussels on 22nd January, 1972. The United Kingdom deposited the instrument of ratification at Rome on 18th October, 1972. Even before signature the House of Commons had several opportunities to debate the Treaty and its implications. On 21st, 22nd, 23rd and 26th July, 1971, the Commons had debated a non-committal motion to " take note of " the White Paper entitled " The United Kingdom and the European Communities " (Command Paper No. 4715) which set forth the case for United Kingdom membership. On 21st October, 1971, Sir Alec Douglas Home moved " That this House approves Her Majesty's Government's decision of principle to join the European Communities on the basis of the arrangements which have been negotiated". After a debate lasting six days the motion was carried by 356 votes against 244. And finally,

on 20th January, 1972, two days before the signing of the Treaty, Mr. Peter Shore moved:

> That, recognising the unique character of the Treaty, this House calls upon Her Majesty's Government not to sign the Treaty of Accession to the European Economic Community until the full text has been published and its contents laid before this House for its consideration.

An amendment to this motion was made and the amended Motion was agreed to by 296 votes to 276 as follows:

> That, recognising that under international law the Treaty of Accession to the European Communities would not become operative until ratified, this House approves the intention of Her Majesty's Government to lay before the House the full and agreed English text of the Treaty when signed and the Government's proposals for the legislation required for its implementation.

The Treaty of Accession and the European Communities Bill were presented on 25th January.

The European Communities Bill contained the legislation required to implement the Treaty of Accession. The imposition of Value Added Tax was included in the Finance Bill. On 17th February, after three days' debate, the Second Reading was carried by 309 votes to 301 and the Bill was committed to a Committee of the whole House.

On the order for Second Reading being read, Mr. Enoch Powell, the Member for Wolverhampton South West, had raised a point of order. The Bill, he said, contained a number of major proposals which imposed a burden or charge upon the subject, among them the Community tariffs and the levies under the common agricultural policy, and since these proposals were not incidental but " the absolute essence " of the Bill, the Bill should not have been introduced until *after* the House had agreed to ways and means resolutions authorising them. He further argued that the provision in the Bill for the delegation to the Communities of the power to tax should have been similarly authorised by a preliminary ways and means resolution. Mr. Speaker ruled as follows:

> The purpose of the Bill is to make the legislative changes which will enable the United Kingdom to comply with the obligations entailed by membership of the Communities. Taxation is not its main purpose, and therefore I rule that this is a Bill which does not need to be founded on a ways and means resolution.

Accordingly the necessary ways and means resolution was debated *after* the Second Reading of the Bill on the 22nd February along with an expenditure resolution, which was needed to authorise payments to the Communities, including most of the levies and customs duties included in the ways and means resolution and also the eventual payment of up to 1 per cent of the proceeds of the V.A.T. Amendments were moved to both these resolutions. Mr. Michael English moved an amendment to secure that nothing in the ways and means resolution

should authorise any charge unless it had been approved by the Assembly of the Communities. Mr. Michael Foot moved an amendment to the expenditure resolution designed to secure that all payments by the United Kingdom should be paid out of moneys provided by Parliament, that is to say voted annually and not, as the resolution proposed, by way of permanent charges on the Consolidated Fund or the National Loans Fund. After nearly a whole day's debate both amendments were negatived and the resolutions were agreed to by a majority of 70 in each case.

Clause 1 of the Bill (short title and interpretation) defined the meaning of " the Communities " and " the Community Treaties "; matters of a kind which are more usually relegated to the last clause. When the committee stage began on 29th February notice had been given of 69 amendments to this Clause alone, of which the Chairman of Ways and Means, Sir Robert Grant-Ferris, had selected only twelve for discussion. When the expected protest was made the Chairman read a short statement which he thought would help Members to see why he had come to the conclusions that he had and why the selection seemed to many Members so disappointing, as follows:

> A large number of amendments have been submitted to Clause 1, and the Committee is entitled to know why so few have been placed on my provisional list. Let me say at the outset that, in regard to the majority of the Amendments on the Paper, the question is not a question of selection but one of order. That is to say, most of the amendments—indeed, all of the more important amendments—have been omitted not in virtue of my power of selection but because they are out of order and could not be called in any circumstances.
>
> The reason for this is the nature of the Bill itself—[Hon. Members: " Oh "]. The Bill, as the Explanatory Memorandum says, is one which makes the legislative changes which will enable the United Kingdom to comply with the obligations entailed by membership of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community, and to exercise the rights of membership.
>
> In a word, the Bill provides the legal nuts and bolts which are necessary if the United Kingdom is to be a member of the Communities. It is not a Bill to approve the Treaty of Accession or any of the other treaties which are basic to membership of the Communities—[Interruption]. If it were such a Bill—[Hon. Members: " Disgraceful "]. If Hon. Members would be so kind as to wait for a moment—if it were such a Bill, then, of course, every article of these treaties would be open to discussion and the majority of amendments to Clause 1 would be in order. Since this is not a Bill to approve the basic treaties, amendments designed to vary the terms of those treaties are not in order, and I have no option to rule otherwise. (*Hansard*, 29th February, 1972, cols. 268–9.)

This explanation did not satisfy the Opposition, and on their behalf Mr. Foot declared that they were not prepared to accept the Chairman's selection of amendments and that he would give notice of a substantive motion criticising the Chairman's conduct. After two hours of discussion, during which the Chairman several times reiterated that he had been obliged to rule so many amendments out of order by the limited nature of the Bill, he accepted a Motion to report progress.

The following day the threatened Motion of censure upon the Chairman appeared as follows:

> That this House considers that the ruling given by the Chairman of Ways and Means on 29th February to the Committee of the whole House sitting on the European Communities Bill gravely infringes the rights of the House and its powers of decision on the issues raised by the Bill, and that, therefore, a full new selection of amendments should be proposed.

Although, however, the Motion was in terms directed against the conduct of the Chairman, the debate developed into an attack upon the Government who, it was said, had so drafted the Bill as to make it too impossible for the Opposition to move the amendments they desired to move. In winding up the debate, Mr. Rippon, the Minister responsible for negotiations with the European Communities, defended the Government against this imputation by virtually reiterating the Chairman's ruling of the previous day: what limited the scope for amending the Bill was not the subtlety with which it had been drafted but its essential nature; it was a Bill not about the terms of the treaties but about the legislative changes needed to implement them. The Motion upon the Chairman's conduct was defeated at 10 p.m. by 309 votes to 274. The House then went into committee on the Bill and the Chairman called the first of the amendments which he had selected. No progress was, however, made: innumerable points of order were raised and it was not until 7 a.m. the following morning that Mr. Ronald King Murray, an Opposition spokesman, moved the first amendment. Twelve minutes later the committee decided to report progress. Debate on Clause 1 began in earnest on 7th March and continued on 8th, 14th, 15th March, 18th and 19th April.

Clause 2 contains the heart of the Bill. Subsection (1) gives the force of law in the United Kingdom to present and future Community law which, under the Treaties, is to be given effect without further enactment. Subsection (2) provides that Orders in Council and regulations may be made for the purpose of implementing a Community obligation or exercising a right under the Treaties. On these two provisions hang all the Community law.

To what extent, if at all, would subsection (1) be amendable? It might be supposed that the principle whereby Community law was to become U.K. law automatically was so fundamental to membership of the Communities that any amendment which in any way derogated from the principle would be out of order on the ground that it wrecked the Clause and thereby wrecked the Bill. There were on the notice paper a large number of amendments which were in fact designed to restrict the operation of the principle by excluding certain areas of Community regulations. Thus there were amendments designed to exclude the operation of the principle from Community regulations relating to agriculture, tobacco, films, wine, food and so on. If any one of such amendments had been carried and finally enacted, if that is to say

Parliament had declined to accept a part of the existing Community law, then *eo ipso*, the United Kingdom would have effectively rejected the Treaty of Accession. Nevertheless, the Chairman decided that such amendments, though they would if carried be destructive of the whole purpose of the Bill, were in order. In so deciding he followed the precedent which had been set by an earlier Chairman of Ways and Means (Sir Dennis Herbert) in respect of the Ottawa Agreements Bill in 1932. That was a Bill " to enable effect to be given to the agreements made on the twentieth day of August nineteen hundred and thirty-two, at the Imperial Conference held at Ottawa. . . ." Clause 1 of the Bill imposed a charge of customs duties on a long list of goods included in the text of the agreements in the First Schedule. On a point of order Sir Herbert Samuel asked:

> Is Parliament then free to make amendments to the Clauses which would render these Clauses inconsistent with the terms of the Schedules; in other words, with the terms of the agreements?

The Chairman replied:

> Parliament is free to do so, but what the effect of it would be is not necessary for me to rule at this moment. If Parliament refuses to pass legislation which would enable the executive government to give effect to agreements which have been entered into, that would raise a situation which it is not for me to deal with at this juncture.

In accordance with this ruling, Sir Dennis Herbert called the first amendment which was to insert after the word " agreements " the words " except in so far as they relate to wheat in grain ". If this amendment had been agreed to, the Ottawa Agreements would in effect have been stultified, but it was in order, because the House of Commons has the right to refuse the tools to enable the Government to implement an agreement which it has made. It was on this principle that forty years later Sir Robert Grant-Ferris permitted the opponents of the Common Market to move amendments which, if carried, would have stultified the Treaty of Accession.

Sixteen amendments to exclude specific areas of Community law were appropriately grouped according to their subject and allowed to be discussed. On the other hand amendments which were designed directly to alter provisions of a Community Treaty (as opposed to those which merely withtheld the means to implement the Treaties) were ruled out of order. An amendment, for example, to amend Article 138 (1) of the Treaty of Rome by substituting regional election of U.K. delegates to the Assembly in place of nomination by Parliament (the method prescribed by the Article) was ruled out of order. Likewise amendments designed to prescribe the future behaviour of the Communities or of the United Kingdom, as a member of the Communities, were ruled out of order as being beyond the scope of the Bill. An amendment, for example, in the name of Mr. Foot which sought to prescribe what should happen if a common fisheries policy for the

Community had not been approved by Parliament by 31st December, 1982, was ruled out of order.

Debate on the Bill had continued for ten days and the amendments to subsection (1) of Clause 2 had still not been disposed of, when the Government decided to move for an allocation of time order, which was carried on 2nd May by 304 votes to 293. The Order provided for twelve more days in committee on the Bill. No amendments were made in the committee and the Bill was read a third time and passed on 13th July. Discussion in the Lords was less protracted. After a debate lasting two full days the second reading was carried by 189 votes to 19, and the remaining stages of the Bill were considered in seven days. In all, the two Houses had debated the Bill on thirty-five days. The Royal Assent was notified on 17th October.

# IV. PARLIAMENTARY FINANCIAL CONTROL IN MALTA

By C. Mifsud

*Clerk of the House of Representatives*

*Revenue*

Standing Order 69 of the House of Representatives, which is identical to Section 74 of the Malta Constitution, states that " Except on the recommendation of the Governor-General signified by a Minister, the House shall not proceed " upon any Bill (including an amendment to a Bill) or Motion (including an amendment to a Motion) or receive any petition which " in the opinion of the person presiding in the House makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of Malta, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Malta ".

In practice this means that a Member of Parliament who is not a Minister cannot initiate any financial matter. It means also that in case of difficulty, as to whether a Bill requires the Governor-General's recommendation or not, it is the Speaker who has the final word. In Malta there are no Money Bills in the United Kingdom sense, and in fact the phrase " Money Bill " is not even mentioned in the Standing Orders of the House; and in practice the term " Money Bill " is used simply to describe a Bill requiring the recommendation of the Governor-General according to the Constitution.

Before the Second Reading, the Minister piloting the Bill would hand the recommendation to the Speaker who reads it to the House. This recommendation takes the form of a message from the Governor-General stating that after he has been informed of the subject-matter of the Bill in question, giving its short title, he recommends it for the consideration of the House of Representatives.

Under the 1947 Self-Government Constitution, the Bill used to go before a Committee of Ways and Means; but after a preliminary report of a Select Committee of the House appointed to amend the Standing Orders, on 23rd May, 1948, the House abolished this Committee. Since then all Finance Bills regarding revenue and taxation go straight before the House as in the case of all other Bills. At that time there was a Labour Government and the Opposition was against the abolition of this Committee, on the ground that this reduced the opportunity of the representatives of the people to discuss financial matters, especially as Malta has one House of Parliament only.

When the money-raising Bill has been read a second time, it stands committed to a Committee of the whole House, as is the case with all Bills. After the Committee stage the Bill is read a third time when no amendments, not being merely verbal, can be made to any Bill.

The Bill then receives the assent of the Governor-General, thus becoming an Act of Parliament.

In theory, therefore, it is Parliament which sanctions every cent collected by the State; but in practice it is the Ministers only who can introduce money-raising Bills, and because Ministers form part of a Government which has a majority in the House, every Bill introduced by them can be said to be certain to be passed by Parliament. Government back benchers are not expected to vote against measures introduced by their own Government, while Opposition Members are in a minority. This does not mean, however, that Government ignores the criticism of its own back benchers and of the Opposition—and in fact there are cases where the Government has accepted amendments, wholly or partly, though practically always in matters of minor significance.

In practice, therefore, the Member of Parliament who is not a Minister cannot have much control on the public revenue, collected in accordance with an electoral programme, on which a Government with a majority has been elected.

*Expenditure*

The position is not any easier for back benchers when it comes to expenditure, which can be sanctioned only by Appropriation Acts or Votes on Account. According to Section 106 of the Constitution, the Minister of Finance has to lay on the Table of the House before, or not later than thirty days after, the commencement of each financial year (1st April) estimates of revenue and expenditure of Malta for that year.

The heads of expenditure contained in the estimates, other than expenditure already appropriated by some other Act, have to be included in an Appropriation Bill which provides for the necessary expenditure and the appropriation of those sums for the purposes specified therein. But if the amount appropriated for any purpose is insufficient, or if a need arises for expenditure for a purpose for which no amount has been appropriated by that Act, or if moneys have been expended for any purpose in excess of the amount (if any) appropriated, a supplementary estimate showing the sums required or spent has to be laid before the House, and the heads of any such expenditure are included in a supplementary Appropriation Bill.

According to Section 107 of the Constitution, when the Appropriation Act does not commence from the 1st April the Minister of Finance, through Votes on Account, may authorise the withdrawal of money for the purpose of meeting the necessary expenditure to carry on the Government of Malta until the expiration of four months from the

beginning of that financial year or the coming into operation of the Act, whichever is the earlier. The Appropriation Act would naturally cover the amounts spent under these Votes on Account.

Parliamentary control on expenditure lies in the fact that all moneys—as in the case of revenue—have to be voted by Parliament.

When the Minister of Finance delivers his Budget Speech (technically known in the Standing Orders as the Financial Statement) and moves the Motion that the House considers the Estimates in Committee of Supply he lays a copy of the General Estimates on the Table of the House. According to Standing Order 71 (3) (*a*) the debate is then adjourned for not less than a week, so that Members may have time to study them. According to Standing Order 71 (3) (*b*), the debate on the Motion of the Minister of Finance " shall not exceed two days (not including the day on which the Financial Statement is delivered)". During this debate the House discusses the general policy of the Government. Then the whole House resolves itself into a Committee of Supply to consider the details of the estimates. When, on the last day of the Committee, the Chairman reports that the Committee has agreed to the Estimates with or without amendments, a resolution is moved authorising this expenditure from the Consolidated Fund (" all revenues and other moneys raised or received by Malta—not being revenues or moneys payable into some other fund established by or under any law for the time being in force in Malta for a specified purpose—shall, unless Parliament otherwise provides, be paid into and form one Consolidated Fund "—Section 105 (1) of the Constitution) and ordering the Minister of Finance or other Minister to bring in the Appropriation Bill, which is then deemed to have been read the first time.

It is then read a second time, goes into a Committee of the whole House, is read the third time and becomes the Appropriation Act on receiving the assent of the Governor-General. General discussion can again take place both on the moving of the resolution and on the Second Reading of the Appropriation Bill.

This indeed is the theory of parliamentary control on expenditure, but whether this control is effective enough is another story. In practice the expenditure detailed in the estimates is always sanctioned by Parliament when Government has a majority in the House, because, as Campion says, " Government stands or falls by its financial arrangements ", and thus Government cannot allow the House to make substantial modifications in the Estimates. If the Estimates are not passed by Parliament, as happened in 1950, when Malta had a Minority Government, Government resigns or the Prime Minister dissolves Parliament, because this is a vote of censure on the Government. In fact, in 1950 Parliament was dissolved, and the Estimates were passed by Emergency Ordinance 1/51. This method is no longer applicable today, now that Malta has secured its independence, and were the same thing to happen a new Parliament would have to be elected as early as

possible to approve the Estimates within the four months stipulated by the Constitution.

Then, too, Standing Order 71 (3) (*c*) says that " not more than seven sittings shall be allotted for the consideration of the General Estimates in Committee of Supply ", though on Motion made after notice, to be decided without amendment or debate, additional time may be allotted for the business of supply. Such Motion, however, has never been made since 1962; and before then it was very rare too. These seven sittings allotted for the Committee come to about twenty-one hours, as a full sitting takes usually three hours, apart from the hour allotted for questions and the half-hour adjournment.

It is clear, therefore, that the Committee does not have adequate time for criticising the Estimates in all their details. Moreover, the seven days reserved for the Committee have remained unchanged since 1948 (*i.e.* since the 1947 Constitution), when the House consisted of forty members and the General Estimates of expenditure came to £5,249 million, to the present day when the House consists of fifty-five members (and Speaker), when the General Estimates come to £M44,142 million, and when Malta is independent, with the additional expenditure this involves, such as (to mention one example) the creation of the Ministry of Commonwealth and Foreign Affairs. Moreover in 1948 there had been eight Ministries, where from 1962 there were nine Ministries, and today there are ten. Thus, today more than before, the Opposition has to choose a smaller number of departments for its criticism, because it cannot within the limit of three hours deal with all the departments falling under a Ministry. In addition, on three of its days the Committee has to deal with two Ministries each day, with the correspondingly lesser chance of adequate criticism.

Standing Order 71 (3) (*f*) says that, " At 9 o'clock p.m. on the last of the days so allotted, the Chairman shall forthwith put the question then under consideration and shall then proceed to put the question on the remaining votes of the Estimates one by one, all such questions to be decided without amendment or debate. He shall then leave the Chair, without question put, and make his report to the House." In 1957, when Labour was in Government, the Opposition selected only Vote 2—office of the Prime Minister—which it discussed on all the seven allotted days, and on the last day Parliament passed the remaining forty-eight votes, in accordance with the Standing Order here quoted. Since then it has been customary for the Minister of Justice and Parliamentary Affairs to prepare a Motion allotting the time for each Ministry in respect of these seven days. Apart from questions of principle, for which the two days' debate on the Motion to go into Committee of Supply is intended, it naturally makes for better financial control when Parliament chooses three to four departments under each Ministry and changes these departments from one year to the other, so that all departments would at one time or another be reviewed by it. As it happened in 1957, on the last day of the Committee, Parliament

had to vote without any amendment or debate, the sum of £13,521 million out of a total expenditure of £13,574 million.

Moreover, a Member of Parliament who is not a Minister can only move the omission or reduction of any item of a vote, and the Committee cannot attach a condition or an expression of opinion to a vote nor alter its destination.

The Committee, too, is supposed to discuss the details of the items, one vote after another, but on many occasions, perhaps because the average Member does not have enough expert knowledge of the intricate working of the departments, it so happens that Members do not speak on details at all and the Committee ends in a general discussion on the policy of the department in question and not on details of administration and departmental organisation.

In its financial control Parliament therefore may have considerable limitations, arising mainly from lack of time and expertise. In addition, up to date, the system of Parliamentary Financial Control in Malta has never been aided by subsidiary means, such as a Public Accounts Committee or a Select Committee on Estimates, as is the case in some other countries; but whether steps would in future be taken in this direction remain always a prerogative of Parliament.

Apart from these main occasions, Parliament at times tries to exert control on the finances of the Island through Parliamentary Questions or through criticism on the Motion of Adjournment, especially after some financial statement has been made in the House or some financial instruments laid on the Table of the House. Then there are also other occasions for full dress debate—such as the Address in Reply when Members or Parliament might likewise touch on public finance. But here, too, as on the main occasions for financial control, the probability is that the emphasis would be always on principles and on financial policy rather than on details of finance.

# V. ELECTION OF A SPEAKER: FIRST REPORT OF THE PROCEDURE COMMITTEE, 1971–2

By D. McW. Millar
*Formerly a Deputy Principal Clerk in the House of Commons*

Following criticisms of the procedure for the election of a Speaker, which had been made on the occasion of the election held in January 1971, the Select Committee on Procedure of session 1971–2 adopted this matter as the subject of their first enquiry.[1]

The Committee recorded in their Report that within the preceding half century various criticisms of the procedure for the election of a Speaker had been made. Within the last twenty years there had been two contested elections, the previous such election having been in 1895, and in recent years debate, other than the making of formal speeches, had arisen more frequently, even when only one candidate had been proposed to the House. The criticisms most frequently expressed had related to lack of consultations with back benchers about the candidates for election, the unsuitability of the procedure for an election, and the qualifications of candidates for the office.

*Consultations with Back Benchers*

The Committe found that, at the election of a Speaker in 1921, 1951, 1959 and 1971, difficulties had arisen regarding discussions with back benchers about the names of candidates. For example, in October 1959 the Leader of the Opposition (Mr. Gaitskell) said, " Obviously, what one would have liked to have happened was to have had such discussions freely, informally between Members—not just front benches, but back benches as well—in all parts of the House, with the hope that out of such discussions a common view would have emerged. Well, that certainly has not happened " (612 H.C. *Debates*, col. 6). In a memorandum of evidence to the Procedure Committee in December 1971 the Leader of the House (Mr. Whitelaw) stated that the criticisms made of shortcomings in consultations with back benchers arose " from some human failing in the sounding of opinion ". He continued: " It is clearly the duty of a Leader of the House . . . to ensure that the soundings of opinion are as wide and as thorough as possible, not only amongst the Members of his own party, but in the House as a whole."[2] The Chairman of the Parliamentary Labour Party (Mr. Houghton) said, " I think you can always improve on consultation and you can do

that by having more of it. There was not enough of it last time."[3]

Witnesses suggested to the Committee that the power of nomination should be removed from the Government of the day, but the Opposition Chief Whip and Mr. Houghton thought that the initiative of the Government was of paramount importance and that the House needed help from the leaders of the parties. Both witnesses emphasised the need for the Government to enter into full consultations with its back benchers before names were suggested to the Opposition. The Committee received some evidence on methods of consultation, in the course of which the Leader of the House and Mr. Houghton expressed their opposition to the formalisation of consultation procedures, in the interest of securing the support of as many Members as possible for a particular candidate.

The Committee drew the attention of the House to the evidence of failure of consultation between the leaders of both major parties and their back benchers prior to the election of the Speaker in 1971 but, believing such matters to be primarily the concern of parties, made no recommendation upon them. They expressed the hope, however, that the parties would give proper consideration to all the points of view expressed in the evidence regarding lack of consultation.

*Criticisms of Election Procedure*

The proceedings followed by the House in electing its Speaker were governed by ancient usage and were conducted by the Clerk of the House. The Standing Orders did not apply and the question was not put if only one candidate was proposed for the Speakership.

Strong criticisms of this procedure were made at the election of the Speaker in January 1971 and were repeated to the Procedure Committee. It was argued that the changing character of the work of the House had resulted in certain features of the procedure, derived from ancient usage, becoming anachronistic and unduly inflexible. Some Members believed that there was no justification for the rule that the question is not put in cases where there is a sole candidate. In January 1971, for example, in order to enable a vote to be taken on the Motion for the election of the first candidate, a second candidate was proposed; although he immediately disclaimed his candidature, the Clerk of the House put the question for the election of the first candidate and a division followed. The Clerk of the House explained that the modern rule was that " when a candidate is unopposed, no question is proposed and there is no opportunity for argument or dissent leading to a division "[4]

The Clerk proposed that in future he should be given authority first to propose the question that a certain Member do take the Chair as Speaker and then to accept a Motion, that the debate be now adjourned, as a distinct question which interrupts and supersedes the original question. This would permit debate on the general subject of the

election of a Speaker, which could lead to a division, with the effect either that the debate would be adjourned until a future day, or that this question would be negatived, and the House could reach a decision on the question for election of a Speaker. Although the Leader of the House supported this proposal, the Committee did not accept it. The Committee found that the rule that no question should be put on the Motion for election of a sole candidate appeared to be a fairly modern alteration of the ancient procedure for the election of a Speaker, as until the election of Speaker Harley in 1700 the question was normally put in such cases.

Further criticisms were expressed of the procedure based on ancient usage in that it offered insufficient opportunity for consultations between Members; and because of the vulnerability of the House during the election of a Speaker owing to the fact that the Clerk of the House as presiding officer was powerless to deal with points of order, dilatory Motions, or prolongation of the debate. The Clerk of the House pointed out however that " no Clerk within historic memory has ever been challenged when he has been presiding over the election of a Speaker ". The Committee received evidence from various Commonwealth and overseas legislatures to the effect that, in some countries where the Clerk acted as presiding officer, certain provisions of Standing Orders applied to the proceedings.

*Election by Secret Ballot*

The remedy for these shortcomings in the election procedure which received the greatest support among back-bench witnesses before the Committee was the proposal to elect the Speaker by secret ballot. It was argued that this method of election would reduce the influence of the leadership of both major parties and of the Executive, and that its worth had been proved in the elections for the leaders of the major parties. The contrary view was put with some force by the Leader of the House, who believed that a system of secret ballot would " tend to diminish the Speaker's status, to weaken the tradition of impartial authority and continuity in the office, and to accentuate rather than compose divisions of opinion within the House ". The Opposition Chief Whip argued that election should be decided openly by a vote in the House and that voting in a secret ballot would still follow party lines.

The Committee concluded that the advantages claimed for a secret ballot would not necessarily follow from its adoption. They attached importance to the principle that " Members should be publicly accountable for the votes they cast in their capacities as Members of Parliament ", and thought that a ballot would lead to canvassing and lobbying, especially of new Members, which would be undesirable. For these reasons they rejected the proposal.

*Proposals for Changes in Procedure*

The Committee recorded its opinion that the criticisms levelled against the procedure for electing a Speaker were largely justified. In order to make the changes which they considered necessary, they had first to recommend that a Member should preside over these proceedings. The procedure by which the Clerk of the House presided at the election of a Speaker was acknowledged to be of some antiquity, but the Committee believed that the House was placed in an unduly vulnerable position in these circumstances.

The Committee next expressed the hope that, in order to avoid the inconvenience which arises when a Speaker retires at the end of a Parliament, which made consultations with Members particularly difficult, whenever possible the Speaker should retire in the middle of a session, giving at least ten sitting days' notice. They recommended that if possible the retiring Speaker should occupy the chair until his successor was elected, in order to enable the House to continue its sittings. The Committee then went on to recommend that, " on all other occasions, including the re-election of a Speaker at the beginning of a new Parliament, the Member with the longest unbroken period of service who is present in the House on the back benches should occupy the chair at the election of a Speaker ". The Committee thus rejected the proposal that the Chairman of Ways and Means should preside over the election of a Speaker in mid-session, and deliberately excluded front-bench Members. Their recommendation provided that if the Father of the House, being a back bencher, did not wish to preside, he could absent himself from the House.

The Committee then sought to provide for circumstances in which a Speaker died or accepted office when the House was not sitting. In this situation the Clerk was unable to announce the unavoidable absence of Mr. Speaker under Standing Order No. 105, and the House was obliged to adjourn until a new Speaker was elected. The Committee's solution to this difficulty was to recommend that, in order to enable the House to continue to sit, the Chairman of Ways and Means should automatically perform the duties and exercise the functions of Speaker until the commencement of proceedings for the election of a new Speaker.

If the retiring Speaker were to occupy the chair during the election of his successor, or the Chairman of Ways and Means were to preside in the circumstances just described, each could exercise his authority under powers contained in Standing Orders. The senior back bencher could not exercise such powers, however, and the Procedure Committee recommended that he be granted powers under six specific Standing Orders " to enable to exercise his functions in the House with proper authority ".

The Committee's final recommendations concerned the form of proceedings on the election of a Speaker. They were that the question

should be put on the election of a sole candidate, thus enabling opposition to be recorded, and that, when more than one candidate had been proposed, the Motions for the election of the second and subsequent candidates should be moved in the form of amendments to the original motion. The Committee saw advantage in the question being put first for the election of a second candidate " in order that the House should know the degree of support or of opposition accorded to him ". If this question was negatived decisively the Committee considered that the unanimous election of the first, or of another candidate, might thereby be secured, which result they believed to be highly desirable. Their final recommendation was that the procedure for the election of a Speaker should be embodied in Standing Orders in a form approximating as closely as possible to the procedure established by ancient usage.

*Qualifications for the Speakership*

At the conclusion of their Report the Committee then turned to two aspects of the election of a Speaker about which they made no recommendations but contented themselves with recording their opinion One of the matters of debate at the elections of Speakers since 1921 had been the advisability or otherwise of electing the Chairman of Ways and Means. The Report quoted a passage from Erskine May's *Parliamentary Practice* which recorded that the Chairman's independence had not the same formal guarantees as that of the Speaker, as he was appointed on the Motion of a Minister of the Crown from the supporters of the Government.[5] The House has nevertheless been disposed as often as not to elect a Chairman or Deputy Chairman of Ways and Means as Speaker, for of the eleven Speakers in the last hundred years, five previously held office as Chairman or Deputy Chairman of Ways and Means. The Committee's conclusion was that there should be no automatic presumption that occupancy of these posts constituted a qualification for the office of Speaker.

The Committee also recalled that, in the last hundred years, five of the eleven occupants of the Chair had been former Ministers. In 1959 Sir Harry Hylton-Foster was elected direct from the Treasury Bench to the chair, which practice was objected to at the time by Mr. Gaitskell, the Leader of the Opposition. Further objections were made by Members at the election of January 1971 on the ground that a Speaker who had been a Minister would be a figure of controversy and would not understand the feelings of back benchers as well as a back-bench candidate. The Committee did not find that the doubts of witnesses as to the fitness for the chair of former Ministers had been realised, but agreed with the views expressed by Mr. Gladstone and Mr. Gaitskell that the Speaker should not be elected direct from the Treasury Bench.

*Implementation of the Recommendations*

On 8th August, 1972, the Leader of the House moved a Motion containing a new Standing Order to give effect to all the Committee's recommendations, save two. These were that relating to the Chairman of Ways and Means taking the chair if the Speaker's unavoidable absence could not be announced, and that restricting the powers to be given to the senior back bencher when presiding at the election of a Speaker. The Leader of the House said that legislation would be required to implement the former recommendation, and that it was not always easy to fit this in to the Government programme.[6] As regards the latter recommendation, he said that the Government thought it wiser that the senior back bencher " should be given all the powers of Mr. Speaker " while presiding at the election of a new Speaker. After an hour of debate the House agreed to the proposed new Standing Order and to a procedural Motion providing that proceedings at the election of a Speaker should be governed, not as heretofore by ancient usage, but in future by the provisions of Standing Orders, so far as they are applicable.

*Notes*

[1] First Report from the Select Committee on Procedure, 1971–2, H.C. 111.
[2] H.C. 111, 1971–2, *Evidence*, p. 37.
[3] *Ibid.*, Q. 135.
[4] *Ibid.*, p. 19.
[5] Erskine May, *Parliamentary Practice*, 18th edn., p. 230.
[6] *H.C. Deb.*, 8th August, 1972, col. 1666.

# VI. THE EVOLUTION OF QUESTION-HOUR IN INDIA

By A. Shanker Reddy
*Secretary, Andhra Pradesh Legislature*

" *With every instalment of constitutional reforms which the British Parliament introduced in India, the scope for asking questions widened.*"—Messrs. M. N. Kaul and S. L. Shakdher.

The immense popularity of Question-hour among the parliamentarians of India, both in the Parliament at the national level and in the State Legislatures, will be obvious to all who give a casual glance to the columns of the daily press. The total number of admitted questions during first, second, third and fourth Lok Sabha (House of People) was 57,902, 63,643, 58,440 and 93,338 (for four years) respectively. The number of Members who did not ask a single question, which stood at 75 during the second Lok Sabha, showed a decline when it came down to 40 during the fourth Lok Sabha. Sir Herbert Williams, who described the " Question " as " one of the most powerful implements of democracy ", was reported to have put 4,000 questions in a term of five years in the British House of Commons. This figure had already been exceeded by his Indian counterparts like Messrs. Ramakrishna Gupta and P. C. Borooach who had topped the list in the second and third Lok Sabha with 6,556 and 6,084 questions respectively. The amount of expenditure incurred per annum was rupees ten lakhs during the years 1956, 1957 and 1958. All these facts conclusively establish the immense importance attached by the Members to the question-hour, which they know can make the Departments of the State " realise that they are functioning under a close public scrutiny which will continuously test their efficiency and honesty ", in the memorable words of Mr. Laski.

The Question-hour, which has such dynamic potentialities, carries with it in India a history extending to a century and a quarter. It has come to its present position by a slow process of evolution but not sudden revolution. It has passed through several stages, crossed several hurdles and has emerged to be what it is today through trial and error, on a par with the political progress made by the country.

The beginning of a parliamentary system was made in India by the Charter Act of 1853. Though the powers of Councils brought into existence under this Act remained undefined, questions on the actions of the executive were allowed. The Government, which must have found these questions very irksome and uncomfortable, limited the powers of the Legislative Councils constituted under the Act of 1861

to law-making. It is indeed a surprise that the Act of 1861, which should naturally have enlarged the powers of the Councils and widened the scope for putting questions, only wiped out a facility previously enjoyed by Members. The true nature and limitations of the Councils under the Act of 1861 were described in a very appropriate way in the Montagu-Chelmsford Report:

> The character of the Legislative Councils established by the Act of 1861 is simply this, that they are Committees for the purpose of making Laws. Committees by means of which the executive Government obtains advice and assistance in their legislation and the public derive the advantage of full publicity being ensured at every stage of the law-making process. . . .
>
> The Councils are not deliberative bodies with respect to any subject, but that of the immediate legislation before them. They cannot enquire into grievances, call for information or examine the conduct of the executive. The acts of the administration cannot be impugned nor can they be properly defended in such assemblies except with reference to the particular measure under discussion.

The need to provide an opportunity to Members to elicit information through questions was keenly felt by one and all, *including the Government of India.* As a result of it the demand for the right to put questions was conceded in the Indian Councils Act of 1892. Lord Curzon observed, in defence of the contemplated step, in the course of his speech during the Second Reading of the Bill:

> It is desirable in the first place in the interests of the Government, which is at the present moment without the means of making known its policy, or answering criticisms or animadversions, or of silencing calumny . . . and it is also desirable in the interests of the public of India who, in the absence of the correct official information, are apt to be misled, to form erroneous apprehensions and to entertain unjust ideas.

Though the right to put questions was conceded in the Indian Councils Act of 1892, the position regarding question-hour was much different from what it is today and it took at least another three decades for the parliamentary question in India to reach the present position. Six days' notice was necessary under this Act to put a question. The Presiding Officer could either waive the duration of notice or extend the time to answer a question. The questions admitted were included in the notice paper of the day and were taken up as the first item of the day's proceedings. In two respects, question-time then differed from Question-time now. Firstly the question had to be read out in the House by the Member concerned or any other Member authorised by him. Secondly, no supplementaries nor discussion on the answer given by the Government was possible. To the present generation it would be unthinkable to put a question in the Legislature without Members having the right to ask supplementaries. But such was the kind of parliamentary question with which India made a beginning. Even in those days, the fact that the denial of the right to put supplementaries had destroyed the objectives of putting questions was appreciated by

many, including Lord Morley, the then Secretary of State for India, who observed in the course of a despatch in 1908:

> I have come to the conclusion that subject to such restrictions as may be found requisite in practice and to the existing general powers of the President, the asking of supplementary questions should be allowed. Without these a system of formal questions met by formal replies must inevitably tend to become unreal and ineffective.

The regulations made under the Indian Councils Act 1909 partly met the demand for the right to put supplementaries, by providing that the Member who had asked the main question could put supplementaries. Either the Chair could disallow the supplementary or the Government Member concerned could refuse to answer it without notice, in which case, however, that Member could give a fresh notice of the same as a separate question. The period of notice for questions was extended to ten days under the regulations. A ban was placed on questions of excessive length, questions containing arguments, inferences, ironical expressions, defamatory statements, etc., and questions seeking for an expression of opinion or solution of a hypothetical proposition. Most of these restrictions still exist. The ruling of the presiding officer on the admissibility or otherwise of a question was final.

To have a right is one thing, but to exercise it well and effectively is another thing. In this case, however, Members were not found to lag behind in putting to best use what had been conceded to them in gradual stages. The effective use to which this right had been put elicited the encomiums of one and all, including the Indian Statutory Commission, which expressed the view: " The use of the power of interpellation has been steadily and effectively developed. . . . It is being more often used to draw attention to matters of real public importance and Government action has repeatedly been influenced by such questions." While expressing satisfaction with the view expressed by the Commission, we may, however, add that the use of the term " interpellation " is not correct. It is interesting to note that the same term was used by Lord Curzon in the course of his speech on the Indian Councils Bill 1892. His Lordship said: " The second change introduced by the Bill is the concession of the right of interpellation or of asking questions." " Interpellations " are different from questions and the system of putting questions in the Indian Legislatures, then as well as now, is based on the system prevailing in the British Parliament.

The introduction of the Montagu-Chelmsford Reforms of 1919 brought in their wake three changes. The first was the earmarking of the first hour of every sitting day to question-hour and the restriction that no other business excepting formal items, like obituary references permitted by the Chair, could be transacted prior to question-hour. The second was the provision made to address questions even to a private Member if it related to matter for which he was responsible,

like a Bill, etc. The third was the provision made for short-notice questions. The consent of the concerned Member of the Government was necessary for waiving the prescribed period of notice. Notice therefore had to be given in the case of such questions both to the Presiding Officer and the concerned Member of the Government. Such questions had to be taken up either at the end of the Question-hour or after the questions list for the day was exhausted, whichever was earlier.

September of 1921 was indeed a landmark in the history of parliamentary questions in India for two reasons. Firstly, the restriction that the author of the main question alone could put supplementaries was dispensed with and other Members also could put supplementaries. Secondly, the distinction of starred and unstarred questions was introduced. Starred questions were those which were distinguished with a star (asterisk mark) and an oral answer would be furnished to them on the floor of the House. Unstarred questions were those which were not so distinguished and answers to them were circulated.

The changes made in 1937 also require special mention. These made it obligatory for Members to specify the date on which they expected the answer. They had to give a notice of five days. A maximum of five starred questions per member per day was set. Any questions that could not be answered during the Question-hour on a particular day were to be placed on the Table of the House.

Though the Government of India Act of 1935 was intended to replace the Government of India Act of 1919, it was never implemented so far as the Central Legislature was concerned. It was, however, implemented in 1937 in the Provinces. From 1937 onwards India was governed by the Government of India Act of 1919 so far as the Central Legislature was concerned and the Government of India Act of 1935 so far as the Provincial Legislatures were concerned. The removal of diarchy gave a great impetus to the democracy in the State Legislatures. Though the Act of 1935 had no far-reaching effects technically on the parliamentary question, the skill and talent displayed by eminent parliamentarians both in the Central Legislature and Provincial Legislatures in making an excellent use of question-hour requires special mention.

When India attained freedom in 1947 she did not have to start with a clean slate when building up her parliamentary institutions. The Question-hour, with its century-long history, was already there and its foundations were well and truly laid. The only major change which the dawn of freedom in 1947 and the advent of the new Constitution in 1950 brought in their wake was the removal of restriction on putting questions on subjects like foreign affairs and native states. No need for any changes was found necessary even in the rules formulated by the Provisional Parliament. Consequent on the national emergency, certain changes became necessary to ensure greater attention on the part of Ministers to their official duties. The previous system of

sending advance copies of notices to Ministers was replaced by the system of sending the copies of admitted questions only. Not more than five questions (whether starred or unstarred) in the name of a Member can be put on the list of a day and the number of starred questions therein must not exceed three.

Two factors are considerably enhancing the utility of the Question-hour. One is the half-an-hour debate which will be the consequence, if the reply of the Government is unsatisfactory. The second is the Assurances Committee which will take a note of any assurance the Government may give during the question-hour and pursues the matter and submits reports to the House on the performance of the Government in translating their oral assurances into concrete action.

As already stated at the outset, the popularity of the question-hour is growing and is proving itself to be a formidable weapon in the hands of the parliamentarians to highlight any lapses in the administration. Many sensational episodes that have subsequently created history in India first came into light during the question-hour in the Legislature. The parliamentary question that started as a small plant in 1892 has grown into a gigantic tree now. It has become a handy instrument for the legislator, a source of hope for the victims of injustice and a cause of terror for erring officials.

# VII. AN ACCOUNT OF THE HISTORY OF THE SWAZILAND LEGISLATURE

By N. L. Dlamini
*Clerk of the Parliament*

The first Constitution of Swaziland was drawn up in 1964, in the closing years of Colonial government. A Legislative Council was set up, consisting of twenty-nine members, including four officials. A general election was held in June 1964. At the same time an Executive Council, consisting of four official and four non-official members, was created. It is interesting to note that three members of that Council are now members of the Cabinet.

Inadequate as that first Constitution was, with a legislature still not based on a proper franchise and a common roll, the Legislative Council played a useful role in giving experience to its members in the working of parliamentary democracy, legislative practice and the rules of procedure and debate—a preparation, in fact, for the new Constitution which came into force in 1966 and was the herald of the imminent attainment of independence by Swaziland. The actual handing over of power took place on 6th September, 1968, at a historic ceremony at which His Majesty the King received the vital documents from the Secretary of State.

The 1966 Constitution continued in force, with some changes, after the attainment of independence. The principal changes were consequent on the disappearance of Her Majesty's Commissioner and of certain reserved powers. The composition of Parliament in fact remained unchanged, and there was no fresh general election at Independence.

There is no doubt that this continuity was beneficial. The new Parliament buildings at Lobamba (on a site with many hallowed and historic associations for the Swazi people, and chosen by His Majesty himself) were opened by His Majesty the King in September 1969. Her Royal Highness the Princess Alexandra, representing the Government of the United Kingdom, was present with His Majesty.

The Constitution contains a Bill of Rights, guaranteeing certain fundamental rights of freedom of the individual. It lays down the principles governing citizenship. It declares Swaziland to be an independent sovereign kingdom, and it outlines the powers and privileges of the monarch. The King of Swaziland is Head of State, and subject to the Constitution the executive authority of Swaziland vests in him.

The King has another function, in his capacity as Ngwenyama. All minerals, other than those covered by existing rights, vest in the Ngwenyama in Trust for the Swazi Nation, and the same applies to Swazi Nation land. It may be explained here that the Swazi Nation is a body consisting of the Ngwenyama, the Ndlovukazi and all adult male Swazis, which advise the King on all matters regarding Swazi law and customs.

The Constitution provides for two Houses of Parliament, the Senate (the Upper House) and the House of Assembly. The former consists of twelve Members, of whom six are nominated by the King and six are elected by the Lower House. That House consists of twenty-four elected Members and six nominated by the King. There are eight constituencies, each returning three Members to the House of Assembly.

The Senate is presided over by the President, and the other House by the Speaker. The life of a Parliament is five years, after which a general election is held.

The Constitution lays down certain principles concerning the legislative powers of the two Chambers. In particular, as in many other legislatures, it restricts the financial powers of the Upper House and its power to hold up legislation. Each House has its Standing Orders governing procedure and conduct. It may be noted that the power to make laws rests with the King *and* Parliament. Thus all Bills, after passing through all stages in both Houses, go to the King for assent. The King may send back a Bill, or clauses of a Bill, for further consideration at a Joint Sitting of both Houses of Parliament, and has in fact done so on at least one occasion, leading to notable improvement.

There is provision for a Joint Sitting of both Houses in a case where the Houses do not agree within a specified time on amendments to a Bill. In the lifetime of the Swaziland Parliament such has never become necessary.

The King appoints the Prime Minister, choosing an elected Member of the House of Assembly who commands the support of the majority. The King also appoints the other Ministers, on the advice of the Prime Minister. The maximum number of Ministers is eight, but a Bill is coming before Parliament to alter the Constitution so as that the number, as also the number of Members of both Houses, can be increased.

The Cabinet consists of the Prime Minister and the other Ministers, and its function is to advise the King in the government of the country. The Cabinet is collectively responsible for all things done by a Minister in the execution of his office.

The permanent staff of Parliament includes the Clerk to Parliament and the Clerks-at-the-Table of the Senate and the House of Assembly.

The present President of the Senate was Speaker of the old Legislative Council for the last six months of its life, and the present Speaker of the House of Assembly also officiated in that post, and before that was the first Clerk to the Legislative Council. A number of members of the permanent staff of Parliament also served in the old Council.

All this has also contributed to continuity and the ordered political progress of the country and Parliament. In both Houses all debates are in both SiSwati and English, the speaker pausing at suitable short intervals to enable the interpreter to translate from English to SiSwati or *vice versa*.

The standards of debating and behaviour in both Houses are generally considered to be very high, and this was noticeable from the very outset. One explanation for this rapid fitting in to the pattern and practices of parliamentary democracy is the fact that the traditional Swazi institutions have a striking affinity with modern democratic ideas and practices. Swaziland is in effect a Constitutional Monarchy, and its people are indeed fortunate in having as their Head of State a wise, benign and far-sighted monarch, King Sobhuza II.

# VIII. "MILD DRUDGERY": THE DEPARTMENT OF THE CLERK OF THE HOUSE OF COMMONS IN 1905

By W. R. McKay
*A Senior Clerk in the House of Commons*

In a typically English country churchyard—so typical as to be almost a self-parody—at Chippenham near Newmarket there is to be found the unostentatious tomb of the first and last Baron Farnborough. When quite by chance I came across the grave I had been recently re-reading one of my favourite thrillers, *The Riddle of the Sands*. This unlikely combination of events led me to reflect on how little had been recorded of the work and personnel of the Clerk's Department of the House of Commons since 1850 when Orlo Williams' *Clerical Organisation* stops—the connection being that Lord Farnborough was Sir Thomas Erskine May and the author of *The Riddle of the Sands* was another Clerk, Erskine Childers.

In the epilogue of Orlo Williams' book, he looks forward to a continuation of his study into the age of Le Marchant, May, Palgrave, Ilbert and Webster, a work which would be narrower in outline than his, but would rely on richer documentation and would be accompanied by a study of changes in parliamentary procedure and machinery. Though I believe this would be well worth doing, such research as I have so far been able to undertake has gone only part of the way towards Orlo Williams' goal. Before going further, as I hope to do, into the working of the Department of the Clerk of the House of Commons and its personnel from 1850 to about 1920, it seemed a good idea to make a progress report. There were two reasons for this—first, because a superficial account of the personnel of the Department (leaving aside for the present the kind of work they did) might prove interesting, and second, because I hoped an essay such as this could serve as an appeal to colleagues and others for help in mining the oral tradition of the Department (*i.e.* its out-of-date gossip) without which an account based entirely on official papers and records would be very tedious indeed.

## *Our Hero*

Perhaps the best way of marshalling some of the information already gathered is to use it to see the Department through the eyes of a mythical Clerk who joined about 1905. After competing in an examination with several other young men all after the same place, and being appointed by the Clerk of the House, he would have found himself in

an establishment of thirty-six Clerks, much as it had been since the Select Committee on House of Commons Offices reported in 1849. That report recommended that there should be four principal clerks, six senior clerks, twelve assistant clerks and twelve junior clerks. The arrival of the new recruit would have brought the Department exactly into line with the recommendation. It seems an indication of how little the work-load and distribution of responsibility had changed over the previous half-century.

At the top of the tree were the three Clerks at the Table. In 1905 all of them were of relatively recent appointment. The Clerk of the House was Sir Courtney Ilbert, the first holder of that office since Sir Denis Le Marchant in 1850 to have been appointed from outside the Department. Milman, Ilbert's predecessor, told a Committee in 1899, when he himself was Clerk Assistant, that the two clerks assistant had, since May's appointment to the post of Second Clerk Assistant, invariably been selected from the permanent staff. He might have added that since 1762 only two Clerks of the House were not, on their appointment, Clerk Assistant. By 1903, when Ilbert was appointed, the second of these cases was half a century and more in the past, and in May himself the Department had amply proved its ability to produce an outstanding Clerk of the House. On the other hand Ilbert's credentials were clearly of the highest—Le Marchant had also had an administrative career behind him on appointment—and he must soon have established himself in the Department. Indeed a combination of authorship of *Legislative Methods and Forms* and a tendency to what his daughter called red-hot radicalism was not a bad qualification in itself. In addition, he was the close friend and literary executor of Jowett, and came from a distinguished career in India and in Parliamentary Counsel's office. He must have tried to build up a Department quite different in character from that of even the 1890s, when pre-Erskine May Clerks like Henry Mayne (who wrote the laws of whist) were still substantially represented.

The Clerk Assistant, Nicholson, went to the Table at the age of forty-nine, just before Ilbert's arrival. His promotion from the grade of Assistant Clerk—when there were six Senior Clerks with longer service—is said to have been due to his work as Clerk to the Select Committee on the Jameson Raid. Milman in 1899 described the principle of appointment to the Table as " not at all . . . by seniority . . . [but] given with the endeavour to obtain the most useful man who devoted most time to the service of the House ". In the light of the dismal record of the Select Committee on the Jameson Raid, it is hard to see how Nicholson qualified for the job on that ground particularly. But perhaps it would have been considerably worse without his efforts: or the appointment could have been recompense rather than reward. One of the few parallels to Nicholson's accelerated rise to the Table was in fact Jenkinson who became Second Clerk Assistant in 1886 when Palgrave succeeded May. At that time there were seven Senior

Clerks and four Assistant Clerks above him. Milman said that this was the work of Palgrave in conjunction—significantly enough—with the Speaker, Peel. It is ironic, however, that neither Nicholson nor Jenkinson became Clerk of the House.

On the other hand, another Clerk who rose equally quickly to Table status did become Clerk of the House. This was Webster, who was Second Clerk Assistant in 1905. He reached that appointment at the astonishingly early age of thirty-four, from the relatively humble degree of the last of the Assistant Clerks with seventeen men senior to him. At that time he had been an Assistant Clerk for only one year. Webster seems to have been Ilbert's protégé, though there is no denying that at the same time he was very lucky. After all, the death of Milman after a very short period in office—a death caused largely by, of all things, a bicycling accident—and the resignation of Jenkinson could hardly have been foreseen in 1900 when Palgrave retired and Webster was a Junior Clerk.

With a Clerk of the House brought in from outside, and with two Clerks Assistant both promoted well out of seniority, the new boy in 1905 may very well have overheard many a discontented murmur from his colleagues.

The four offices of the Department headed by Principal Clerks were in 1905 very much as they had been half a century before. This pattern remained the same until 1913 when the Private Bill Office became " Committee Office: Private Bill Department " and thereafter part of the " Committee and Private Bill Office ", an arrangement which reduced the number of Principal Clerks to three. None of the Principal Clerks between 1885 and 1920 at any rate became Clerks at the Table. Promotion to a Principal Clerkship, like a post at the Table, was not entirely a matter of seniority. Our recruit of about 1905 would find William Gibbons Clerk of Public Bills and of the Fees. Gibbons was then aged sixty-four, and had been promoted at the age of sixty—he was to serve until seventy-three, which was well over the retiring age envisaged in 1849. Though on his promotion, he was the most senior of the Senior Clerks, he had previously been passed over three times. The Clerk of the Journals, W. H. Ley, then aged fifty-eight, was the son of a Second Clerk Assistant and grandson of a Clerk of the House. He was promoted in 1895 over the heads of three men senior to him. The Clerk of Private Bills, Somerset, was fifty-seven and had been in that post for seven years. He too was not the most senior Senior Clerk on his appointment. Finally, Reginald Dickinson was Principal Clerk of the Committee Office. Unlike his three colleagues, he was a graduate, and also a barrister. (Apart of course from Ilbert, only he and Bond of 1905 Clerks were barristers.) Dickinson was promoted at the same time as Somerset, and in 1905 was aged sixty-four.

The next senior grade, the Senior Clerks, were, like the Principal Clerks, men of very long experience: again only a few—two—had attended a university and none seems to have had a degree. The

Assistant Clerks were no striplings either. All were men in their forties, who could expect promotion pretty well exactly in order of seniority.

The Junior Clerks, unlike all their seniors, were nearly all graduates and one at least—Smyth—had a very distinguished university career behind him. The range of their experience in 1905 was considerable. The most senior of them, Colomb, was thirty-six—eleven years without a first promotion. On the other hand, the Clerk immediately senior to the mythical hopeful of 1905 was Delmé-Radcliffe who spent only two years in the Department. There was no system of regular annual intake of recruits, and while over the previous ten years there had been eleven appointments, in three of these years no appointments were made. Over the same period, four men had resigned as Junior Clerks—one to found a preparatory school, one to enter his family publishing and printing business, one to join Milner's Kindergarten and one (probably) to return to academic life. Had he known it, our hero could have expected what his seniors would have regarded as speedy promotion, since the decade before the Great War saw an acceleration in the number of resignations or deaths as Junior Clerks—seven before 1914.

*God be with you, Balliol Men*

So much for a brief outline of the Department the new recruit would have found in 1905. What he might have found most striking about his colleagues would no doubt have been the similarity in the educational and social mould from which they were cast. Twelve—a third of the Department—were Etonians. Three had been educated at Charterhouse, three at Marlborough and three at Winchester. Eight other schools were represented by one Clerk apiece. So far as universities were concerned, by no means all Clerks had ever matriculated and not all those who had left with degrees. Reckoning simply attendance at a university, it is hardly surprising to find that the two older English universities are almost the only universities concerned. Over the thirty-five years to 1920, there were something like three Clerks from Oxford to every two from Cambridge. The pattern of distribution between the colleges of these universities was, however, markedly different. At Oxford, Balliol and New College predominated, though many of the other colleges were also represented. The picture was quite different at Cambridge where something like three-fifths of the Clerks produced had studied at Trinity. Thus in 1905 nine Oxford colleges were represented in the Department (Balliol, New College and Trinity by more than three Clerks), while by far the majority of Cambridge Clerks were from Trinity. Even allowing for variations in size between the colleges, it seems as if there may have been an informal tradition at some colleges that Clerkships (*a*) existed and (*b*) might be won. Of the Clerks serving in 1905, only two are known to have

connections with other universities. Delmé-Radcliffe had enrolled as a " pensioner " at Trinity College, Dublin, though he never matriculated or resided, and A. I. Dasent had studied at Dresden. (Only one other Clerk in the period 1885–1920 is known to have studied abroad—Jenkinson, at Gottingen.)

*Social Background*

Socially, too, the Department was very homogeneous. A great many Clerks came from old English county families of local standing and influence. Dickinson's family, for example, had long been settled in Somerset and were descended from a physician to Charles II. (This could be trumped only by Frere who was related to Dr. John Dee, Queen Elizabeth's court magician, or C. A. Austen-Leigh who was Jane Austen's great-nephew). Dickinson's father had been high sheriff, and his grandfather and great-grandfather had represented Somerset in Parliament. In a similar way, Ilbert's family had long been prominent in South Devon, Bond's in Cornwall, and Fell's in Lancashire. Southern Englishmen were in an overwhelming majority, in fact. The only Scotsman—indeed probably the first in the service of the House—was Balfour, who had been educated partly at The Edinburgh Academy, and whose father was Lord President. Irishmen were better represented. Scott Porter was born in Dublin and his father had been at various times Irish Solicitor General, Attorney General and Master of the Rolls. Erskine Childers may also be counted amongst the exceptions since, though he was English himself—as his political friends and enemies alike never allowed him to forget—his mother was Irish and he was brought up by an Irish uncle and aunt in County Wicklow. The third may well be Smyth, whose father retired to Larne, after being a judge in the Punjab.

What our hero probably found of more significance, and of relevance to his colleagues' reasons for applying for a Clerkship, was that many of his new colleagues were related to Members. Simeon, Colomb and Scott Porter were the sons of Members and Simeon's father-in-law was a Member. Even more were grandsons of Members—Nicholson's grandfather represented Norwich for many years and, by coincidence, so did Frere's: Dickinson, Ellis and Dawkins all had had grandfathers in the House. Doyle was surrounded at home by Members—his father-in-law, brother-in-law and son-in-law. H. A. Ferguson-Davie and Bond were more distantly related to Members.

In an earlier age it had been quite common for son to succeed father in the Clerk's Department, and in 1905 Ley, the Clerk of the Journals, was the most prominent example of the last stages of this pattern. There were other cases. The Clerk of Public Bills' son was a Junior Clerk, W. K. Gibbons. H. A. Ferguson-Davie's father was the previous Clerk of Public Bills. C. V. Frere's father had been a prominent member of the Department (like Doyle, he was the son of a minor

poet) and the author of two treatises on select committee and election committee practice. Childers and Simeon may have had a connection through the latter's wife whose maiden name was Childers. And Doyles' mother was Lady Annona Williams-Wynn, so that he may be connected to the Clerk of that name. Such relationships probably arose because the unfettered nomination of earlier Clerks was exercised in favour of their relatives. This is clear in the cases of L. T. Le Marchant and Tupper. Tupper was Sir Denis Le Marchant's nephew, and since L. T. Le Marchant's family home was, like that of Sir Denis, in Guernsey, it is reasonable to suppose a blood relationship existed in that case too.

Ellis's connections were even more august, though they were with another Department in the Palace of Westminster. His father had been Serjeant-at-Arms in the Lords. What is perhaps more impressive and significant of the social tone of the Department was that his father went on to be extra equerry to Edward VII and comptroller in the Lord Chamberlain's Department. Ellis's brother was page of honour to Queen Victoria, and gentleman usher to Edward VII, George V and George VI.

A surprisingly high number of Clerks in 1905 were related to—usually the grandsons of—peers. They included Webster, Ellis, Somerset, Williams-Wynn, Bond and Grey. One—Doyle—was a baronet: Scott Porter and H. A. Ferguson-Davie were heirs to baronetcies, and Simeon was the younger son of a baronet. On the other hand, none of them could challenge the social success of one of their recently retired colleagues who married the daughter of a duke who was also the widow of a marquess.

Among those less highly connected, a proportion were children of Anglican parsonages—Ilbert, Webster, Somerset, Holland and Delmé-Radcliffe. About the same number came from service backgrounds—Nicholson's father was a captain in the Cameronians, Giffard's a captain in the Madras Light Infantry: Grey's father was an Admiral. Many of Doyle's immediate family were prominent soldiers (though his father had been Professor of Poetry at Oxford and author of that once well-known poem, *A Private of the Buffs*). Of course, there were also Clerks from more out of the way backgrounds—A. I. Dasent's father (Dasent's brother was also briefly a Clerk) was a very well-known Norse scholar and had been Delane's assistant editor on *The Times*.

### *Afflicted by Authors*

It is recorded somewhere in *Hansard* that a nineteenth-century Minister, when defending the Supply Vote for the salaries of the Clerks in the House of Commons, argued that they were to be compared to Eskimoes—their year was half day and half night. There is a certain amount of evidence about the varied ways in which Clerks spent their free time. Though Helbert had retired by 1905, he may nevertheless

serve as an example. His diary for two successive days in 1893 records " dined with the Palgraves . . . lunched with the Pineros ". The following month he went to *The Second Mrs. Tanqueray*—" magnificent: girls sobbing, one fainting—men snorting all around ". It seems plain that his duties were not permitted to stand in his way. While in the Department he evidently gambled to a degree, and on one occasion he " met Palgrave at his door as I was going to the Derby: sarcastic remarks ". It seems that More-Molyneux was right when in a letter to Helbert he described the official duties of a Clerk, in a phrase from which the title of this article is drawn, as " mild drudgery ". Nor did his duties sit too heavily on Erskine Childers. The hero of *The Riddle of the Sands* gaily telegraphs his " Chief " saying that it was possible he might have to apply for an extension of leave " as I had important business to transact in Germany ". When the reply came, asking the hero to return without delay to London, his office being very busy and short-handed, the envelope was endorsed by one of his junior colleagues: " Don't worry. It is only the Chief's fuss." In real life Childers sailed his seven-ton yacht *Vixen* to the German, Danish or Baltic coasts in the long recesses. He also managed to sail one autumn to the West Indies on an old tramp steamer, and then charter a boat to potter about from island to island.

Many of the Clerks of 1905 used their free time to write. Leaving aside Ilbert, many of whose works related to his official experience in India, the most prolific author was A. I. Dasent. Apart from his heavier works on the office of Speaker and on his uncle J. T. Delane, he was responsible for some minor studies of London streets, buildings and worthies (including Nell Gwynn).

In 1905 Dickinson had already published two editions of his *Summary of the Constitution and Procedure of Foreign Parliaments*. For this, he was able to draw on information in reports on the practice of other assemblies laid before the House in the early 1880s—a forerunner of the interest Campion and Johnston were later to take in comparative procedure. As well as continuing May's *Constitutional History*, Holland wrote a short treatise on Seneca, which he intended to be an introduction to a translation of Seneca's letters which never saw the light of day. In the same vein, Smyth was to write a learned study on the *Composition of the Iliad*. Simeon's work was principally translation from French or Italian, including the *Private Life of Napoleon* and the *Recollections of Marshal Macdonald*.

Perhaps more enduring were the works of Basil Williams and Erskine Childers. Williams went on to be a prominent historian and Childers the propagandist of the Republican side in the civil war in Ireland, but what sprang from their years in the Clerk's Department, at least indirectly, were several books about the army and the war in South Africa. Both had been out with a volunteer force in 1900. Like several Clerks who were to fight in 1914 they had for some time been part-time reserve soldiers. They did not serve for very long in South

Africa (where Childers was a driver and Williams a gunner) since they left England in February 1900 and were back by October. From this trip, however, came Childers' volume of *The Times History of the War in South Africa*, *In the Ranks of the CIV* and several studies of the use of cavalry in warfare.

*Conclusion*

I hope that this somewhat superficial and anecdotal snapshot of the Department at the turn of the century will evoke some memories that can be worked into a continuing account not only of the personnel of the Department, but of the work it did and its official structure, which this article has hardly touched on.

## IX. DEBATE: LIMITATION ON THE READING OF SPEECHES AND EXTRACTS FROM DOCUMENTS, ETC.

The Questionnaire for Volume XLI asked the following question:

" What limitations are placed in debate upon
(*a*) the reading of speeches; and
(*b*) the reading of relevant extracts from books, documents and newspapers? "

The answers to the Questionnaire show that while there are some considerable variations of detail in the practice of many Commonwealth Legislatures on this aspect of procedure, most Houses continue to apply the basic Westminster rules.

*House of Lords*

On 17th June, 1936, the House resolved that the reading of speeches was to be deprecated (*L.J.* 168, p. 241). Although strictly this is only a Sessional Order, it has on various occasions since then been quoted as authority for the proposition that the reading of speeches is not in order. The Companion to the Standing Orders, however, on page 83 recognises that Ministers may have to read from a prepared text, and that other speakers may have to use " extended notes "; prepared texts are not however conducive to good debate.

The Lords have no rule about the reading of extracts from books, documents or newspapers in speeches or in asking or answering questions.

*House of Commons*

The rule of the House, as stated in Erskine May, is that a Member is not permitted to read his speech, but may refresh his memory by a reference to notes. In practice this rule is regularly relaxed in the case of speeches by Ministers and Opposition front bench spokesmen, particularly at the beginning of debates and on occasions when the importance or complexity of the matter under discussion requires precision of statement. Other Members occasionally appear to be reading large portions of their speeches, but the Chair rarely intervenes in such cases unless appealed to, and even then will normally pass off the matter quite lightly. But the lack of attention and respect with which speeches delivered in this way are received by the other Members of the House is in itself sufficient evidence of the value of the rule as an indication of general practice.

There is no rule to forbid a Member reading relevant extracts from a book, document or newspaper in support of the argument which he is putting forward in his speech; but the practice is contrary to the spirit of good debate and the Chair commonly intervenes to restrict the length of such quotations.

*Northern Ireland*

The Speaker of the House of Commons of Northern Ireland has always deprecated the reading of speeches unless by a Minister or Member in charge of a Bill when moving the Second Reading. Members are permitted to make use of notes but the Speaker has on occasion deprecated the use of too copious notes by a Member.

The reading of relevant extracts from books, documents and newspapers has been permitted by the Speaker but only when such extracts are short. Quotation from *Hansard* of the current Session is not permitted.

*Jersey*

Standing Order 23 (4) is as follows:

" A Member may not read his speech but may read extracts from books or papers in support of his argument and may refresh his memory by references to notes."

*Isle of Man*

Standing Order 24 of Tynwald requires that no Member may read a newspaper or book in his place, except in connection with the business of the debate. By implication the reading of relevant extracts is permissible and no objection is raised in either branch of the Legislature to the reading of speeches.

*Canada: Senate*

There are no limitations on the reading of speeches.

With regard to the reading of relevant extracts from books, documents, etc., the Senate has always followed the practice as outlined in *Bourinot*, 4th edition, pp. 335–6:

. . . a Member may read extracts from documents, books or other printed publications as part of his speech, provided in so doing he does not infringe any point of order.

But there are certain limitations to this right, for it is not allowable to read any petition referring to debates in the House and where the language of a document is such as would be unparliamentary, if spoken in debate, it cannot be read. No language can be orderly in a quotation which would be disorderly if spoken. Nor can any portion of a speech, made in the same session, be read

from private books or papers. It is also irregular to read extracts from newspapers or documents referring to debates in the House in the same session. In making extracts a Member must be careful to confine himself to those which are pertinent to the question; it is not regular to quote a whole essay or pamphlet of a general character. Neither is it regular for a Member to read a paper which he is asking the House to order to be produced. Nor is it in order to read articles in newspapers, letters or other communications, whether printed or written, emanating from persons outside the House, and referring to, or commenting on, or denying anything said by a Member, or expressing any opinion reflecting on proceedings within the House.

It may be interesting to note that on 7th February, 1962 (Senate Debates, p. 83), Speaker Drouin made the following ruling regarding the reading of extracts from newspaper articles:

Generally speaking, Members of the Senate are here to give their own opinions on subjects and matters under debate, and not to read speeches and opinions of others, because we cannot cross-examine or question those persons on their words. An Honourable Senator who wishes to quote from an article should not do so to any length, and he should adopt the opinions that he reads as his own, and give them in his own language.

Therefore my ruling is—and I think I will be upheld by Honourable Senators who perhaps have more experience than I—that reading of long speeches and editorials is not generally allowed, because a Member of Parliament, whether in the other place or here, should give his own opinion on matters and not those of other persons who have nothing to do with the Senate.

*Canada: House of Commons*

There is a rule, in principle, which precludes the reading of speeches in the House of Commons but, in practice, the chair has been unsuccessful in applying it.

It is a common practice for Members to read relevant extracts from books, documents and newspapers. However, the Chair endeavours to limit the length of these extracts.

*Ontario*

Standing Order 16 (*a*) 4 reads as follows:

" In debate, a Member will be called to order by the Speaker if he, in the opinion of the Speaker, refers at length to debates of the current Session, or reads unnecessarily from verbatim reports of the Legislative Debates or any other document, unless he wishes to complain of something said, or to reply to an alleged misrepresentation, in which case he may quote relevant passages necessary for such purposes."

*Saskatchewan*

In the Saskatchewan Legislative Assembly, Members are cautioned by Mr. Speaker to refrain from reading a speech. Members may read relevant extracts from books or newspapers, etc., as long as the Member gives the source of his quotation.

*Prince Edward Island*

The rules are lenient.

*Northwest Territories*

The general custom of not encouraging the reading of speeches applies in Sessions of the Council of the Northwest Territories. There are, however, no specific provisions in the rules of Council regarding this practice. The presence on Council of an increasing number of persons whose original language is not English has contributed to an increase in this practice. Under these circumstances, the reading of speeches is generally overlooked.

From time to time Members while directing questions to the administration, or when speaking in support of a Motion, do read extracts from books, documents or newspapers. Since to date there have been few, if any, abuses and the extracts read have been truly relevant to the subject under discussion, this practice has been permitted.

*Australia: Senate*

Standing Order 406 reads: " No Senator shall read his speech." In general debate Senators are quick to draw the President's or Chairman's attention to any breach of this Standing Order. There are some exceptions and qualifications however. A President's ruling states that copious notes may be referred to; by custom Standing Order 406 is never enforced with regard to a maiden speech; if a Senator desires for special reasons to read his speech, he is able to do so by leave (*i.e.* unanimous leave) of the Senate; established usage enables a Minister to read a prepared speech when moving the Second Reading of a Bill; and a Minister can also read a Ministerial Statement, or a statement in connection with the tabling of a paper or document.

The prohibition on the reading of speeches does not debar a Senator from reading a letter, departmental report, etc., in debate. This includes the reading of brief relevant extracts from books, documents and newspapers. With respect to such quotations, the practice is that it is not competent for a Senator to read any statement which he is not allowed to utter.

*Australia—House of Representatives*

The Standing Orders of the House of Representatives do not now place any limitation in debate upon the reading of speeches.

The temporary Standing Orders adopted by the House at the inauguration of the Parliament in 1901 and revised from time to time contained one which stated that: " A Member shall not read his

speech " This Standing Order was retained until 1965 when it was omitted on the recommendation of the Standing Orders Committee. The Committee had reported that:

As parliamentary practice recognises and accepts that, whenever there is reason for precision of statement such as on the Second Reading of a Bill, particularly those of a complex or technical nature, or in ministerial or other statements, it is reasonable to allow the reading of speeches and, as the difficulty of applying the rule against the reading of speeches is obvious, *e.g.* " reference to copious notes", it is proposed to omit the standing order.

The prohibition which had been imposed by the Standing Order had not been rigidly enforced by the chair for many years. When a point of order was raised that a Member was reading his speech, it had become customary for the Chair not to uphold the point of order and make the observation that the Member appeared to be making use of rather copious notes. One Member was so disturbed at this situation, claiming that if the Standing Order were not to be properly observed it would be better for it to be omitted, that he lodged with the Standing Orders Committee a request that the Committee examine the matter. His stand was supported by both the Committee and the House. While it is now not unusual for a Member to read from a prepared speech, others have lamented the omission of the Standing Order. They claim that the cut and thrust of good debate is lost when a Member delivers a speech prepared some time in advance and which, while being well researched and relevant to the debate, may fail to answer or complement points made by preceding speakers. The future might well see an attempt to reimpose some prohibition on the reading of speeches other than on those occasions when the complexities or technical nature of a debate make this essential.

In the House of Representatives the Standing Orders place no limitations in debate upon the reading of relevant extracts from books, documents and newspapers.

An earlier provision in the Standing Orders prohibiting the reading of extracts from newspapers or other publications, except *Hansard*, referring to debates in the House or in Committee except upon a matter of Privilege, was omitted in 1963.

Standing Order 321 states that,

A document relating to public affairs quoted from by a Minister or an Assistant Minister, unless stated to be of a confidential nature or such as should more properly be obtained by address, shall, if required by any Member, be laid on the Table.

The rule does not apply to private letters quoted by a Minister or an Assistant Minister, nor does it apply to private Members.

When a ruling was sought in relation to a document quoted by a private Member (2nd May, 1957) the chair stated:

Although I and many honourable Members may feel that when a document such as this is marked " Confidential " it should be kept so, I believe that it

must be left to the good sense of the Member who is in possession of the letter to decide whether its contents should be revealed. If the honourable Member believes that his action is in good taste, and if he is prepared to take the results which may accrue from his quoting the contents of the letter, I rule that he is in order.

When a similar point arose on 11th May, 1966, the Chair stated:

The matter is not governed by Standing Orders and it must be left to the good sense and discretion of an honourable Member whether or not he should use material in his possession.

Any limitations which operate are thus purely as conscience dictates.

*New South Wales: Legislative Council*

There is no Standing Order prohibiting the reading of speeches. However, Presidents have ruled over the years that a Member is not entitled to read a speech but is permitted to refer frequently to notes.

Standing Order 77 reads:

It shall be competent for Members to read extracts from books, newspapers, or other publications or documents, subject, however, to such limitations and restrictions as may be in force in analogous cases in the Imperial Parliament.

The effect of rulings by Presidents in this regard has been to enable Members to read extracts from letters, documents, etc. which relate to the argument being advanced by a Member. It has been ruled that a Member is not entitled to read an extract for the purpose of putting an argument, but may do so for the purpose of giving facts.

*New South Wales: Legislative Assembly*

In the Legislative Assembly of New South Wales there has been a long-standing rule, which has been applied with considerable flexibility and tolerance, that Members must address the House in their own words and not read speeches which could have been prepared by someone else. If that were permitted it would mean that persons who were not Members would virtually have a voice in the House. Reference may be made to copious notes but particularly long portions should not be read. It is, of course, common practice for Ministers to have prepared speeches when in charge of Bills or other business before the House.

Standing Order 145 states: " No Member shall read extracts from newspapers or other documents referring to debates in the House during the same Session."

Only brief references may be made to newspaper reports and the Member concerned must accept responsibility for the accuracy of the report (not merely that the report was, in fact, printed in the newspaper). Documents readily available to Members may be quoted from but such quotations should be relevant and as short as possible. Documents

quoted from, not readily available, must be made available to all other Members by the Member concerned. Letters quoted from must be properly identified by revealing the name of the writer. In very exceptional circumstances this requirement may be waived.

*Queensland*

There is no specific Standing Order in the Queensland Parliament which prohibits the reading of speeches but provision is made whereby, in all cases not specially covered by the Standing Rules and Orders or by Sessional or other Orders, resort shall be had to the Rules, Forms and Usages of the House of Commons. However, notwithstanding that " May " indicates that " A Member is not permitted to read his speech ", considerable tolerance is shown to Members in this regard. It is very rarely that the Speaker has, of his own volition, reminded a Member of the fact that it is out of order for him to read his speech but he has done so when a point of order has been raised by another Member. On these occasions, of course, the explanation by the Member that he is referring to very full or copious notes usually ends the matter.

The reading of extracts from documents, books and newspapers is in order, provided that the material is relevant to the debate and the extract not too long. Lengthy extracts are frowned on by the chair.

Provision is made in the Standing Orders whereby a document read or cited by a Member may be ordered to be laid on the Table.

*Tasmania: House of Assembly*

Standing Order No. 143 provides that: " A Member shall not read his speech, but may refresh his memory by reference to notes."

Private Members do not read their speeches. Ministers sometimes do when introducing important and complex legislation. In these cases, the Chair does not intervene since the practice is not abused and the House welcomes the fuller information thus provided.

*Victoria*

In both the Council and the Assembly there is no specific prohibition against Members reading speeches. However, it has long been the practice in both Houses to permit Ministers to read Second Reading speeches and ministerial statements and to restrain other Members from reading other than from notes;

In the Assembly Standing Orders No. 88 and No. 89 provide as follows:

88. " No Member shall read from a printed newspaper or book the report of any speech made in Parliament during the same Session, unless such report refer to the debate then proceeding."

89. " No Member shall read extracts from newspapers or other documents referring to debates in the House during the same Session."

The Council does not have similar Standing Orders but their practice is in accord with these two provisions.

*South Australia: Legislative Council*

Council Standing Order No. 170 reads as follows: " A Member must not read his speech, but may refresh his memory by reference to notes."

This rule is not strictly enforced, especially in connection with Ministers or Members moving the Second Reading of Bills where accuracy in the explanation of a complicated bill is essential.

Generally, a Member may read extracts from documents necessary to illustrate his remarks but the following Standing Orders impose limitations:

Standing Order No. 188—" No Member shall quote from any debate of the current Session in the other House of Parliament or comment on any measure pending therein."

In the case of Ministerial explanations or debates on a question involving a Question of Privilege between the two Houses, it is necessary to relax this rule.

Standing Order No. 189—" No Member shall read extracts from newspapers or other documents, referring to debates in the Council during the same Session, excepting *Hansard* ".

*South Australia: Legislative Assembly*

The reading of speeches, especially by Ministers in explaining Bills, is allowed and also in Ministerial Statements on Government policy.

The reading of relevant extracts from books, documents and newspapers has been allowed if no objection is taken and is usually covered by the " rather copious notes " remark.

*Western Australia: Legislative Council*

The following limitations apply:

Standing Order No. 72 states: " Except when introducing a Bill, or by leave of the President, no Member shall read his speech."

Standing Order No. 81 states: " No member shall read extracts from newspapers or other documents except *Hansard*, referring to debates in the Council during the same Session."

*Western Australia: Legislative Assembly*

Generally Members are expected to make their own speeches and to limit quoting from newspapers, etc., to a few lines only.

Quoting from authoritative documents, etc., for greater accuracy in support of an argument is less restricted, but Members are expected to limit quoting to the more salient points and any further support should be summarised in their own words.

Ministers when introducing legislation or making public statements are not restricted in their reading.

*Northern Territory*

There are no limitations on the reading of speeches or quoting extracts from documents, books and newspapers.

*Papua New Guinea*

By convention, there are no limitations on the reading of speeches.

The only limitations placed on the reading of relevant extracts from books, documents and newspapers in debate are those implied in the following Standing Orders:

123. Any Member complaining to the House of a statement in a newspaper, book or other publication as a breach of privilege shall produce a copy of the newspaper, book or other publication containing the statement in question and shall be prepared to give the name of the printer and publisher.

296. A document relating to public affairs quoted by a Minister or an Official Member, unless stated to be of a confidential nature, shall, if required by the House, be laid on the Table.

*New Zealand*

Standing Order 165 provides that:

A Member shall not read his speech, but may refresh his memory by reference to notes: provided that no Member, other than Mr. Speaker, shall interrupt a Member who is speaking to suggest a breach of this rule, and that Mr. Speaker may allow some relaxation of the rule, taking into account the technical nature of the subject or any other special circumstances.

This modifies earlier Speakers' rulings.

With regard to the quoting of extracts from books, newspapers or documents, the practice of the House of Representatives is based on a great many Speakers' rulings. Basically these lay down that while Members are entitled to read extracts from books, etc., they should do so in moderation and should not rely entirely on outside sources to justify their own remarks.

*India: Rajya Sabha*

While there is no hard-and-fast rule in the Rajya Sabha prohibiting the reading of speeches by Members, this practice is not encouraged because the reading of speeches detracts from the cut and thrust of

debate and the pre-composed speech of a Member may often have no relation to the arguments and reasoning put forward by other Members. In the Lok Sabha, in 1955, Mr. Speaker, interrupting a Member who was reading a speech, ruled as follows:

> The Hon. Members must realise that we meet in the House for purposes of a debate. A speech prepared outside the House, without reference to what other Members have said and their arguments, has no necessary connection with what is passing on in the House. And, therefore, it is a good parliamentary practice not to allow written speeches. Hon. Members may refer to their notes. They may take the points. They may have quotations. The debate becomes unreal if speeches written outside are read in the House.

This sums up broadly the present practice prevalent in both Houses of Parliament. It may be added that, in accordance with a well-established parliamentary convention, Ministers who have to make important statements, particularly on matters of policy, are allowed to read out from prepared texts.

As regards limitation on the reading of relevant extracts from books, documents and newspapers in course of debates, this is not covered by any specific rule, but the convention has developed that while a Member is allowed to refer to such documents, he is not permitted to quote from an original document unless the chair is satisfied with the genuineness thereof.

It has been held to be in order for a Member to quote the opinion of another person published in a newspaper in support of his arguments or in substantiation of his statements about any particular case. Newspaper reports and articles, etc., are also permitted to be quoted by a Member who has to refer to such reports, etc., to raise a question of privilege against the newspaper in question.

*India: Lok Sabha*

The reading of a speech is not permissible except in the case of a maiden speech. Ministers are, however, permitted to read from a written text for the sake of accuracy. While speaking, Members are permitted to consult their notes.

There are no limitations upon the reading of relevant extracts from books, documents and newspapers but, on demand, the document cited may be required to be laid on the Table of the House.

*Gujarat*

A private Member shall not read his speech, but may refresh his memory by reference to notes. Ministers are allowed to read their speeches.

The reading of relevant extracts from books, journals, reports, documents and newspapers is allowed, but Members who quote extracts from these publications are required to disclose the title of the publica-

tion, together with its edition number, date and page to facilitate the reporting branch to reproduce the same in the Official Reports.

*Mysore*

Members are not allowed to read their speeches but they are allowed to refer to their notes. Under Rule 290 of the Rules of Procedure no speech made in the Council shall be quoted in the Assembly unless it is a definite statement of policy by a Minister. Provided that the Speaker may, on a request being made to him in advance, give permission to a Member to quote a speech or make reference to the proceedings in the Council if the Speaker thinks that such a course is necessary in order to enable the Member to develop a point of privilege or procedure.

The reading of relevant extracts only from books is permitted; though Members are entitled to hold any paper in their hands, they are not allowed to read newspapers in the House. In respect of documents, permission will be withheld where a document is a statement of figures prepared by a Member, the use of which he could have made in his own speech; or contains a Member's views but the Member cannot vouch for the authenticity of its contents; or where a document is not an original but is merely a copy, the authenticity of which cannot be verified; or where a document contains extracts from some documents which are not accessible and whose existence could not be verified; or where a member seeks to lay a document independent of any relevant business before the house, or where a member has neither quoted from the document sought to be laid nor has been called upon to lay it nor is any question of privilege involved so as require him to substantiate the allegations made by him with the documentary evidence.

*Rajasthan*

Reading of written speeches is not allowed. By way of reference, Members can quote short extracts from books, documents and newspapers.

*Madhya Pradesh*

Members are not allowed to read their speeches but are allowed to read relevant extracts from books, documents and newspapers.

*Tamil Nadu: Legislative Assembly*

Rulings of the Chair have formed the basis of procedure with regard to the reading of relevant extracts from documents and newspapers.

When referring to documents, Members should first get the permission of the Chair, so that the Chair can have time to go through the text. With regard to newspaper reports, the Chair has ruled that they

should not be cited as the basis for any statement and should be quoted in the House only with the consent of the Chair. The Chair advised that as far as possible, it is better not to read from newspapers but that a reference to a particular passage would be better than quoting from it.

*Uttar Pradesh: Vidhan Parishad*

The reading of speeches is not allowed, but Members are allowed to read relevant extracts from books, documents and newspapers.

*Sri Lanka*

There are no restrictions.

*Malta*

Standing Order 47 says: " A Member shall not read his speech, but may refresh his memory by reference to notes."

However, leave of House may be granted for a speech to be read, in exceptional circumstances.

Reading of relevant extracts from books, documents and newspapers is frequently indulged in by Members for further illustration or confirmation of their arguments.

A rule exists that a Member may not read any portion of a speech made in the same Session from a printed book or newspaper—but wide discretion is allowed the Chair as to the enforcement of this rule.

Documents quoted from must be laid on the Table if any Member so insists. But under Standing Order 181 " no departmental file of a confidential character need be laid before the House".

Standing Order 181 is the only one on this matter; and extensive reference is made to Westminster procedure which is followed by the House in this respect, especially *Erskine May*, 18th Edition, pp. 420/42, and the ruling of Speaker Morrison, which runs as follows:

> For the House to be able to demand that documents should be laid upon the Table, three conditions must be fulfilled.
>
> In the first place, the Minister must have quoted from the document; it is not sufficient that he should have referred to it or even to have summarised or paraphrased it in part or in whole.
>
> Secondly, the document must be a " despatch or other State paper "; the rule cannot be applied to private documents.
>
> Thirdly, the rule cannot be applied to documents which are stated by the Minister to be of such a nature that their disclosure would be inconsistent with the public interest.

Standing Order 197 says: " In all cases not provided for by these Standing Orders, resort shall be had to the rules, forms, usages and practice of the Commons' House of Parliament of the United Kingdom, which shall be followed as far as they can be applied to the proceedings of the House with due regard to the special nature of the Constitution."

*Zambia*

Members of Parliament are not allowed to read speeches during debates in the House, but are only allowed to refer to notes. Ministers, however, are allowed to read speeches when making important ministerial or policy statements, some of which are complex and involve a lot of figures and technical language.

Members of Parliament are permitted to read or quote relevant extracts from books, documents and newspapers when there is need to, often to prove a point.

Members are also required to table any such documents for the other Members to read afterwards.

*Gibraltar*

Standing Order 46 (3) reads: A Member shall not, except with the permission of the President or Chairman, read his speech, but he may read extracts from written or printed papers in support of his argument, and may refresh his memory by references to notes.

*Bahamas*

A Member may not read his speech, but may refresh his memory by referring to notes.

A Member may not read from a book, newspaper or other printed document the report of, or an extract referring to, any debate in the Assembly during the same session.

*Singapore*

Except as prescribed in the Standing Order relating to oral translation of speeches, in debate a Member shall not read his speech, but he may read short extracts from books or papers in support of his argument and may refresh his memory by reference to notes.

In accordance with the provisions of Article 37 of the Constitution of Singapore, all debates and discussions in Parliament shall be conducted in the Malay, English, Mandarin or Tamil languages. Under the Standing Order relating to oral translation of speeches, in the event of there being, in the opinion of the Speaker or Chairman, inadequate or unsatisfactory facilities for simultaneous oral translation, the Speaker or Chairman may require, *inter alia*, that:

(*a*) a Member who desires to speak in Malay, Mandarin or Tamil shall hand an English translation of a prepared speech to the interpreter prior to delivery of his speech; or

(*b*) a Member who desires to speak in Malay, Mandarin or Tamil shall hand a copy of his speech to the interpreter from which the interpreter can deliver a prepared English translation or an English translation at sight; or

(*c*) a Member who intends to deliver a speech of importance shall hand copies of a summary of his speech to the interpreters for translation into all the other three languages after he has completed his speech.

In any of the circumstances or occasions set out above, the Speaker or Chairman may permit a Member to read his speech.

*St. Lucia*

Members are not allowed to read their speeches but are allowed to refresh their memory from notes. If extracts are quoted they must be relevant to the matter, and the name, date and origin of book, document or newspaper given.

*Malaysia*

The reading of speeches is not allowed but Members are allowed to read extracts from books, documents, etc., in support of their argument.

*Mauritius*

Members are allowed to refer to copious notes but are not allowed to read speeches. Ministers making statements are, however, allowed to read them. Members may read extracts from books, etc., but must lay the documents on the Table.

*Trinidad and Tobago*

Members are given quite a lot of freedom in regard to the reading of speeches or extracts from documents, etc.

*Fiji*

Members are not allowed to read their speeches but they may speak from extensive notes. There is no limitation on the reading of relevant extracts from books, documents and newspapers except that what is quoted from is laid on the Table, with the exception that if a Government publication is quoted, that publication need not be tabled. since it is assumed to be readily available and to have been tabled previously.

## X. APPLICATIONS OF PRIVILEGE

### At Westminster

**House of Commons (Press report of Select Committee's findings before publication).**—On 22nd June, 1972, Mr. Hugh Fraser, a Conservative Member, drew the attention of the House to an article in that day's *Daily Mail* newspaper, which purported to report the findings of the Select Committee of Privileges on a matter which had recently been referred to them. Mr. Fraser, a member of the Committee, revealed that the Committee had agreed to their report on the subject on the evening of 20th June, but that at the time the newspaper article was written the report had " neither been typed as a document nor printed ". He accordingly asked the Speaker to rule that the article constituted a *prima facie* breach of privilege.

Another member of the Committee, Mr. Pannell, then intervened to point out that the Votes of Proceedings of the House for 20th June contained an entry recording that the Committee had formally made their report on the matter to the House on that day. He asked the Speaker, in making his ruling, to clear up the confusion that obviously existed as to whether the date on which the Press could publish a Committee's findings was the date of this formal entry in the Votes and Proceedings or the actual date of publication of the Committee's report.

Next day the Speaker gave the following ruling:

> The House knows that any publication of a draft report before the report has been agreed to by a Committee and presented to the House is treated as a breach of privilege. On the other hand, when the report, as in this case, has been presented to the House, although not yet available to hon. Members in a printed form, it is not an offence against the law of privilege to publish the findings of a Select Committee. It is, however, very discourteous to the House when this is done, as my predecessors have frequently said. All I can do on this occasion is to express my displeasure but to state, as my predecessors have ruled, that no question of privilege is involved.

The Leader of the Opposition (Mr. Harold Wilson) protested that a leak from a Committee was just as serious if it occurred before the publication of their report as if it occurred while the Committee was still sitting. The Speaker agreed and said that, although he was bound by the rulings of his predecessors, he would be most willing to see the practice altered by the House in some way. No action has since been taken by the House in response to this suggestion. (*H.C. Deb.*, Vol. 839, cc. 731, 889.)

### Western Australia: Legislative Council

**Insulting statement by Premier.**—Matters of privilege were raised on two occasions during the 1972 session.

The first, in the form of a substantive Motion, moved by the Leader of the Opposition pursuant to Standing Order No. 171, related to a statement made by the Hon. Premier in the " West Australian " newspaper on 30th September, 1972. The Premier had said: " I cannot believe that the [Legislative] Council as constituted would permit moral obligation to outweigh political consideration in any circumstances."

Debate on the Motion " deploring the insulting statement made " continued for some considerable time, several members of the House contributing; the Motion was then passed. (*Hansard*, pp. 3574–83; 3861–4.)

**Newspaper error.**—The second occasion when the question of privilege was before the House referred to another newspaper item where a Member was reported as having stated he would support a particular Bill when in fact he had announced that he opposed the measure. The newspaper concerned corrected the error the following day and, surprisingly, the item was headed in large capital letters and appeared in a prominent position in the publication. (*Hansard*, p. 3789.)

## New Zealand

**Offensive documents sent to Members.**—On 7th July, 1972, the Leader of the Opposition raised, as a matter of privilege, the receipt of an offensive document by two of the Members of his party. Later in the day the Speaker ruled that there was a *prima facie* breach. The matter was referred to the Committee of Privileges. The Committee reported on 27th July that the sending of the documents, while reprehensible, did not amount to a breach of privilege. (*Hansard*, Vol. 379, pp. 849, 861, 862, 1268–79.)

## India: Lok Sabha

**Interruption and walk out by a Member during President's Address.**—On the 23rd March, 1971, when the President started reading his Address in English to both Houses of Parliament assembled together under Article 87 of the Constitution, in the Central Hall of Parliament House, Shri Ram Deo Singh, a Member of Lok Sabha, interrupted the President and said in Hindi: " I had written a letter to you. I want to submit that you should read your Address in Hindi or in your mother tongue." The President thereupon said that a Hindi version of his Address would be rendered by the Vice-President. A Member of Rajya Sabha also urged the President to speak in his mother tongue. The President asked the Member concerned " to show due respect to this House " and sit down, or otherwise " kindly walk out ".

The interruptions, however, continued and the President repeatedly asked the Members who were interrupting him either to sit down or to walk out. After some time Shri Ram Deo Singh and some Members of Rajya Sabha left the Central Hall.

On the 2nd April, 1971, Shri Inder J. Malhotra, a Member of Lok Sabha, moved: " That this House strongly disapproves of the conduct of Shri Ram Deo Singh who created obstruction and showed disrespect to the President on the solemn occasion of his Address to both Houses of Parliament assembled together under Article 87 of the Constitution on the 23rd March, 1971, and condemns his undesirable, undignified and unbecoming behaviour."

After some discussion, an amendment moved by Shri Mohan Dharia, another Member, was adopted and the Motion was adopted by the House in the following amended form:

That this House is deeply concerned at the conduct of Shri Ram Deo Singh who is alleged to have created obstruction and showed disrespect to the President on the solemn occasion of his Address to both the Houses of Parliament assembled together under Article 87 of the Constitution on the 23rd March, 1971, and therefore resolves that a Committee consisting of fifteen Members of this House be constituted by the Honourable Speaker to go into the matter in all details and to suggest suitable action and also guidelines for the future by the first week of the next session.

During the discussion on the Motion the Speaker (Dr. G. S. Dhillon) drew attention to the procedural difficulties that inevitably arose when there was disorder on an occasion when both Houses were assembled together. It was not clear who was the presiding officer responsible for dealing with the disorder, or what the correct procedure was for punishing the offender. The problem had arisen before but had never been satisfactorily settled. He therefore supported the proposal that the whole subject should be considered in detail by a Committee.

The Committee on the Conduct of a Member during President's Address (1971), which was appointed by the Speaker on 5th April, 1971, in pursuance of the Motion agreed to by the House, presented their first report on 15th November, 1971. They stressed that the President's Address to Parliament was the most solemn and formal act under the Constitution and should be marked by dignity and decorum. The report continued:

As stated by the Committee on the Conduct of certain Members during President's Address (1963), the House has " disciplinary powers in regard to the conduct of its Members " and " the House exercises its jurisdiction of scrutiny over its Members for their conduct whether it takes place inside or outside the House ". The House can punish a Member if in its opinion a Member has acted in an unbecoming manner or " has acted in a manner unworthy of a member ". There have been a number of cases in recent years, both in Parliament as well as in State Legislatures in India, where Members who made interruptions and created disturbances or staged walk-outs during the Address of the President/Governor to Members of Parliament/State Legislature assembled together under Article 87/176 of the Constitution, were punished by the House for their misconduct.

After considering the facts of the present case and the evidence before the Committee, the Committee are of the opinion that the conduct of Shri Ram Deo Singh, M.P., during the President's Address to both Houses of Parliament assembled together on the 23rd March, 1971, under Article 87 of the Constitution, was improper and inconsistent with the dignity of the occasion and the standards of conduct which the House expects from its Members. The Committee are of the view that the conduct of Shri Ram Deo Singh, M.P., on that occasion should be viewed with disapproval.

The Member concerned had stated in his oral evidence to the Committee that when he had interrupted the President he had not been aware that the Hindi version of the President's Address would be subsequently read out by the Vice-President. He had left the Hall when the President asked the Members who were interrupting to hear him or go out. In the light of this explanation the Committee recommended that a lenient view might be taken in this case, and the House accordingly took no further action in this matter.

**Alleged criticism of Member by Prime Minister in her chamber.**—On 18th August, 1972, Shri Jyotirmoy Bosu, a Member, sought to raise a question of privilege against the Prime Minister for allegedly criticising his conduct in the House when he went to her chamber on the 16th August, 1972, in a deputation to discuss the matter regarding the Bombay Strike. Shri Bosu alleged that the Prime Minister had criticised him and other members of the deputation for pressing the acceptance of their Adjournment Motion on the Bombay Strike in the House on 16th August, 1972. He contended that what the Members did in the House could not be the subect matter of discussion outside the House.

The Speaker (Dr. G. S. Dhillon), disallowing the question of privilege, observed: " As Leader of the House, she (Prime Minister) can meet you in her room and discuss so many things. It will be setting an unhealthy precedent if the Prime Minister were always to be in the fear that whatever she is saying in her room may not come out as a privilege or some other motion later. I do not think it is very correct."

**Answer to Parliamentary Question published without acknowledgement.**—Shri N. K. Sanghi, a Member, in a letter to the Speaker dated 2nd April, 1972, complained that the *Financial Express*, Bombay, in its issue of 1st April had published two news items which were attributed to the " Financial Express Bureau " but which were in fact based on information contained in answers to certain questions in the House. Shri Banghi contended that the newspaper should have made a reference to the relevant Lok Sabha proceedings as the source of the news items.

On 11th May, 1972, the Speaker informed the House that the Editor of the *Financial Express*, Bombay, had been asked to give an explanation of the matter, and in reply had admitted that the news items in question were based on written replies in Parliament but had stated that, as the

report made no reference to the supplementaries or to the discussion on the question, it had not been thought necessary to mention Parliament explicitly. Whenever the newspaper reported discussions or supplementaries to questions they made a point of identifying the source. The Editor had further stated that it had not been the intention of the *Financial Express* to belittle the importance of Parliament or commit any breach ot parliamentary privilege.

After informing the House of the Editor's explanation, the Speaker went on: " I would only say that it would have been better if, in this case, the newspaper had also given a reference to the relevant proceedings of Lok Sabha instead of claiming it as emanating from its own Bureau. I hope that the Press will take note of it. The matter is now closed."

### Andhra Pradesh

**Omission of Members' names from radio bulletin.**—On 27th March, 1972, Sarvasri Syed Hassan and Shafi-ur-Rehman, Members of the Assembly, gave notice of a Privilege Motion against the Station Director, All India Radio, Hyderabad, for omitting their names from a local news bulletin describing the deliberations of the Assembly on 25th March.

Before ruling on the motion, the Speaker consulted the Station Director, who explained that when the Council and the Assembly were in session simultaneously, as was the case then, news coverage of the proceedings of both bodies was given on the basis of the news value of different items and some selection was inevitable. The Station Director also cited a similar case in 1971, when it had been ruled that if, whether because of limitations of time or inadvertently, a Member's speech was not referred to, it could not be concluded that it had been deliberately done with the intention of suppressing the Member's speech.

The Speaker quoted this explanation in his ruling, and also cited *Erskine May* to the effect that, although suppression of the speeches of particular Members had been treated as a breach of privilege, the suppression must be continuous. Accordingly he disallowed the Privilege Motion.

**Reflections against Legislative Assembly.**—On 4th April, Sri N. Srinivasula Reddy, M.L.A., gave notice of a Privilege Motion against Sri Nellore Sriramamurthy, Editor of the weekly *Zamin Ryot*, for having published an article which, in the course of a report on the elections to the Rajya Sabha, portrayed the Members of the Andhra Pradesh Legislative Assembly as corrupt persons. The Member also alleged that a letter to the Editor published in the same weekly under the caption " The candidature of Janardhana Reddy to the Rajya Sabha " contained improper criticisms of a speech which he had made in the House.

In his ruling the Speaker cited the resolution of the House of Commons of 26th February, 1701, that to print or publish any libels reflecting upon any Member of the House for or relating to his service therein was a high violation of the rights and privileges of the House. He also cited a number of cases both in India and the United Kingdom when publications reflecting upon the conduct of Members had been ruled to be breaches of privilege. He continued:

> All the same, I have taken considerable care in examining this matter with a view to avoid any infringement on the freedom of press as I felt that while trying to safeguard the privileges of the legislators individually and the House as whole, much more regard should be paid for protecting the privileges of other citizens who also have the right of expression through Press and platform. While one should appreciate with tolerance the criticism in the newspapers, such criticism should not exceed the bounds of decency and limits of fairness.
>
> On a perusal of the passages in question in the weekly magazine *Zamin Ryot*, dated 31.3.72, I am of opinion that it is a clear case where *prima facie* case is made out for referring to the Privileges Committee as very serious and damaging allegations are made not only against the M.L.A.s but also the House as a whole. Accordingly, I refer it to the Committee of Privileges for examination and report to the Assembly.

### Bihar

**Intrusion by police within precincts.**—An important question of breach of privilege was raised in the Bihar Legislative Council on 6th September, 1972, by Shri Raj Kumar Purbey, M.L.C. The matter related to an intrusion by the police into the precincts of the House on the previous day without the permission of the Chairman. The police were chasing a riotous mob, and in the course of the incident a Member of the House and a press reporter had been assaulted.

After discussion the matter was referred to the Privileges Committee on 22nd September, 1972, and is still under examination by the Committee.

### Kerala

**Allegations of partiality on the part of the Speaker.**—On 18th August, 1971, the newspaper *Thaniniran* carried an editorial bitterly criticising the decision of the Speaker, Shri Moideenkutty Haji, not to allow a special adjournment debate on the situation in Bangladesh and his subsequent refusal to permit discussion of the Indo-Soviet Treaty. The editorial alleged that the Speaker, a Member of the Muslim League, had been influenced by religious bias in making his rulings, and went on: " How can the laws of a secular State be implemented under a Speaker who is a religious fanatic?" A question of breach of privilege regarding the editorial was raised in the House on 19th August, 1971, and on a Motion moved by the Minister of Works (on behalf of the Leader of the House) the matter was referred to the Committee of Privileges for investigation and report.

The Committee began its investigation by inviting the Managing Editor of *Thaniniram*, Shri Krishnan Nair, to state what he had to say in the matter. The Managing Editor at first declined to respond to this invitation, but eventually submitted written statements to the Committee in which he said that the editorial had been prompted by his " righteous indignation, generated by a spirit of nationalism ". He also requested permission to be represented before the Committee by counsel, on the grounds that the case involved a substantive question of law and that his rights to be so represented were clear both from Article 22 (1) of the Indian Constitution and from the relevant passages in *Erskine May*. The Committee, however, rejected these arguments. They would, they said, be investigating the case mainly on the basis of facts, not on a question of law; the provisions of Article 22 (1) of the Constitution related only to persons who had been arrested; and furthermore, *Erskine May* stated quite clearly that persons accused of breach of privilege were not as a rule allowed to be defended by counsel.

In their report on the case, published in October, 1972, the Committee stated:

> In the facts and circumstances of this case, the Committee do not consider it necessary to go into the wider question whether the decisions taken and the rulings given by the Speaker about the admissibility of Motions and other matters relating to the procedure and conduct of business in the Assembly could be criticised or commented upon outside the House. Even assuming that the freedom of speech and of the press extends to the exercise of such a right, the Committee are of the view that the editorial in question has far exceeded the limits of fair criticism. The editorial contains several passages containing imputation of partiality to the Speaker. . . . The language of the editorial is such that it brings the Chair into odium, contempt and ridicule by referring to him in an insulting and contemptuous manner and by using foul epithets in respect of him. The Committee were distressed to note that even in his written statement submitted before the Committee Shri Krishnan Nair had not shown any feelings of remorse; on the other hand he has tried to justify his conduct in a provocative manner.

In view of this the Committee concluded that Shri Krishnan Nair was guilty of committing a gross breach of privilege and contempt of the House, and they recommended that he should be summoned to the Bar of the House and reprimanded. Their recommendation was accepted by the House, and was implemented on 31st October, 1972.

### Tamil Nadu: Legislative Council

**Criticism of composition of Joint Select Committee.**—On 8th December, 1972, a Member raised a privilege issue under Rule 157 of the Council Rules in regard to a resolution passed by the Tamil Nadu Government-Aided Elementary and Middle Schools Association, Salem District Branch, about the constitution of the Joint Select Committee on the Tamil Nadu Recognised Private Schools (Regulation) Bill 1972. The resolution was to the effect that three Members of the Council nominated to the Committee would not be able to bring an impartial

judgment to bear upon the provisions of the Bill which had been drafted on the basis of the Report of the Dr. Paul Committee of which those three had been members and that, therefore, they should be excluded from the Committee.

After hearing the Member, the Leader of the Opposition and the hon. Minister for Education and Local Administration, the Deputy Chairman who was then in the Chair stated that he would, in the first instance, write to the Association concerned and obtain its views before giving a ruling.

On 13th February, 1973, the hon. Chairman ruled that the resolution technically amounted to a contempt of the House, but since the Association had written a letter expressing its regret for having wounded the feelings of the Members of the House, the House would accept the same and drop the matter.

The hon. Chairman then withheld his consent for raising of the matter further. (*Legislative Council Debates*, Vol. CI No. 5; Vol. CIV, No. 4.)

## MALTA

**Comments about Member by Government Chief Messenger.**—At Sitting 89 of the 21st June, 1972, a Labour M.P. claimed that certain comments passed on him by a Government Chief Messenger in connection with one of his parliamentary questions constituted a breach of privilege. Mr Speaker reserved his ruling for next sitting.

At Sitting 90 of the 26th June, 1972, Mr. Speaker ruled that the comments complained of constituted a *prima facie* breach of privilege.

The Labour M.P. in question moved the Motion that the House considers those comments as a breach of privilege. The Motion was seconded and postponed so that the necessary steps could be taken to summon before the House the Chief Messenger in question and the witnesses, whose names had been given by the Labour M.P. raising this matter.

At Sitting 96 of the 12th July, 1972, the House resumed from the 26th June, 1972, the debate on the Motion of breach of privilege. With leave of House the Labour M.P. concerned read an apology from the Chief Messenger in question, in view of which the Labour M.P. asked leave to withdraw his Motion. Leave was granted and the Motion withdrawn.

**Threatening letter to Minister from Journalist.**—At the Sitting of the 27th November, 1972, while moving the Second Reading of the Exchange Control Bill, the Minister of Finance and Customs strongly deplored an article in the *Financial Times* of that date, signed by their correspondent, Mr. Godfrey Grima. The Minister said he had written an article which was to be sent to the *Financial Times* to correct the malicious lies and gross inaccuracies of Grima's article which had done great harm to Malta.

At the sitting of the 28th November, 1972, before the commencement of business, the Minister of Finance and Customs raised as a breach of privilege a letter which he had that day received from Grima. The letter which was laid on the Table ran as follows:

Your malicious comments in the House yesterday were studied by our solicitors this morning and although protected by parliamentary immunity, action will be taken against you unless you honourably retract.

Furthermore, our story was written after our solicitors had thoroughly examined your alarming Exchange Control Regulations. It was again examined before and after dispatch.

The Speaker ruled that this letter constituted a *prima facie* case of breach of privilege, according to Section 11 (1), (*e*) and (*f*) of the House of Representatives (Privileges and Powers) Ordinance 1942, the only enactment which regulates the privileges of the House as provided for in Standing Order 161. Section 11 (1) of this Ordinance says that: " The House should have the power to punish with a reprimand or with imprisonment for a period not exceeding 60 days or with a fine not exceeding £100 or with both such fine and such imprisonment, any person . . . guilty of any of the following acts—

(*e*) " any . . . insult of a Member . . . on account of his conduct in the House . . .
(*f*) " the sending to a Member of the House of any threatening letter respecting his conduct in the House."

After the Speaker's ruling, the Minister moved that the House consider the letter a breach of privilege. It was agreed to adjourn the debate till another sitting.

On the 30th November, 1972, in accordance with the Ordinance of 1942, the Minister of Justice and Parliamentary Affairs moved that the Clerk of the House be authorised to order Grima to attend at the bar of the House on Monday, 4th December, 1972, at 6.30 p.m., to show why he should not be found guilty of a breach of the privileges of the House. The Motion was agreed to.

When he appeared at the bar of the House Mr. Grima, through his counsel (as per Section 13 (5) of the Ordinance, which gives this right to all, except those who commit the alleged breach of privilege in the presence of the House), pleaded guilty. The counsel for defence read out a letter sent by Mr. Grima to the Minister of Finance and Customs dated 30th November, 1972. In this letter Mr. Grima offered the Minister his sincere and unreserved apologies. Whilst admitting that his previous letter to the Minister was totally non-permissible, Mr. Grima promised that similar incidents would not be repeated. He wrote that the first letter had been written in a moment of anger and that he had attempted to withdraw it.

Mr. Vella, an assistant to the Private Secretary of the Minister of Finance, then gave evidence on oath. He said he had received a telephone call from Mr. Grima but did not recall that Mr. Grima had offered to withdraw the letter to the Minister.

Mr. Grima said that he was prepared to give evidence on oath and gave his evidence too.

At 9.00 p.m. the debate was interrupted and adjourned till the following day, when the case was resumed with Mr. Grima continuing his evidence in accordance with the oath administered to him by the Clerk at the previous sitting. Mr. Grima was cross-examined by Members who put their questions to him through the Chair. He said he had rung up Mr. Vella and had told him that he wished to withdraw the letter and then to speak to the Minister to find out if there were inaccuracies which he would have corrected and so dispel any alarm.

Following this cross-examination, counsel for defence made his submission for the accused. He said that Mr. Grima had acknowledged that he had made a mistake in sending the letter. The defence did not wish to plead provocation, since this was not the case. They were certain that justice would be done with dignity and impartiality.

On the Prime Minister's suggestion the sitting was then suspended to consider a decision. When the sitting resumed the Minister of Justice and Parliamentary Affairs moved that the House, having considered the seriousness of the breach of privilege by Mr. Grima, and having considered his apology, found Mr. Grima guilty and condemned him to a fine of £M50. The Motion was seconded by the Leader of the Opposition and unanimously agreed to.

## Zambia

**Intimidating letters to Speaker.**—During 1972 there was one case of breach of parliamentary privilege recorded, and this was against a Lusaka lawyer, Anthony William Werner Cobbett-Tribe (Zambian). It arose out of Mr. Cobbett-Tribe's defence of his clients, some M.P.s and former M.P.s involved in a court case.

Mr. Cobbett-Tribe was found guilty of contempt of the House in writing intimidating and insulting letters to Mr. Speaker. He realised his folly when confronted by the power of the House and made a public apology to a full House.

In his admonition of Mr. Cobbett-Tribe, Mr. Speaker said: " Let it be learned and clearly understood by you, Anthony William Werner Cobbett-Tribe, that Parliament is the supreme power in the State without rivals capable of curtailing or overriding its authority. Any limitations of this omnipotency of Parliament can merely be political or mischievous, but cannot be legal because Parliament has unlimited legal power." In view of his apology Cobbett-Tribe was ordered to withdraw from the House and the House proceeded no further in the matter. (*Parliamentary Debates* No. 29 of 1972, 1381–2.)

## XI. MISCELLANEOUS NOTES

### 1. Constitutional

**New South Wales (Commonwealth of Australia Constitution Convention).**—On 22nd March, 1972, the Legislative Council agreed to a series of resolutions related to the need for readjustment of the powers and responsibilities within the Federal system between the Commonwealth of Australia and the various States. The resolutions open the way for the holding of a Convention to prepare amendments to the Commonwealth Constitution for approval by the Australian people by referendum.

The terms of the resolutions were conveyed to the Legislative Assembly by message, and a message was received from the Legislative Assembly on 23rd March, 1972, conveying the terms of similar resolutions adopted by the Assembly that day.

**Tasmania (Length of Parliaments).**—The Constitution was amended in 1972 to provide for a duration of four years for the House of Assembly, commencing with the next Parliament. Until 1969 the Assembly had been elected for five years. In that year, following a change of government, the term was changed to three years for future Parliaments. The Assembly elected in 1969 was thus to have been the last to continue for five years. However, there was an early dissolution in March 1972 and another change of government. One of the first measures dealt with in the new Parliament was a Bill to reverse the changes made in 1969. The Bill was amended by the Legislative Council and, after negotiation, it was settled that the present Assembly would continue for five years, while future terms would be four years.

**South Australia (Ombudsman).**—Act No. 115 of 1972 provides for the appointment of an Ombudsman, and Mr. G. D. Combe, M.C., formerly Clerk of the House of Assembly, was so appointed on 14th December, 1972, at a salary of $20,200 per annum. The office is outside the Public Service and provision was made for the preservation of existing and accruing rights of any appointee before his appointment. The Ombudsman may not engage in any other remunerative employment or undertaking without the consent of the Minister.

He is removable from office by the Governor on presentation of an address from both Houses of Parliament praying for his removal, and the Governor may suspend him from office at any time on the grounds of incompetence or misbehaviour. In the latter case, the Governor

shall make a full statement of the reasons for such suspension, which statement shall be laid before both Houses within seven days or, if Parliament is not then sitting, within seven days of the next succeeding session. If an address praying for the removal from office of the Ombudsman is not presented to the Governor within one month of the tabling of the reasons for suspension, the Ombudsman shall be restored to office, but if an address is so presented the Governor may remove him from office.

The office will become vacant when the Ombudsman dies, resigns, attains the age of sixty-five years, is removed from office, becomes bankrupt, is convicted of an indictable offence or sentenced to imprisonment for any offence, becomes a Member of any State or the Federal Parliament or becomes incapable of performing his functions and duties due to mental or physical illness. The Governor may appoint on such terms and conditions as he determines an Acting Ombudsman when the Ombudsman is unable to perform his duties or when the office is temporarily vacant. Such person may exercise and perform all the powers, functions and duties of the Ombudsman while so acting.

The Ombudsman may, by instrument in writing, delegate all or any of his powers and functions (except the power of delegation) to any person and may likewise revoke or vary any such delegation without affecting the exercise or performance of that power or function by the Ombudsman. The Ombudsman has been given the power of a Royal Commission and will not be inhibited in his investigations by any statutory obligations to secrecy or the exercise by the Crown of its right in law not to make certain disclosures, but the secrecy of proceedings in Cabinet is preserved. Information obtained in the course of investigations shall not be disclosed. Authority has been given to enter any premises of a Department, Authority or proclaimed Council for the purpose of any investigation, and a substantial penalty has been prescribed for obstruction, failure or refusal to comply with lawful requirements and wilfully making false or untrue statements.

He may investigate any decision, act, omission, proposal or recommendation (including a recommendation made to a Minister) relating to a matter of administration made or done by any Government Department, Authority or proclaimed Council, or by any person engaged in the work of such bodies. Included are the circumstances surrounding any decision, act, omission, proposal or recommendation and excluded are judicial acts and the substance of legal advice given to the Crown by its advisers.

The Act does not apply to Commissions or tribunals which are excluded by proclamation, nor to or in relation to any member of the police force in his capacity as such a member.

The Ombudsman may initiate an investigation on any complaint being made to him, notwithstanding that, on the face of it, the complaint may not appear to relate to an administrative act, or on his own

motion. But he is precluded from making investigations in cases where another remedy is available to the aggrieved person, except when it is felt that such other remedy was not reasonably available to the aggrieved person, notwithstanding that, in terms of any Act, the act or decision to be investigated was expressed to be final and without appeal. He has been given jurisdiction to investigate a course of conduct that occurred within twelve months before the commencement of the Act or, in the case of a proclaimed Council, a course of conduct of that Council which occurred before the Council became a proclaimed Council.

Complaints may be made by any person or body of persons whether corporate or not. The complainant must have some direct interest in the matter of the complaint, but Members of Parliament may act on behalf of persons in bringing matters to the attention of the Ombudsman. Complaints must be made within twelve months from the day on which complainant first had notice of matters alleged in the complaint, except where the Ombudsman considers it proper in all the circumstances to conduct an investigation. He may examine and report on industrial matters when this is necessary in the exercise of his general jurisdiction, but complaints made by or on behalf of an employee in that capacity where the complaint relates to an administrative act alleged to have been done by or on behalf of the employer of that employee in that capacity may not be investigated.

The Ombudsman may refuse to investigate matters when he considers the complaint is trivial, frivolous, vexatious, not made in good faith, unnecessary or unjustifiable or when the complainant does not have a sufficient personal interest. In all such cases, he is required to inform the complainant of his decision and the reason therefor. Before commencing any investigation, the Ombudsman must inform the principal officer of the Department, Authority or proclaimed Council whose acts are subject to investigation of his intention. Every investigation shall be conducted in private and in any way that seems to the Ombudsman appropriate in the circumstances.

The Ombudsman will endeavour to rectify matters by reports to the Department, Authority or proclaimed Council, and failing this he has the right to inform the responsible Minister or Parliament. He is empowered to give appropriate publicity to his reports or recommendations and is required to inform complainants of the result of his investigations. Appropriate protection has been afforded him in the exercise of his powers and functions. Offences against the Act are to be disposed of summarily.

All existing Departments of the Public Service and all bodies, corporate or not created by Act of Parliament, to which members may be appointed by the Governor or a Minister, and not expressly excluded by proclamation, are subject to the jurisdiction of the Ombudsman. He may have his jurisdiction tested by the Supreme Court.

He is required to report annually to Parliament.

**India (Delimitation Act 1972).**—This Act has been passed by Parliament in pursuance of the provisions of Articles 82 and 170 (3) of the Constitution of India which lay down that upon the completion of each census—

(*a*) the allocation of seats in the House of the People to the States,
(*b*) the total number of seats in the Legislative Assembly of each State,
(*c*) the division of each State into territorial constituencies for electing Members to the House of the People and the Legislative Assembly,

shall be readjusted by such authority and in such manner as Parliament may by law determine.

The Act provides for the setting up of a Delimitation Commission for the purpose of effecting readjustment in the parliamentary and assembly constituencies in all the States and the Union territories on the basis of the population as ascertained at the census of 1971 and also lays down certain instructions for the guidance of the Delimitation Commission as to the manner in which such readjustment should be made.

**Sri Lanka (Constitutional Changes).**—The House of Representatives which functioned under the previous Constitution was replaced in 1972 by the National State Assembly.

The duration of the House of Representatives was five years under the previous Constitution. However, under Section 40 (1) of the new Constitution provision has been made to the effect " that unless the National State Assembly is sooner dissolved, every National State Assembly under the Constitution shall continue for a period of six years from the date of its first meeting and no longer, and the expiry of the period of six years shall operate as a dissolution of the National State Assembly."

In the case of the first National State Assembly (which is in operation at present), Section 42 (5) of the Constitution provides that " unless sooner dissolved, the first National State Assembly shall continue for a period of five years commencing on the date of the adoption of the Constitution by the Constituent Assembly."

The provision in the previous Constitution " where after any general election, the Governor General is satisfied that any important interest in the Island is not represented or is inadequately represented, he may appoint any persons, not exceeding six in number, to be Members of the House of Representatives " has been omitted from the new Constitution.

Section 39 (1) of the new Constitution provides " that except as otherwise expressly provided in the Constitution, no court or other institution administering justice shall have power or jurisdiction in respect of the proceedings of the National State Assembly or of anything

done, purported to be done or omitted to be done by or in the National State Assembly."

**Malta (Constitution of Malta (Amendment) Bill).**—This Bill had as its object the abolition of the office of Vice-President of Her Majesty's Constitutional Court and according to the Constitution required a two-thirds majority of the House in order to become law.

The First Reading was agreed to; the Second Reading was carried on Division: twenty-eight in favour, twenty-six against. During the Committee stage, the three clauses of the Bill and its title were all carried. In terms of Section 67 of the Constitution, on 10th January, 1972, Mr. Speaker declared that the Third Reading was negatived on a division, which resulted in twenty-eight in favour and twenty-six against.

**Malta (Abolition of right of appeal to Privy Council).**—An Act was passed by the House of Representatives to provide that decisions of the Maltese courts cease to be subject to appeal to the courts of another country. For this purpose the right of appeal to the Privy Council was abolished with effect immediately following the publication of the Bill. Appeals made before that date were not affected.

**Zambia (One-Party Parliament).**—Following the enacting by Parliament of the Constitution (Amendment) (No. 5) Bill 1972, and the signing of the Bill into law on 13th December, 1972, by the President, Zambia became a One-Party Participatory Democracy. The United National Independence Party became the one and only political party. This meant therefore that the Parliament became a One-Party Parliament. Thus, all former African National Congress Members and one Independent Member came under the umbrella of U.N.I.P. in the One-Party Parliament. The new law also accorded special privilege and protection to the former A.N.C. Members and one Independent Member to retain their seats in Parliament until 31st December, 1973, or until the dissolution of Parliament, whichever is earlier.

**Cayman Islands.**—On 22nd August, 1972, a new Constitution came into effect. This removes nominated Members from the House and provides for four elected to the Executive Council. Previously there were two elected to the Executive Council for various Departments and subjects.

### 2. Procedure

**House of Lords (Short Debates).**—A new type of debate known as a " Short Wednesday Debate " was introduced in 1972. Two of these debates occur on one Wednesday each month in the session up to

Whitsun, and each debate may last for not more than 2½ hours. Private Members submit their subjects, which are shown in a new entry in the Order Paper, and the two subjects each month are chosen by a ballot conducted by the Clerk of the Parliaments.

**House of Lords (Questions for Written Answer).**—Standing Order No. 42 was redrafted and adopted by the House on 17th February, 1972. (*H.L. Journal*, 1971–2, p. 151; *H.L. Hansard*, 17th February, 1972, cols. 317–18.) The redrafted Order reads as follows:

> 42. A question to which an answer in writing is desired may be placed on the Order Paper under the heading " For Written Answer ". The reply shall be printed in the Official Report; *it may be given on any sitting day including that on which the question is handed in.*

The last part of the Order was added to enable Ministers to give written replies to questions on the day on which they are tabled instead of waiting (as previously) until they had been printed on the Order Paper.

**House of Commons (Sub Judice Rule).**—Controversy arose in the House of Commons during 1972 over the application of the rules of the House governing reference to matters awaiting or under adjucation by a court of law. In 1963 these rules were embodied in a Resolution of the House, the effect of which (subject to the discretion of the Chair) is to prohibit references in motions, debates or questions to any matter awaiting or under adjudication in a criminal court, a statutory tribunal of inquiry or a court martial and to any matter under adjudication in a civil court. A matter awaiting adjudication in a civil court, but which has not been set down for trial or otherwise brought before the court, can be referred to " unless it appears to the Chair that there is a real and substantial danger of prejudice to the trial of the case ". The rules do not apply to Bills.

The controversy arose over the application of these rules to proceedings before the National Industrial Relations Court, a new court established under the provisions of the Industrial Relations Act 1971. The court is a civil court empowered to determine industrial relations issues brought before it by employers, employees, trade unions and, in certain circumstances, the Government. In particular the Act provides for emergency procedures whereby the Government can apply to the court for an order temporarily prohibiting a strike in a specified industry or for an order requiring a secret ballot of workers in an industry where a strike is in progress or is threatened.

The Government first used this power in April 1972 in relation to a " work-to-rule " by railwaymen which had totally disrupted the railway services of the country. When the responsible Minister was questioned in the House about the application to the Court, the Speaker warned the House that the matter was technically *sub judice* and that they

" must go very carefully ". After being pressed further, he ruled that it was in order to ask the Minister about the nature of his application to the court, but not about the arguments that might be put forward in support of the application. This ruling caused disquiet in some quarters of the House and by common consent the matter was submitted for consideration to the Select Committee on Procedure.

The Committee's report (Fourth Report of Session 1971–2) was published in June 1972. In it they drew attention to two new developments since the Resolution of 1963 was passed. First, " Information and comment are disseminated more fully and rapidly than ever before, which has thrown into relief restrictions on debate in Parliament on matters of national importance "; and, secondly, there had been an increasing tendency for Ministers to be involved as parties to court proceedings in matters where questions of ministerial policy were involved. In these circumstances they recommended that the time had now come to relax the provisions of the 1963 resolution and to permit reference to civil cases, whether awaiting or under adjudication, provided that the Chair was satisfied that there was no substantial danger of prejudice to the cause. They excepted from this recommendation civil actions for defamation, which are normally tried by a jury, and which they recommended should be subject to the same total prohibition that applies to criminal cases.

In addition to recommending this general relaxation in the *sub judice* rules, the Committee also laid down guidelines for the Speaker in exercising his overriding discretion in relation to the particular problems arising from ministerial applications to the National Industrial Relations Court under the emergency procedures. Before making such an application the Minister is required by the Act to satisfy himself that certain specified conditions apply; in the case of an application for a ballot, for example, he must be satisfied that there are reasons for doubting whether the workers taking part in the strike are taking part in it in accordance with their wishes. His opinion on these points does not have to be justified to the court and cannot be challenged by them. The Secretary of State also has to be satisfied that the strike is likely to be gravely injurious to the national economy, and in this case his opinion is subject to the adjudication of the court. The Committee recommended that in principle the House should be able to discuss the Minister's opinion on both these sets of considerations. They pointed out that the interval between the application and the court's decision would inevitably be brief and that the risk of debate prejudicing the proceedings was correspondingly minimal. They also suggested that the Speaker should, in exercising his overriding discretion, take account of the extent to which general national debate had already taken place on the issues involved before the application was made.

The only points which they recommended excluding from discussion in the House were the details of an order that might be made by the court in response to an application, for example (in the case of an order

for a ballot) the precise question which the strikers might be called upon to answer.

In the event, the House, on the Motion of the Leader of the House, agreed to the recommendations of the Committee in a much modified form. The general relaxation of the *sub judice* rule in relation to civil cases other than cases for defamation was not accepted, and instead the following Resolution was agreed to:

*Resolved*, that—

(1) notwithstanding the Resolution of 23rd July, 1963, and subject to the discretion of the Chair reference may be made in Questions, Motions or debate to matters awaiting or under adjudication in all civil courts, including the National Industrial Relations Court, in so far as such matters relate to a Ministerial decision which cannot be challenged in court except on grounds of misdirection or bad faith, or concern issues of national importance such as the national economy, public order or the essentials of life;

(2) in exercising its discretion the Chair should not allow reference to such matters if it appears that there is a real and substantial danger of prejudice to the proceedings; and should have regard to the considerations set out in paragraphs 25 to 28 of the Fourth Report from the Select Committee on Procedure.

The paragraphs of the Report referred to in the Resolution are those relating specifically to the National Industrial Relations Court; and although the Resolution is not limited to cases before that court, it is drawn in terms which make its application to cases before other civil courts a very remote possibility.

**Australia: House of Representatives (Publication of Evidence taken by a previous Committee).**—The Joint Committee on the Australian Capital Territory was first established in 1956. Its terms of appointment provide for it to inquire into and report upon those matters affecting the Australian Capital Territory which are referred to it by the Minister for the Interior who is responsible for the administration of the Territory. The A.C.T. is unique in that it has no form of local self-government and has one representative only in the House of Representatives. The Committee, therefore, performs a most useful function in conducting its inquiries which are followed closely by the public and media.

Although the Committee normally conducts its hearings in public, it has not made a practice of presenting to Parliament the Minutes of Evidence taken during its inquiries. During recent years, however, the Committee, along with other House Committees, has made use of a power existing under a statute—the Parliamentary Papers Act 1908–63—to authorise publication of evidence taken by it at public hearings. At the end of each day's proceedings, it is formally resolved " That, pursuant to the powers conferred by Section 2 (2) of the Parliamentary Papers Act 1908–63, this Committee authorises publication of the evidence given before it at public hearings this day ". This authorisation is now given to avoid any contempt of the House by the

media or by other persons in publishing the evidence or in making copies of it available even though the evidence has not been reported to the House. In this connection, Standing Order 340 of the House of Representatives provides:

> The evidence taken by any select committee of the House and documents presented to and proceedings and reports of such committee, which have not been reported to the House, shall not, unless authorised by the House, be disclosed or published by any Member of such committee, or by any other person.

A difficulty arose, however, in respect of evidence taken by a previous Committee on the Australian Capital Territory prior to the introduction of the authorisation procedure. This evidence had not been presented to the Parliament and was being eagerly sought following a controversy which had developed in relation to the acquisition and use of freehold land in the Territory—a matter which had been the subject of an inquiry by the previous Committee.

The existing Committee received advice that it had no authority to release, or authorise publication of, the evidence taken by the previous Committee. The Chairman, following a unanimous resolution of the Committee, then wrote to Mr. Speaker requesting that, under the circumstances, he might feel disposed to tabling the evidence. The request was agreed to. By pre-arrangement, the Leader of the House moved for its printing and requests for the evidence were able to be satisfied.

Whilst the procedure for authorisation of the publication of evidence will avoid a recurrence of a situation of this nature, the experience served to illustrate that public access to evidence (other than *in camera* evidence) taken by a Committee is an important part of any Committee inquiry.

(*Contributed by the Clerk of the House of Representatives.*)

**Australia: House of Representatives (General Business).**—Standing Order 104 of the House of Representatives provides that " unless otherwise ordered, government business shall, on each day of sitting, have precedence of all other business, except that on the sitting Thursday alternate to the sitting Thursday to which Standing Order 106* applies, general business shall have precedence of government business until fifteen minutes to one o'clock p.m." Notices for particular general business days are frequently given months in advance and the opportunity to raise matters is keenly sought by private Members on both sides of the House.

During the Second Session of the 27th Parliament which extended from February 1970—November 1972, there were 63 weeks of sitting and the House sat on 59 Thursdays, 57 of which occurred after the

* Standing Order 106 provides for a " Grievance " Debate on each alternate sitting Thursday morning commencing with the first sitting Thursday after the Address in Reply to the Governor-General's speech has been adopted.

Address in Reply had been adopted. It would be expected, therefore, that general business would have had precedence on 28 days, but in fact this occurred only on 14 days.

The principal reason is to be found in a sessional order which it has been customary for the Leader of the House to move during the Budget sittings each year. The order provides that government business shall take precedence of general business on each sitting until the main Appropriation Bill has passed all its stages in the House of Representatives The argument advanced is that Members may raise any matter during the Budget debate and may also raise matters falling within the responsibility of particular departments during consideration in committee of their proposed expenditures.

This sessional order designed to expedite the Government's legislative programme has met some resistance, but possibly less than might have been expected in view of the limited number of general business precedence days available. Perhaps the explanation lies in the regular use made of the adjournment debate when matters irrelevant to the Motion may be raised and in the number of matters of public importance which are submitted to the House for discussion.

(*Contributed by the Clerk of the House of Representatives.*)

**Australia: House of Representatives (Questions without Notice—Allocation of the Call).**—Question time in the House of Representatives is an occasion of especial interest, not only to visitors, the listening public and the news media, but also, in particular, to the private Member. For approximately 45 minutes each sitting, Members may direct questions *without* notice to Ministers relating to public affairs with which they are officially connected or to any matter falling within their administration. With Ministers unaware of what questions may be in store for them, there is an air of expectancy in the Chamber.

In a closely divided and sometimes bitterly contested 27th Parliament, it was not surprising, therefore, when a newly elected Opposition Member, finding difficulty in catching the Speaker's eye, raised the matter of the allocation of the call to ask questions without notice. Under the existing system the Speaker calls Members alternately from the left and the right of the Chair and, by keeping a record of the number of calls given to each Member, allocates them as evenly as possible. In moving that the matter of the distribution of questions without notice be referred to the Standing Orders Committee for determination, Mr. Keating said,

> It boils down to inequitable distribution of questions. The matter should be considered and each side should be allotted questions on the basis of the number of back bench Members rather than on the basis of one for the Opposition and one for the Government.

At that time there were 66 Members of the governing coalition parties and after the appointment of the Speaker and the Ministry

(22 from the House of Representatives), there remained 38 private Members in the Government parties. On the other hand, there were 59 Members of the Opposition.

The House agreed that the matter should be referred to the Standing Orders Committee. The Committee reported, however, that it would " make no recommendation to vary the existing procedure for the distribution of the call during questions without notice ". Statistical data considered by the Committee revealed that during the period under review, each Opposition Member had asked an average of 26 questions, whereas each private Government Member had asked an average of 33 questions. However, a total of 2,383 questions had been asked by Opposition Members compared with 2,204 by private Government Members.

The Committee's report was debated at some length by the House of Representatives and it was agreed that the matter be referred back to the Committee for further consideration. At the dissolution of the House, no further report on the subject had been received from the Committee.

**Australia: House of Representatives (Petitions).**—On 20th April, 1972, the House of Representatives adopted new procedures for the presentation of petitions to the House following consideration of the matter by the Standing Orders Committee. The large number of petitions being presented and the time required for this purpose had given rise to a general feeling that some revision of this time-consuming process was required.

Under the procedure previously existing, each Member having a petition to present was called in turn by the Speaker, stated the identity of the petitioners and indicated the purpose of the petition and then moved

(*a*) that the petition be received,
(*b*) that the petition be received and read, or
(*c*) that the petition be printed (in the event of his wanting to make some action in respect of it).

If the House resolved that the petition be received and read, the Clerk then read the terms of the petition in full. During 1971 the average daily time taken for the presentation of petitions was 5·6 minutes during the autumn sittings, and 8·6 minutes during the Budget sittings (see Table (i)).

TABLE (I): TIME TAKEN FOR PRESENTATION OF PETITIONS DURING 1971

| *Period of sittings* | *No. of sitting days* | *No. of petitions* | *Total time (mins.)* | *Average no. of petitions pres. daily* | *Av. daily time (mins.)* |
|---|---|---|---|---|---|
| Autumn | 30 | 137 | 168 | 4·6 | 5·6 |
| Budget | 43 | 586 | 370 | 13·6 | 8·6 |
| (Total time taken for presentation—8 hrs. 58 mins.) | | | | | |

The new procedure provides that Members shall lodge petitions with the Clerk who shall make an announcement as to the petitions lodged with him for presentation to the House, indicating in the case of each petition the Member who lodged it, the identity of the petitioners and the subject matter of the petition. No discussion of the subject matter of a petition shall be allowed, and every petition shall be deemed to have been received by the House unless a Motion, moved forthwith, that a particular petition be not received, be agreed to. The terms of the petitions are printed in *Hansard*.

Following the introduction of the new procedures on 20th April, 1972, an average of 20 petitions has been presented each day, the proceedings on which have averaged 2·8 minutes per day. This is in marked contrast with the 1971 data given in Table (i) and the pre-20th April data given in Table (ii), which together give an average of 11 petitions presented each day and taking an average time of 8 minutes. In a House which is constantly under pressure in respect of time, this result is quite significant.

Another important change which has been made is that, whereas formerly the House took no steps to ensure the subsequent consideration of the subject matter of any petition, it is now provided that the terms of every petition received by the House shall be referred by the Clerk to the Minister responsible for the administration of the matter which is the subject of the petition. No requirement has been made, however, for Ministers to report to the House on any action taken in connection with petitions referred to them.

TABLE (II): TIME TAKEN FOR PRESENTATION OF PETITIONS DURING 1972

| *Period of sittings* | *No. of sitting days* | *No. of petitions* | *Total time (mins.)* | *Average no. of petitions pres. daily* | *Av. daily time (mins.)* |
|---|---|---|---|---|---|
| Autumn (22nd Feb. to 19th April* | 19 | 307 | 192·5 | 16·2 | 10·1 |
| 20th April* to 31st May) | 14 | 299 | 28·5 | 21·4 | 2·0 |
| | (Total time taken for presentation—3 hrs. 41 mins.) | | | | |
| Budget (15th August to 26th Oct.) | 27 | 514 | 86·5 | 19·9 | 3·2 |
| | (Total time taken for presentation—1 hr. 26.5 mins.) | | | | |

* New procedures introduced on 20th April, 1972.

### 3. GENERAL PARLIAMENTARY USAGE

**House of Lords (Suspension of Standing Orders without notice).**—Standing Order 81 (" Standing Orders not to be made or dispensed without notice ") was amended and adopted by the House

on 17th February, 1972. (*H.L. Journals*, 1971–2, p. 151; *H.L. Hansard*, 17th February, cols. 317–18.) The amended Order reads as follows:

81. No Motion shall be granted for making any new Standing Order, or for dispensing with a Standing Order of the House, unless notice shall have been given in the Order Paper to consider the said Motion:

Provided that on an occasion of grave national emergency the House may, notwithstanding the provisions of Standing Order No. 35, resolve without notice that it is essential for reasons of national security that a Bill (or Bills) should immediately be proceeded with and that the provisions of Standing Order No. 44 should be dispensed with to enable the House to proceed that day with every stage of a Bill (or Bills) which it thinks necessary; and if the Clerk shall have read Standing Orders No. 44 and 81 at the Table and the Motion for the said resolution shall have been agreed to, any such Bill may be passed through all its stages on that day.

The procedure described in the proviso had in fact been used on the outbreak of war in 1914 and 1939, and on the abandonment of the gold standard in 1931. On these occasions the proviso did not exist; it was added in an attempt to regularise the situation.

On 23rd February, 1972, only six days after it had been adopted, the proviso was used for the purpose of passing through the House in one day a Bill to confer on the army in Northern Ireland certain powers *inter alia* to stop and search vehicles which it had been erroneously supposed the army already had.

The basis on which the House had to decide whether the Standing Orders should be suspended without notice rested on what interpretation should be given to the words " an occasion of grave national emergency " and whether they could be said to apply to a situation such as described above. Although the question of interpretation was briefly touched on in debate, no peer objected to what was proposed and the Motion suspending the Standing Orders was carried without a vote. It is worth noting, however, that the Bill in fact received the Royal Assent at two o'clock in the morning of 24th February; and the validity of the Act was, in the ordinary course of law, deemed to have run from the first moment of that day. If the proviso to the Standing Order had not been invoked, the Bill could have passed through all its stages on 24th February, and received the Royal Assent on the evening of that day. In that case its validity would also, in the ordinary course of law, have been deemed to have run from the first moment of 24th February.

**House of Commons (Questions to Ministers).**—Following newspaper allegations that Ministers in the Department of the Environment had authorised civil servants to prepare files of " friendly " questions for tabling by Government supporters, a Select Committee was appointed by the House in January 1972 " to consider the practice and procedure in relation to Questions and Question Time in the House and to recommend what changes might be desirable " (see THE TABLE, Vol. XL, pp. 158–9).

In their report, published in July (H.C. 393, 1971–2), the Committee came to a firm conclusion on the matter of " question rigging ", which had been the direct cause of their appointment. While there was nothing wrong in Members accepting ideas for Questions or draft Questions from outside sources, they said, it was " not the role of the Government machine to seek to redress the party balance of Questions on the Order Paper, and civil servants should not in future be asked to prepare Questions which have this object ". The House agreed to these conclusions on 18th December, 1972.

The Select Committee also took advantage of their wide terms of reference to examine and make recommendations on a number of other problems relating to Questions and Question Time, and several of their suggestions were approved by the House. As a result a stricter system of rationing has now been introduced; a Member now cannot table more than eight Questions for oral answer for any period of ten sitting days ahead, nor can he table more than two such Questions for answer on any day, nor more than one Question to any Minister on any day. As a counterbalance to this rationing of oral Questions, the provisions for Questions for written answer have been improved by a new Standing Order which enables Members, for the first time, to insist on their Questions being answered by a specific date.

A further recommendation of the Committee which was approved by the House was that the Speaker should be authorised to disregard previous rulings of the Chair in relation to the disallowance of Questions. The effect of following these previous precedents had been to impose a rather rigid pattern on the Questions that could and could not be asked, and the Committee were concerned to ensure that in future Questions which complied with the main rules of order should not be disallowed solely because they conflicted with rulings previously given. (*H.C. Deb.* 1972–3, Vol. 848, cc. 992 ff.)

**New South Wales (Committees sitting during Prorogation).**—The Parliamentary Committees Enabling Act (No. 36 of 1972) was assented to on 11th April, 1972. Its purpose was to enable the Legislative Council Committee on Subordinate Legislation and a Select Committee of the Legislative Assembly, inquiring into the Meat Industry, to continue after Prorogation either until conclusion of the inquiry or the Session following that in which they were established.

The two Committees were established by resolution in the Houses concerned on 10th August, 1971, and 24th August, 1971, respectively, during the Second Session of the Forty-third Parliament. The Meat Industry Select Committee Report was tabled in the Legislative Assembly on 22nd August, 1972.

**South Australia (Oath of Allegiance).**—Act No. 62 of 1972 amended the Constitution Act (Section 42) so as to shorten the Oath of

Allegiance required to be taken by Members of the Parliament before they are permitted to sit or vote. The new form of oath is essentially the same in nature and length as that now taken by Members of the British House of Commons.

**South Australia (Public Accounts Committee).**—Act No. 155 of 1972 provided for the appointment of a Parliamentary Committee of Public Accounts. It will consist of five Members of the House of Assembly, of whom two, at least, shall be appointed from the group led by the Leader of the Opposition. The duties of the Committee are:

(*a*) to examine the accounts of the receipts and expenditure of the State and each statement and report transmitted to the Houses of Parliament by the Auditor-General, pursuant to the Audit Act 1921–66 as amended;
(*b*) to report to the House of Assembly with such comments as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the House should be directed;
(*c*) to report to the House of Assembly any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; *and*
(*d*) to inquire into and report to the House of Assembly on any question in connection with the public accounts of the State—
(i) on its own initiative;
(ii) which is referred to it by a resolution of the House of Assembly;
or
(iii) which is referred to it by the Governor or by a Minister of the Crown.

The first Committee will be appointed during the first session of the next Parliament. The salary of the Chairman has been fixed at $1,500 per annum and Members will receive $1,000 per annum.

**Western Australia (Constitutional Relations between the Houses).**—Since the time of Responsible Government in 1890 there have occurred many disagreements between the two Houses concerning the powers of the Legislative Council in respect to Bills which this House may not amend, and during the 1972 Session a question as to whether a proposed amendment was permissible was debated at length.

A Bill to amend the Fire Brigades Act was introduced and passed through all stages in the Legislative Assembly, and was transmitted to the Legislative Council for its concurrence. The subject matter of the Bill was to amend the control structure of the operational staff and to amend the section of the Act dealing with contributions towards expenditure which at the time was shared on the basis of Insurance Companies 64 per cent; Local Authorities 20 per cent; and the State Government 16 per cent. The proposal in the Bill sought to amend these rates to Insurance Companies 75 per cent; Local Authorities and the State Government each 12½ per cent.

During the Committee stages of the Bill in the Legislative Council an amendment was moved to alter the contributions by reducing the proposed amount for Insurance Companies to 7½ per cent; restoring the State Government's amount to 16 per cent; leaving the Local Authorities at 12½ per cent.

A point of order was raised by the Minister in charge of the Bill as to whether the amendment was within the competence of the Legislative Council to make as, in his opinion, supported by advice received from Parliamentary Counsel, the amendment would be increasing a charge or burden on the people.

The Chairman of Committees ruled the amendment to be in order, and the Minister moved to dissent. Having resumed the Chair and listened to debate, the President ruled that the amendment proposed was out of order. Following a lengthy debate on a Motion to dissent from the President's ruling, a vote was taken and the Motion agreed to.

Further debate ensued, the amendment was eventually agreed to, and the Bill was returned to the Legislative Assembly with amendment. The amendment was disagreed to by the Legislative Assembly on the grounds that it was beyond the legislative competence of the Legislative Council to propose such an amendment which increased a charge on the people.

The reasons supplied by the Legislative Assembly for disagreeing to the amendment were not accepted by the Legislative Council, and a further message was transmitted stating that it would be prepared to consider reasons put forward by the Legislative Assembly provided such reasons did not challenge the proceedings of the Legislative Council whilst acting within the competence of its authority.

This message was not considered by the Legislative Assembly and a message to this effect was received by the Legislative Council.

One further attempt was made by the Legislative Council to the effect that it did not want the Bill to be lost and that it would agree to it in its original form provided that the constitutional question as to its powers be referred to a judicial authority to avoid similar disagreements in the future.

The proposition was agreed to by the Legislative Assembly and the Bill was passed.

Clarification of the question of constitutional powers of Upper Houses is a very necessary aspect of parliamentary procedure, and the result of the proposed judicial enquiry is awaited with interest.

**Malta (Speaker Appointed Acting Governor-General).**—At Sitting No. 121 of 13th November, 1972, immediately before the moving of the adjournment Motion, the Speaker, the Hon. Mr. E. Attard Bezzina, stated that as from the next day he was relinquishing his duties as Speaker, since the Government had asked him to occupy the office of Acting Governor-General with effect from the same day, for a brief period during the absence of the Governor-General on an

official visit to London as guest of the British Government. He said that Members were aware that the office of Speaker was not compatible with that of Governor-General and that was the reason for his resignation. He further stated that after the return to Malta of the Governor-General he would again be available to occupy the office of Speaker if it so pleased the House.

The Speaker's short statement was met by applause from the House.

At Sitting No. 127 of 27th November, 1972, the Hon. Mr. E. Attard Bezzina was unanimously re-elected Speaker of the House.

During the period of the resignation of the Speaker the Hon. Mr. N. Laiviera, his deputy, was Acting Speaker.

**Malaysia (Parliamentary Service (Amendment) Act 1972).**—This Act provides:

(*a*) for the establishment of a Committee of Selection for the purpose of selecting and recommending candidates suitable for appointments in Parliamentary Service;

(*b*) for the reconstitution of the Parliamentary Service Advisory Committee.

## 4. Order

**House of Commons (Disorder).**—Two incidents in the House of Commons early in 1972 drew attention to the difficulties faced by the Chair in dealing with disorder and the vulnerability of the House in the face of disturbances deliberately planned in order to disrupt proceedings and attract publicity.

The first, on 20th January, 1972, followed the publication of the quarterly unemployment figures, which showed that the number of persons registered as unemployed had risen to over a million. When the Prime Minister entered the House during Question Time, several Opposition Members set up a loud chant of " Heath out " and " Resign ", which drowned the reply of the Minister who was then attempting to answer a question. A moment or two later, when the Prime Minister rose to reply to the first question addressed to him, the disturbance was redoubled. Members were on their feet shouting across the floor, and one Member crossed the floor and shook his fist in the Prime Minister's face. *Hansard* records four interventions by the Speaker in an attempt to restore order, but the Members concerned kept up a regular chant of " Out, Out " which made it impossible to proceed with business. Accordingly the Speaker employed his power under S.O. No. 26 and suspended the sitting until the time when Questions to the Prime Minister were due to be concluded.

The second incident, although it only involved a single Member, caused even greater concern among Members of the House. It followed a riot in Londonderry, Northern Ireland, in the course of which several people were killed by army troops. On 31st January, 1972, the day

after the riot, the Secretary of State for the Home Department made a statement on the matter to the House and was questioned about it by the Leader of the Opposition and other Members. Miss Bernadette Devlin, the Member for Mid-Ulster, who had been present in Londonderry to the previous day, twice interrupted the proceedings, accusing the Minister of lying to the House; but she was not among the Members called by the Speaker to put a question. When the Speaker attempted to move to the next business, she protested on a point of order that, as an eye-witness of the riot, she had a right to put a question, but the Speaker replied: " The hon. Lady has no such right. She has that right only if she is called on by me."

Miss Devlin then rose from her place, darted across the floor of the House to the Government front bench and attempted to attack the Minister with her fists and nails. She was quickly pulled away by other Members and resumed her place. The Speaker did not intervene; and when a Member asked him to rule whether it was " in keeping with the practices of the House that an hon. Member who has made a violent attack upon other Members of the House should remain seated within the Chamber ", he simply appealed to the House to leave matters of order to him.

There for the moment the matter rested; but the incident, and in particular the Speaker's decision not to take formal notice of the disorder, gave rise to much discussion both among Members of the House and in the press. The following day, therefore, the Speaker made the following statement to the House.

> I have considered what happened yesterday. When strong feelings exist or are aroused there are times when the Chair can appropriately be deaf or indeed blind. In my view I went to the absolute limits of tolerance yesterday, perhaps beyond them. What I now want to make clear is that if an hon. Member uses unparliamentary language or acts in an unparliamentary manner and when ordered to refuses to withdraw or desist, I will not hesitate to act in accordance with the Standing Orders.
>
> The reputation of the House and the position of the Chair are now at risk. That is something which I, so long as I am Speaker, cannot tolerate.

A few Members questioned whether it was right to let the matter drop without an apology from the hon. Member concerned, and another Member mentioned that under Standing Order No. 23 it appeared to be mandatory on the Speaker to require a Member whose conduct is grossly disorderly to withdraw immediately from the House; but the Speaker reminded them that his decisions could only be criticised by substantive motion. No further action was in fact taken in the matter. (*H.C. Deb.*, Vol. 830, cc. 32–43, 239–40.)

**Fiji (Member required to withdraw from Chamber).**—On 23rd November, 1972, Mr. Deputy Speaker, Hon. Ratu David Toganivalu, asked the Hon. A. V. Tora to withdraw a remark which he had just made alleging that the Minister of Finance (Hon. C. A. Stinson, O.B.E.) was a liar. On the previous day Mr. Tora had made the same allegation

and had refused either to apologise or to withdraw the statement; but the Chair had decided to let the matter go because it was a first offence, while warning the Member concerned that he would not tolerate it again. On this occasion the Member again refused to apologise or to withdraw the allegation, and the Deputy Speaker accordingly named him under the provisions of Standing Order No. 41 (6). The senior Member present then moved that the hon. Member so named be removed from the House, and this motion was agreed to without debate. When Mr. Tora refused to withdraw voluntarily from the Chamber, the Deputy Speaker called upon the Serjeant-at-Arms, who finally escorted Mr. Tora out of the Chamber.

## 5. Standing Orders

**House of Lords (Divisions).**—Amendments made for an experimental period to Standing Orders 51 (" Mode of taking divisions ") and 53 (" Voting in the wrong lobby ") were adopted permanently by the House on 16th December, 1971 (*H.L. Journals* 1971–72, p. 87; *H.L. Hansard*, 16th December, 1971, cols. 1275–6, 1306–8). The amended Standing Order 51 reads as follows:

51.—(1) When, on the question being put, a division is called for, the Lord on the Woolsack or in the Chair shall order the Bar to be cleared, and thereupon the Bar and also the division lobbies shall be cleared of strangers, but not the galleries and the space within the rails of the Throne, unless the House shall so order; and the doors at either end of the division lobbies shall be locked.

(2) During the three minutes after the Bar has been ordered to be cleared, two Tellers shall be appointed by the Contents and two by the Not-Contents, and their names communicated to the Clerk at the Table.

(3) If, after the lapse of three minutes, Tellers have not been so appointed either for the Contents or for the Not-contents, a division cannot take place, and the Lord on the Woolsack or in the Chair shall, instead of again putting the question, declare the question decided in favour of the side which has appointed Tellers.

(4) After the lapse of three minutes from the time when the Bar is ordered to be cleared the Lord on the Woolsack or in the Chair shall again put the question, and the doors at the exit from each division lobby shall be unlocked.

(5) A Lord may vote in a division although he did not hear the question put.

(6) On a division, the Contents shall go forth through the door on the right side of the House near the Throne which leads to the right lobby, and shall proceed through the right lobby, and re-enter the House through the door on the right of the Bar; and the Not-contents shall go forth through the door on the left of the Bar which leads to the left lobby, and shall proceed through the left lobby, and re-enter the House through the door on the left side of the House near the Throne.

(7) After the lapse of six minutes from the time when the Bar is ordered to be cleared, the doors of the Chamber shall be locked, and the Lord on the Woolsack or in the Chair shall inform the House or the Committee of the question which is the subject of the division.

(8) One Teller for the Contents and one for the Not-contents shall be appointed for each division lobby without respect to their degree; and Clerks shall be in attendance in each lobby to record the names of the Contents and Not-contents respectively; the Tellers shall count the votes and announce the numbers to the Lord on the Woolsack or in the Chair.

The previous S.O. 51 did not state what the procedure should be in circumstances when Tellers are not appointed before the lapse of three minutes (formerly four minutes) from the calling of a division.

S.O. 53 was amended to correspond with paragraph 5 of the new S.O. 51.

**House of Commons (Privilege: Bills brought from the Lords).**—In the course of their recent report on the process of legislation (Second Report, 1970–1; see THE TABLE, Vol. XL, p. 73) the Procedure Committee recommended that the House of Commons should waive its ancient privileges in respect of financial matters in order to secure that Bills of which the financial provisions constituted the main purpose could be introduced in the House of Lords. A proposal to implement this recommendation was brought before the House in November 1971 but encountered opposition on the ground that it was too sweeping, and was not proceeded with. On 8th August, 1972, however, the House agreed to a new Standing Order which meets the main point of the Committee's recommendation and may contribute towards a better balancing of the annual legislative programme as between the Commons and the Lords.

The effect of the new Standing Order is that the House may proceed with any public Bill brought from the Lords, except a Bill of aids of supplies (that is to say, a Finance Bill, imposing taxation, or a Consolidated Fund Bill, authorising expenditure from the Consolidated Fund); but any Bill brought from the Lords of which the financial provisions constitute the main purpose can only be proceeded with if a Minister has informed the Clerk at the Table of his intention to take charge of it. (*H.C. Deb.* Vol. 174, cc. 1656–60.)

**Canada: Senate (Order of Business).**—Rule 19 was amended to allow questions and the important business of the day to be taken before inquiries and motions.

**Canada: Senate (Length of Appointment of Committees).**—Rule 66 was amended as follows:

(1) At the commencement of each session a Committee of Selection consisting of nine Senators named by the Senate shall be appointed whose duty it shall be to nominate the Senators to serve on the several standing committees.

(2) Unless and until otherwise ordered by the Senate, the Senators so nominated shall, when their appointments are confirmed by the Senate, serve for the duration of that session.

This was the same Rule as had applied before 1969, when the original amendment was made. Committees had been appointed for a session and it was felt then that this caused far too much change in the membership of the committees, and that it would be much better if a committee carried its membership through a whole Parliament. Accordingly, the rule was changed in 1969 so that when Senators were

appointed to a committee, they were appointed for a whole Parliament. Since then, experience has shown that perhaps this was not a wise move and that with the length of modern sessions, it may be better to go back to the old rule under which committees were appointed every session.

**Australia: Senate (Amendments to Standing Orders).**—Volume XL of THE TABLE mentioned (p. 167) the August 1971 Report of the Standing Orders Committee, which recommended a number of changes in the Standing Orders and in Procedure. Most of the recommendations were held over until 1972 for consideration in Committee of the Whole. Resolutions with regard to the Report were agreed to on 22nd March, 1972, and the following amendments were made to the Standing Orders:

*Composition of the Standing Orders Committee* (S.O. 33)

The Senate agreed to raise the number of members of the Committee itself, from seven to eight. The Committee so recommended because the eight Senators who belonged neither to the Government nor the official Opposition had no representation on the Committee.

*Joint Publications Committee* (S.O. 36)

As the administration of the Australian Government Publishing Service was transferred from the Treasury to another department, Standing Order 36 was amended to allow the " relevant Minister " instead of the " Treasurer " to refer matters to the Joint Publications Committee.

*Time limit to speeches during broadcasts* (S.O. 407A)

Standing Order 407A was amended to shorten the time limits of speeches to thirty minutes during the Broadcasting of Proceedings, unless otherwise ordered.

*Procedure in Committee of the Whole on Bills which the Senate may not amend* (S.O. 253)

Section 53 of the Constitution states in part, that:

> The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

Under the old procedure, a Question could have been put to a clause or item of such a Bill—that the vote be agreed to—which, if negatived, would have meant that the Senate had amended a Bill which under the Constitution it could not. Accordingly, the relevant part of Standing Order 253 was amended to read:

> The proceedings in Committee shall be as follows:

The Chairman shall (unless otherwise ordered) call on each clause or item, and the Question shall be put by the Chairman on each clause or item—" That the clause or item be now passed without requests ".

If Motions for requests are moved and passed, the Chairman shall put a further Question—" That the clause or item be now passed, subject to the requests being complied with ".

In these proceedings Standing Order 265 shall not apply.

(Standing Order 265 states that " a Motion contradictory of a previous decision of the Committee shall not be entertained in the same Committee ".)

**Australia: House of Representatives.**—The Standing Orders Committee in its Report of 20th March, 1972 (No. 20 of 1972) recommended to the House that certain practices be varied and certain Standing Orders amended. The Report was presented to the House on 21st March, 1972, and the recommendations were debated and progressively adopted on 18th and 19th April.

(*a*) *Assistant Ministers*

To facilitate the functioning in the House of the recently appointed Assistant Ministers, a number of changes were made.

It was decided that Assistant Ministers, although not being allocated seats on the Ministerial front bench, should be permitted to be seated at the Table when in charge of any business before the House. It was also agreed that Motions or amendments moved by Assistant Ministers need not be seconded. An Assistant Minister, acting on the request of the Minister, would be entitled to take charge of a Bill in Committee and during the remaining stages; but should debate arise on the Third Reading—and this is unusual—the Minister responsible for the Bill should again take charge of the debate.

To enable an Assistant Minister, when leading for the Government in either a discussion on a matter of public importance or a debate on a private Member's Bill, to speak for the length of time previously reserved for Ministers only, the relevant sections of the time limit Standing Order 91 were amended accordingly.

Other Standing Orders were amended to allow Assistant Ministers as well as Ministers to present papers (S.O. 319) and to move without notice, at the time of their presentation, that papers be printed or noted (S.O. 322). S.O. 321, which expresses the rule that a document relating to public affairs quoted from by a Minister, unless stated to be of a confidential nature, shall, if required by any Member, be laid on the Table, was also amended to have application to Assistant Ministers as well as Ministers.

As it was the intention of the Government that questions directed to the Government should be answered by Ministers only, words were inserted in S.O. 143 to preclude Assistant Ministers from being questioned.

(*b*) *Suspension of Standing Orders*

Standing Order 91 was further amended to establish restricted time limits for a debate on a Motion without notice pursuant to S.O. 399 to suspend the Standing Orders. The time for the whole debate is limited to 25 minutes and times for individual Members limited as follows—mover of motion, 10 minutes; seconder (if any), 5 minutes; Member next speaking, 10 minutes; and any other Member, 5 minutes.

(*c*) *Petitions*

The amount of time of the House taken up with the presentation of petitions having increased very significantly during recent years, new streamlined procedures for the presentation of petitions were adopted. In lieu of the former procedure whereby Members individually presented petitions to the House and moved Motions that they be received or received and read, the new procedure required Members to lodge petitions with the Clerk of the House who would acknowledge their receipt to the House in a consolidated form of announcement. The new procedure has effected a very considerable saving in the time of the House. (See page 95.)

(*d*) *Publications Committee*

As the administration of the Australian Government Publishing Service was transferred from the Department of the Treasury the wording of Standing Order 28, where it provided that only the Treasurer could refer inquiries to the Publications Committee, became inappropriate.

The Standing Order was, therefore, amended to omit " Treasurer " and insert " relevant Minister " in its place.

(*e*) *Use of Academic and other Titles by Members*

It was decided that a Member who is entitled to the use of the title " Doctor " or " Reverend " or having a substantive military, academic or professional title, should be allowed, if he so desired, to use the title with his name as it appears from time to time in official House documents. This change did not involve an amendment of the Standing Orders.

(*f*) *Questions without notice—Allocation of the call*

Following its consideration of the matter of the distribution of the call to Members to ask questions without notice, the Standing Orders Committee decided to make no recommendation to vary the existing procedure of calling Members alternately from the Government and Opposition sides of the House. However, in considering the Committee's Report, the House decided on 18th April, 1972, that the matter of the allocation of the call should be referred back to the Committee. (See page 94.)

**Papua New Guinea (Standing Orders).**—A report, together with proposed amendments to the Standing Orders, was tabled by the Standing Orders Committee on 15th June, 1972. On 26th June the House adopted the proposed amendments to the Standing Orders subject to changes.

Most of these amendments were consequent on the constitutional changes of 1971 and the formation, when the Third House of Assembly assembled in April 1972, of a Coalition Ministry commanding the support of a majority of Members, the evolution of the office of Chief Minister and the consequent diminution of the role of the Official Members.

An amendment which is otherwise noteworthy is to S.O. 196. Previously, a Motion or amendment could not be moved if it were the same in substance as a question which had, during the previous twelve months, been resolved in the affirmative or negative, unless the order, resolution or vote on such question had been rescinded. The new Standing Order gives the Presiding Officer a discretion to disallow such a Motion or amendment, or allow it, as he sees fit in the particular circumstances.

By resolution of the House on 13th November, 1972, the time allowed for questions without notice under S.O. 172 was increased from 15 minutes to 25 minutes.

**New Zealand.**—The principal changes made were:

(*a*) The debate on the Estimates is now limited to 16 days, with debates confined to normal sitting hours. Policy may now be discussed.

(*b*) The Whips' Committee may now fix the duration of debates on various stages of Bills. The Speaker terminates the debate at the expiration of time.

Other minor changes were also made to facilitate the smooth flow of business.

**India: Rajya Sabha.**—During 1972 the Committee on Rules recommended certain amendments to the Rules of Procedure and Conduct of Business in the Rajya Sabha. The recommendations were considered and adopted by the House at its sitting held on 1st June, 1972, and the amendments came into effect from 1st July, 1972. The main amendments made are briefly described below:

(*a*) *Committee on Subordinate Legislation*

Under the old rules the Committee on Subordinate Legislation could only scrutinise and report to the Rajya Sabha whether the powers, delegated by Parliament to a subordinate authority to make rules, regulations, bye-laws, etc., had been properly exercised within the framework of the statute delegating such powers. By amending Rules

204 and 209, the scope of that Committee has been enlarged so as to enable it also to scrutinise the rules and regulations, etc., framed under the provisions of the Constitution of India, and report thereon to the Rajya Sabha.

(*b*) *Committee on Government Assurances*

Procedural Rules of the Rajya Sabha did not provide for any Committee on Government Assurances. In regard to the assurances given by the Ministers on the floor of the Rajya Sabha, the Department of Parliamentary Affairs used to collect the necessary information from the Ministries concerned which, in due course, was laid on the Table of the House in the form of statements by the Minister of Parliamentary Affairs. As this practice was not found to be satisfactory, provisions have now been made in the Rules for the setting up of a Committee on Government Assurances by inserting a new Chapter, namely Chapter XVIIA relating to the constitution and functions of the said Committee. In pursuance of these amendments a Committee on Government Assurances was constituted on 1st July, 1972.

**Tamil Nadu: Legislative Council.**—The Select Committee on the Rules of Procedure of the Tamil Nadu Legislative Council, appointed in 1971, presented its report to the House on 25th March, 1972. The Rules, as amended by the Committee, were approved by the House on 3rd April, 1972, and came into force on 7th April, 1972. The following are some of the important changes made by the Committee:

(*a*) *Procedure for the ratificaton of the Constitution Amendment Bills*

In the old Rules, no procedure was prescribed for the ratification of the Constitution Amendment Bills received from the Parliament. Provision has now been made prescribing the procedure to be followed when such messages, together with the Constitution Amendment Bill, are received. New Rules 140–A to 140–C prescribe the procedure for ratification of amendments to the Constitution. As soon as a message is received from a House of Parliament, a copy of the message together with the Bill shall be laid on the Table of the House and a copy thereof sent to the State Government. Thereafter, any Member may, after giving three days' notice, move a resolution that the amendment to the Constitution proposed by the Bill be ratified. A suitable message has to be sent to Parliament after the Council takes a decision on such resolution. Provision has also been made that if no resolution is moved during the session in which the message of the House of Parliament is laid on the Table, the Secretary should send information to that effect to that House of Parliament from which the message was received.

(*b*) *Discussion on Policy Notes and working of Ministries during the Budget*

Under the Indian Constitution, the Annual Financial Statement or " the Budget " of the State for a financial year is laid before both

Houses of a State Legislature. In the Assembly, the Budget is discussed in two parts, *viz.* (1) general discussion on the Budget without any Motion and (2) discussion on individual Demands for Grants before they are voted and granted. In the Legislative Council or the Upper House, individual Demands for Grants are not submitted to the vote of the House. Hence, there is no opportunity to discuss the policies and working of individual Ministries of the Government except during General Discussion. In 1970 it was decided that the Legislative Council might discuss the policy and working of five or more select Ministries every year before the Appropriation Bill was passed and that the Government should place policy notes in respect of those Ministries in the Legislative Council. A specific provision in this regard has now been made in Rule 153-A enabling discussion on such policy notes.

(*c*) *Lapsing of Questions*

Under the old Rule (Rule 9 (b)), all pending notices of questions lapsed on the prorogation of a session of the Council. It was felt that this provision worked great hardship on the Members, as they had to renew most of such notices for the next session. The Committee decided that on prorogation of a session all pending notices and business should lapse except questions, statutory Motions, Bills which had been introduced and resolutions which had been moved in the House; and such business should be carried over to the next session from the stage reached by it in the expiring session, provided that, except in the case of questions, fresh notice should be given for motion regarding the same.

(*d*) *Time-limit for answering questions*

Old Rule 35 provided that questions which had not been disallowed should be entered in the list of questions for a day not earlier than seven clear days from the date on which notice thereof was received. In practice, this was not possible and questions could be included only after receipt of answers from the various departments. This involved great delay and questions could not be answered in time. Accordingly, the new rule has been introduced providing that admitted questions shall be entered in the list of questions on the 42nd day at the latest after the day on which the question is admitted. It also provides for extension of time being granted for two weeks for convincing reasons.

(*e*) *Short-notice Questions*

A self-contained Rule has been incorporated for giving notice of a short-notice question and it provides that no such notice shall be entertained ten days prior to the date of meeting of the House and that only one notice for a day can be given by a Member and that he should also state reasons for putting the question at short notice.

(*f*) *Half-hour Discussion*

Old Rule 41 provided that a half-hour-debate might be allowed by the Chairman on any matter of urgent importance which had been the subject-matter of a question on that day. This has been amplified in the new Rule 41-A providing for the raising of a discussion of a matter which has been the subject of a question, oral or written, answered within five days prior to the date of the notice and also provides for the Member to give such notice in writing two days in advance of the day on which the matter is desired to be raised, briefly stating the point or points he wishes to raise in the discussion.

(*g*) *No-day-yet-named Motions*

The Committee decided to provide for No-day-yet-named Motions being raised. Rules 60-A to 60-G provide for discussion on a matter of general public interest on a Motion made on a definite issue and restricted to a matter of recent occurrence. The Chairman may, if he is satisfied about the urgency, in consultation with the Leader of the House fix a date for discussion on such a Motion.

(*h*) *Presence of non-Members at a meeting of a Select Committee*

Old Rule 103 did not enable a Member to be present at a meeting of a Select Committee if he was not a member of that Committee. The Rule has been amended to enable any Member of the House to be present at a meeting of a Select Committee, if he so desires, without in any way participating in the proceedings of the Committee.

(*i*) *Procedure in the case of Money Bills passed by the Legislative Assembly and received therefrom in the Council*

In 1966 the Rules of Procedure were changed providing for only one reading in respect of a Money Bill. As the Constitution provided for making recommendations only, the Bill was subject to general discussion on a Motion that the Bill, as passed by the Assembly, be taken into consideration for making recommendations. If the Motion was carried, and if there were any recommendations for the clauses, those recommendations were considered and the Bill returned with recommendations made, if any. If no recommendation was made, the Bill was returned to the Assembly with a message that the Council had no recommendation to make. It was felt that the House should have an opportunity to discuss the Bill when the Motion was moved that the Bill be returned to the Assembly with or without its recommendations. The rules have been changed providing for such discussion and for moving a Motion that the Bill be returned after consideration of all the clauses and the recommendations, if any.

(*j*) *Rules Committee*

Rules 191 to 195-A have been framed for constituting a Standing Rules Committee for the House every year. The old Rules provided

only for an *ad hoc* Committee to be constituted whenever a Motion to that effect was made. The new Rules provide for a Standing Committee. The Chairman of the Legislative Council is the Chairman of the Committee. The Committee shall make a Report to the House, and on approval of the Report by the House, the modifications or recommendations will take effect.

**Malaysia: House of Representatives.—**

(*a*) *Adjournment Debates*

Standing Order 17 (1) was amended on 10th May, 1972, to provide that no adjournment speeches be made at the end of a sitting during the first meeting of the session or during the meeting at which the Supply Bill is considered.

At the first meeting of the session the King delivers the Royal Address, which is then debated by Members who may speak on a wide range of subjects. Similarly, during the meeting at which the Supply Bill is considered, Members have ample opportunity to speak on a wide range of topics. Adjournment speeches made at the end of a sitting of the House are, therefore, considered unnecessary during these two meetings.

(*b*) *Limitation on Questions*

Standing Order 22 was amended to prevent Members asking more than 20 oral questions and 5 questions for written reply on any sitting day. As the number of questions for oral reply that could be disposed of per sitting day during the one-hour period of " Question Time " is, on average, 10 to 15 questions, as against a bigger number of such questions tabled for a day's sitting, it is expected to reduce the number of unanswered questions to a minimum.

**Malawi.**—Certain Standing Orders were amended and adopted by the House on 1st March, 1972. The main purpose of amending Standing Orders 18 (1) and 18 (2) was to enable Parliament to sit more hours on each sitting day so that the Members can carry out business within a shorter period.

**Cayman Islands.**—Standing Order 66 (2) was amended to provide for a quorum of seven Members in the Finance Committee as opposed to the previous figure of ten.

## 6. Electoral

**Jersey (Voting age).**—By a law passed in April, 1972, the voting age in public elections was reduced from 20 to 18 years.

**Australia (Age for voting).**—The proceedings of the 27th Parliament (1969–72) were notable for the several attempts made by the Opposition Party (the Australian Labour Party) in both Houses to pass legislation to give the right to vote at 18 instead of 21 years of age. In the House of Representatives the Leader of the Opposition (Mr. Whitlam) had introduced two Bills, the Adulthood Bill 1970 and the Commonwealth Electoral Bill 1972 for this purpose. The Adulthood Bill 1970 was similar to a Bill of the same title which Mr. Whitlam had introduced in the previous Parliament. In each case after limited debate the Second Reading debate was adjourned and was not resumed. An Opposition attempt prior to the winter adjournment to suspend so much of the Standing Orders as would prevent the Commonwealth Electoral Bill 1971 (a Government measure) being called on and given precedence until disposed of was defeated by the Government. It does appear that had this attempt been successful the Opposition would have moved an amendment to lower the voting age with the object of forcing a vote on the matter.

The next step to gain the vote for the 18-year-olds took place in the High Court during the Parliamentary winter adjournment. Section 41 of the Australian Constitution states:

> No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

The Parliaments of the States of South Australia and Western Australia have passed laws to give the right to vote to 18-year-olds and although the New South Wales Parliament has passed a similar law it has not yet come into operation as it has not been proclaimed. Three persons of 18 years of age resident in South Australia made applications to the Commonwealth Electoral Office, pursuant to Section 41 of the Constitution, to be enrolled as Commonwealth electors. The applications were rejected and the applicants took action in the High Court to assert the validity of their claims for enrolment. The hearing of the case centred largely on the interpretation of the term " adult person ". The judgment of the Court was " An ' Adult person ' within the meaning of Section 41 of the Constitution is a person who has attained the age of twenty-one years ".

When the Parliament resumed after the winter adjournment for its final sittings the political battle to gain the vote for the 18-year-olds moved to the Upper House, the Senate, in which House the Government did not have absolute control. The Leader of the Opposition in the Senate (Senator Murphy) very soon introduced a second Commonwealth Electoral Bill 1972 for this purpose.

The debate on the Second Reading of the Bill was continued for periods on three sitting days and a second reading amendment was moved (but not voted on) to express an opinion in favour of the electoral

system of proportional representation for voting for the House of Representatives.

With the next general elections for the House of Representatives drawing closer it became evident that there was little likelihood of the legislation passing the Senate, let alone the House of Representatives. This in spite of the fact that the Senate Opposition Leader moved unsuccessfully on six occasions to suspend the Standing Orders to have the Bill called on.

The two Bills in the House of Representatives and the Bill in the Senate thus remained on the Notice Papers of the Houses under General Business until they lapsed with the dissolution of the House of Representatives in November 1972.

The attitude of the Liberal Party was outlined by former Prime Minister McMahon in his policy speech of 14th November, 1972. Mr. McMahon said in part:

> In our view, the age at which the franchise shall be exercised should be the same throughout Australia. Therefore, we intend to consult with the States after the elections concerning the introduction of the franchise for 18-year-olds.

The Australian Labour Party, as part of its election policy, undertook, if returned to power, to grant the vote to 18-year-olds. The sequel is that the new Prime Minister (Mr. Whitlam) in a press conference on 9th January, 1973, announced that his Government will introduce legislation to extend the franchise for Federal elections to 18-year-olds and lower the age for candidature to 18. While this legislation is assured of passing the new House of Representatives, its fate in the unchanged Senate will be awaited with great interest.

**South Australia (Electoral Reforms).**—Act No. 136 of 1972 provided for:

(*a*) the appointment of an Assistant Returning Officer to whom the Returning Officer may delegate any of his statutory powers, duties and functions;
(*b*) the correction of claims for enrolment;
(*c*) the Returning Officer to inform candidates for election as soon as practicable whether the nomination is in order;
(*d*) the Returning Officer to disallow a ballot paper except the first in certain cases;
(*e*) illiterate voters or those suffering physical disability or infirmity to use the services of the presiding officer or other person brought into a voting booth for the purpose of assisting in the exercise of the vote;
(*f*) " How-to-Vote " cards, in the prescribed form, to be exhibited in polling booths if lodged with the presiding officer at least 48 hours before the commencement of the poll. The relative positions of the how-to-vote cards will be determined by lot.

**Victoria (Disqualification from Membership).**—On 30th November, 1972, the Constitution Act Amendment (Disqualification) Act was introduced and had its Second Reading. The purpose of this Bill was to vary the disqualification penalties of Section XI of the Constitution Act and Section 73 of the Constitution Act Amendment Act 1958 whereby any person who had been convicted of any felony was disqualified from being a Member of the Assembly or Council. The provision was altered to provide that a felony committed by any such person while under the age of 18 years would not disqualify from being qualified to be elected as a Member.

**Fiji (Electoral System).**—The bicameral Fijian Parliament is composed of:

*The Senate*, consisting of 22 Members appointed by the Governor-General, of whom:

8 are nominated by the Council of Chiefs;
7 nominated by the Prime Minister;
6 nominated by the Leader of the Opposition;
1 nominated by the Council of the Island of Rotuma.

Appointments are for six years, 11 Members retiring every three years.

*The House of Representatives*, consisting of 52 Members elected for five years on the following basis:

*Fijian:* 12 Members elected by voters on the Fijian Communal Roll; 10 Members elected by voters on the National Roll.

*Indian:* 12 Members elected by voters on the Indian Communal Roll; 10 Members elected by voters on the National Roll.

*General* (persons neither Fijians, other Pacific Islanders, nor Indians; *e.g.*, Europeans): 3 Members elected by voters on the General Communal Roll; 5 Members elected on the National Roll.

The " National Roll " consists of all registered electors on the three Communal Rolls.

Any person may be registered as voter on a Roll if he is a citizen of Fiji and has attained the age of 21 years. The insane, those owing allegiance to a State outside the British Commonwealth, those under sentence of death or imprisonment for a term exceeding 12 months, and those guilty of offences connected with elections may not be registered.

Rolls are revised annually. Voting is not compulsory.

Any voter shall be qualified to be elected as Member of the House of Representatives. Disqualified, however, is one who is an undischarged bankrupt; who holds a public office; who has in the preceding three years held certain government posts; who is interested in certain government contracts; or who holds any office connected with an election to the House. Candidatures must be submitted on a nomina-

tion paper signed by 6 to 8 voters of the subject constituency, and accompanied by a deposit of $100.

To be qualified to be appointed to the Senate one must be registered as a voter on one of the three Communal Rolls. The same disqualifications apply as for candidates to the House, except that of interest in government contracts. Further, a prospective Senator cannot also be a Representative.

Fiji is divided into 12 constituencies, each returning one communally-elected Fijian Member; into 12 constituences each returning one communally-elected Indian Member; and into 3 constituencies each returning one communally-elected General Member. For the National Roll elections there are 10 constituencies, each returning a Fijian and an Indian Member, and these are combined into five pairs for the purpose of each returning one General Member. Constituency boundaries are delimited by a Constituency Boundaries Commission.

Each voter is entitled to cast four votes: one in respect of the Communal Roll constituency in which he is registered, and three in respect of the National Roll constituencies in which he is registered.

A by-election is held to fill a seat which becomes vacant between general elections.

### 7. Emoluments

**Northwest Territories.**—The Council Ordinance of the Northwest Territories was amended at the first Session in 1972 to provide for:

(*a*) the payment of members' annual indemnities in monthly instalments instead of quarterly instalments;

(*b*) an increase of $10.00 in the *per diem* expense allowance paid to Members of Council during Sessions who live beyond commuting distances from the place of sitting;

(*c*) the establishment of a $15.00 *per diem* expense allowance to be paid to Members during Sessions who live within commuting distance of the place of sitting;

(*d*) in connection with the payment to Members of Council of an indemnity of $50.00 per day while attending intersessional committee meetings or other meetings when Council is not in Session:

(i) payment on the basis of the total number of days that a Member is absent from his community of residence;

(ii) an increase of $10.00 in the amount of the *per diem* expense allowance which is paid for attendance at the type of meetings referred to in (*d*) (i) above.

**Australia (Members' Salaries and Allowances).**—As recorded in Vol. XL of The Table (1971, pp. 173–5), an independent inquiry was conducted in 1971 to examine and report upon the salaries and allowances of Senators, Members of the House of Representatives,

Ministers and office holders of the Australian Parliament. It was also reported that, as general agreement could not be reached between the Government and Opposition on the increases recommended and those proposed in three Bills introduced to give partial effect to the recommendations, debate on the Bills was stood over until 1972.

No further action was taken on the Bills during 1972 and they lapsed with the dissolution of the House prior to the general elections for the House of Representatives. It is probably fair to say that there was general disappointment among most, if not all, Senators and Members that agreement could not be reached in order that their salaries could be adjusted to a more realistic level.

They received some small consolation, however, when it was decided to effect increases in travelling and living-away-from-home allowances in accordance with those recommended by the Inquiry. The allowance paid to Senators and Members for days spent in Canberra or in travelling to or from Canberra to attend sittings of the Parliament, party meetings, party committee meetings, or meetings of Parliamentary Committees in Canberra was increased from $15 to $22 per day. The allowance for Parliamentary Committee Members for meetings away from Canberra was increased from $21 to $25 a day. The travelling allowances paid to Ministers, Presiding Officers and Leaders and Deputy Leaders of parties for other than whole days spent in Canberra, were adjusted as follows:

| | *Old* $ | *New* $ |
|---|---|---|
| Prime Minister | 36 | 42 |
| Senior Ministers and Leader of the Opposition in the House of Representatives | 30 | 36 |
| Ministers, Presiding Officers, the Deputy Leader of the Opposition in the House of Representatives and the Leader of the Opposition in the Senate | 24 | 33 |
| Deputy Leader of the Opposition in the Senate, Leader of the Third Party in the House of Representatives and Leader of the Second non-Government Party in the Senate | 21 | 28 |

The increases came into effect on 26th April, 1972, and required no legislative amendment.

(*Contributed by the Clerk of the House of Representatives.*)

**New South Wales (Members' pension rights).**—The Parliamentary Contributory Superannuation Bill was amended to make certain provisions for Members who resign to take up Crown appointments and whose pension rights are suspended upon acceptance of an office of profit. Provision is now made for a former Member, upon ceasing to hold a Crown appointment, to have the right to convert part of his pension to a lump sum. It also removes a possible doubt as to the right of a widow of a former Member, who died whilst holding a Crown appointment and whose pension was temporarily suspended, to receive a pension.

(*Contributed by the Clerk of the Legislative Assembly.*)

**India (Salaries and Allowances of Members of Parliament (Amendment) Act 1972).**—The main object of the Act was to make available to the Members of Parliament representing the Union territory of the Andaman and Nicobar Islands and the Union territory of Laccadive, Minicoy and Amindivi Islands the facility of a free non-transferable pass which would entitle them to travel at any time by the highest class by steamer to and from any part of his constituency and any other part of his constituency or the nearest port in the mainland of India. The Act also provided that such a Member would be entitled to one free pass for one person to accompany him and travel by the lowest class by steamer and also one free non-transferable pass for his spouse to travel by the highest class by steamer to and from the usual place of residence of the Member in his constituency and nearest port in the mainland of India, once during every session.

(*Contributed by the Secretary of Lok Sabha.*)

**Andhra Pradesh (Parliamentary Allowances).**—The Chairman of the Regional Committee used to be entitled to the same salary and allowances and facilities as were allowed to a Deputy Speaker. The State Government decided that the status of the Chairman of the Regional Committee should be brought on par with that of a Minister in matters of salary, allowances and perquisites. Accordingly the provisions of the Andhra Pradesh Payment of Salaries and Removal of Disqualifications Act 1953 were suitably amended.

Under the Andhra Pradesh Speaker and Chairman Travelling Allowance Rules 1961, the Presiding Officers of the State Legislature were eligible for travelling allowances for journeys undertaken by them in connection with the following specific purposes only:

(i) for visiting other Legislatures, either within or outside India;
(ii) for participating in any public function or any function arranged by the State Government or local authority or for receiving a civic address within the State;
(iii) for attending a Conference or Committee of Presiding Officers of Legislatures, whether held within or outside India;
(iv) tours within the State to various places of developmental activities and the like to acquaint themselves with the progress of schemes, projects, etc., whenever they consider necessary.

The State Government has now decided to treat the Presiding Officers of the Legislature on a par with Ministers in regard to the admissibility of travelling allowances, with the result that they can now go anywhere in India on public business. Accordingly, the provisions of the Andhra Pradesh Speaker and Chairman Travelling Allowance Rules 1961 were suitably amended.

**Malaysia (Increase in Allowances).**—The Parliament (Members' Remuneration) Act 1960 was amended to increase the subsistence allowance payable to Members from thirty-five dollars to fifty dollars per day when attending meetings of the House or any Committee thereof.

**Malaysia (Pension Disqualification).**—The Members of the Administration and Members of Parliament (Pensions and Gratuities) (Amendment) Act 1972 provides that pension or gratuity shall not be paid to M.P.s who have become disqualified for being Members of either House under circumstances described in para (*e*) or (*f*) of Article 48 of the Constitution. This amending Act was passed by the House of Representatives and the Senate on 10.2.1972 and 18.2.1972 respectively.

**St. Lucia (Retirement Allowances).**—The Retiring Allowance (Legislative Service) Act 1972 providing for a gratuity to Ministers and elected Members was passed by the House on 21st July, 1972.

Under the Bill a Minister who has served for a period of six years shall be paid a gratuity at the rate of 25 per cent of the aggregate of all monies payable throughout the period he served.

A Retiring allowance to elected Members who have served for 15 years shall be at the rate of one-half of the highest annual salary paid.

# XII. RULINGS OF THE CHAIR IN THE HOUSE OF COMMONS: 1972

**Adjournment of the House under S.O. No. 9 (Urgent Debates): Motions allowed by Mr. Speaker.**

—Northern Ireland (31st January, 1972; *Hansard*, Vol. 830, c. 55–6)
—Northern Ireland (16th March, 1972; Vol. 833, c. 777).
—Vietnam (11th May, 1972; Vol. 836, c. 1577–8)
—Industrial situation following the committal to prison of five dockers (Vol. 841, c. 1324–5)

**Amendments may be moved by any Member.**

The Chairman (in Committee on a Bill) ruled, on 1st March, 1972:

Anyone can move an amendment on the Notice Paper. [The hon. Member] will recollect that on Standing Committees hon. Members who are not even on the Committee can put down amendments and have them moved by hon. Members who are on the Committee. . . . So far as the rules of order go, it is perfectly in order for any hon. Member to move another hon. Member's amendment . . . if he wishes to. It may be unusual, but it is not out of order. (Vol. 832, c. 599.)

**Conduct of Members cannot be raised later except on substantive Motion.**

When a Member asked the Speaker to comment on the behaviour of certain Members during a debate on the previous evening, the Speaker replied:

The rules of the House are clear. If there is a matter to be complained of and it is raised at the time, the Chair has to deal with it. I expressed my opinion, which appears in *Hansard* this morning, on the general situation last night. I said then that it brought no credit upon the House. But no matter of order was raised with me then, and the rules are that any criticism of the conduct of other right hon. and hon. Members must be by substantive Motion. If a Motion is tabled and there is time to debate it, that is when the matter must be discussed. (18th February, 1972; Vol. 831, cc. 771–3.)

**Debate: Quoting by Ministers of advice given by officials.**

The Speaker was asked if a Minister was free to quote out of context advice received from an official, without laying on the Table a full record of the conversation or other context in which the advice was given. He replied on the following day:

If the advice quoted is extracted from a document, the rule of the House is that the document should be laid on the Table, if it can be done without injury to the public interest . . . (*Erskine May*, p. 421). I know of no instance,

however, where this rule has ever been applied to a conversation, and I do not think that such an application would be easy in practice.

He later added:

. . . there is nothing in itself disorderly in the communication to the House by a Minister of the advice which he has received from any quarter. Whether it is prudent or desirable that he should do so is a matter upon which he must make up his mind in each particular case. (7th December, 1972; Vol. 847, c. 1685–7.)

**House of Commons (Access): No general right of access by public to House.**

A man, charged with obstruction, had been remanded on bail on condition that he did not enter the city of Westminster. The question was raised whether the man did not have a constitutional right of access to the House. Mr. Speaker would not enter into the merits of the case, which was *sub judice*, but went on:

As to the validity of a condition imposed by a court when granting bail which, in effect, prevents the person charged from having access to this House, and as to interference with what is called the right of access to this House, there is, in my view, no such general right of access. Sessional Orders impose a duty on the Commissioner of Police so far as Members of this House are concerned. It is obviously sensible and convenient that everyone with any responsibility should do his best to ensure that constituents and others are able to come here to talk to hon. Members. The Services Committee has considered this matter. But, in my view, there is no such right of access, the infringement of which involves privilege. That is my view, firmly held, but I may be wrong, and I would welcome consideration of the matter, when convenient, by the appropriate Select Committee. (3rd May, 1972; Vol. 836, c. 392.)

**Private Members' Bills: Deferment by Members other than Member in charge.**

A Member complained that when, in his absence, his Bill had been called over on a Friday at 4 p.m., another Member (who objected to the Bill) had deferred it until the last Private Members' Bill Friday. The Speaker ruled:

The deferment of a Bill in this way, though rare, is not unprecedented. . . . On 26th May, 1937, Mr. Speaker Fitzroy, when a similar incident was brought to his notice after it had occurred, strongly deprecated the use of this method for killing a Bill by an opponent as contrary to the established usage of the House. I entirely agree with my predecessor, and state that in future if objection is taken to a Bill the Chair will not accept its deferment to a distant date unless so requested either by the hon. Member in charge of the Bill or by another hon. Member known to be acting with his authority. (9th March, 1972; Vol. 832, c. 1672–3.)

## XIII. EXPRESSIONS IN PARLIAMENT, 1972

The following is a list of examples occurring in 1972 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may succinctly be done; in other instances the vernacular expression is used, with a translation appended. The Editors have excluded a number of instances submitted to them where an expression has been used of which the offensive implications appear to depend entirely on the context. Unless any other explanation is offered the expressions used normally refer to Members or their speeches.

**Allowed**

" Common drunks " (*St. Lucia Hans.*, 17.3.72)
" Funny " (*Tamil Nadu L.A.*, XX, 45)
" He might have something else to wash, and there is no need for me to specify " (*Can. Com.*, 15.6.72)
" Lack of commonsense " (*Tamil Nadu L.A.*, 8.12.1972)
" Professional quack " (*N.S.W.L.A.*, p. 635)
" Rubber stamp it " (*St. Lucia Hans.*, 26.5.72)
" The small mind of the Opposition " (*Malta*, Sitting 133, 11.12.72)

**Disallowed**

" Anachronism " (of the Upper House) (*Tamil Nadu L.A.*, XVIII, 723)
" Animosity, inciting racial " (*N.Z. Hans.*, (vol. 380, p. 2142)
" Apparently it has become part and parcel of a corrupt practice of the government " (*N.S.W.L.C.*, Vol. 98, p. 5604)
" Besmirch " (*N.Z. Hans.*, Vol. 380, p. 1952)
" Betrayal " (*Gujarat Procs.*, Vol. 34 c. 542)
" Big, fat slob " (*Q'ld. Hans.*, p. 1571)
" Black pig iron " (of a Minister) (*N.S..WL.A.*, p. 2396)
" Bloody liar " (*Q'ld. Hans.*, p. 429)
" Bogus " (*India L.S.*, 16.3.72, c. 19)
" Brazen faced " (*Malta*, Sitting 80, 31.5.72)
" Brave, not enough " (*N.Z. Hans.*, Vol. 381, p. 2700)
" Brute " (*Gujarat Procs.*, Vol. 34 c. 325)
" Buffoonery " (*Tamil Nadu L.A.*, 8.12.1972)
" Bullshit " (*Fiji Parl. Deb.*, 1972, p. 257)
" Cheap leadership " (*Gujarat Procs.*, Vol. 35 c. 593)
" Communism, people like you who lean to " (*Aust. Sen. Hans.*, Pt. I, pp. 1842–3)
" Contemptible " (*N.Z. Hans.*, Vol. 379, p. 1123)

" Courage, lacks " (*N.Z. Hans.*, Vol. 381, p. 3515)
" Coward: You are a low " (*N.Z. Hans.*, Vol. 378, p. 277)
" Crocodile tears " (*Tamil Nadu L.A.*, XVII–84, XXIII–436–7)
" Cur " (*Aust. Sen. Hans.*, P. II, p. 1705)
" Daniel is coming to judgment " (*R.S. Deb.*, 6.4.1972, col. 106)
" Defaming under privilege " (*Aust. Sen. Hans.*, Pt. I, p. 2041)
" Deliberately distorted " (*Can. Com.*, 26.5.72)
" Deliberately misleading " (*Can. Com.*, 28.6.72)
" Delirium " (*Gujarat Procs.*, Vol. 38 c. 408)
" Despicable " (*N.Z. Hans.*, Vol. 379, pp. 1122, 1628, Vol. 381, p. 3214)
" Dictators " (*N.Z. Hans.*, Vol. 380, p. 2261)
" Dirty, filthy snide answer " (*Q'ld. Hans.*, p. 670)
" Dirty little mind " (*N.Z. Hans.*, Vol. 379, p. 1278)
" Disgrace to the Senate " (*Aust. Sen. Hans.*, Pt. II p. 2067)
" Distortion, deliberate " (*N.Z. Hans.*, Vol. 379, p. 1242)
" Double dealing " (*N.Z. Hans.*, Vol. 379, p. 1251)
" Duplicity " (*N.Z. Hans.*, Vol. 381, p. 2936)
" Election agent " (of a State Governor) (*India L.S.*, 3.4.72, c. 248)
" Fanatic, adventure of a " (*Zambia P.D.*, Vol. 29, c. 404)
" Fantastic nonsense " (*R.S. Deb.*, 13.4.72, col. 194)
" Fascist element " (*N.Z. Hans.*, Vol. 379, p. 1239)
" Force a Bill through this House on wrong information and on deceit " (*Aust. Sen. Hans.*, Pt. I, p. 1295)
" Garbage " (reference to Minister's speech) (*Q'ld. Hans.*, p. 2157)
" Gentlemen " (*Zambia P.D.*, Vol. 29, c. 93)
" Gigantic swindle " (*N.Z. Hans.*, Vol. 379, p. 897)
" Half truth " (*N.Z. Hans.*, Vol. 379, p. 1244)
" Harshness " (*Gujarat Procs.*, Vol. 34, c. 543)
" Honest: There is not an honest man on the other side " (*N.Z. Hans.*, Vol. 378, p. 279)
" How much did you get out of it?" (*Aust. Sen. Hans.*, Pt. II, p. 315)
" Humbug " (*Aust. Sen. Hans.*, Pt. II, p. 1084)
" Hypocritical " (*Aust. Sen. Hans.*, Pt. II, p. 1095)
" Ill-gotten gains " (*N.S.W.L.A.*, p. 139)
" Insulting " (*N.Z. Hans.*, Vol. 380, p. 2116)
" Lie, That is another " (*N.Z. Hans.*, Vol. 380, p. 2109)
" Lie, Damnable " (*N.Z. Hans.*, Vol. 380, p. 2409)
" Lie " (*Zambia P.D.*, Vol. 29, c. 1001)
" Loafers " (*M.P.V.P.*, 14.7.72)
" Loud-mouthed mug " (*Q'ld. Hans.*, p. 2236)
" Member directed from outside the House " (*N.Z. Hans.*, Vol. 379, p. 854)
" Misled by Cabinet Ministers " (*N.Z. Hans.*, Vol. 380, p. 2175)
" Misleading, deliberately " (*N.Z. Hans.*, Vol. 381, p. 3502)
" Mob, I wouldn't apologise to that " (inciting disobedience to the Chair) (*N.Z. Hans.*, Vol. 380, p. 2261)

" Mob decision " (*Zambia P.D.*, Vol. 31, c. 136)
" Modus operandi. The member resorts to any " (*Gujarat Procs.*, Vol. 38, c. 144)
" Mongering " (*M.P.V.P.*, 15.12.72)
" Murderers, they are (Members of a party) (*N.S.W.L.A.*, p. 978)
" Nasty old men running the Government " (*N.Z. Hans.*, Vol. 379, p. 1173)
" Notorious " (*Tamil Nadu L.A.*, XV–623–4)
" Old bird " (*M.P.V.P.*, 14.7.72)
" Old Boys " (*Zambia P.D.*, Vol. 29, c. 62)
" Paragon, you are a of justice " (*Malta*, Sitting 113, 25.9.72)
" Phew " (*Zambia P.D.*, Vol. 29, c. 140)
" Politically immoral " (*Aust. Senate Hans.*, Pt. II, p. 1257)
" Polluting the minds of the public " (*N.Z. Hans.*, Vol. 378, p. 805)
" Posing " (*Gujarat Procs.*, Vol. 34 c. 950)
" Ridiculous and shameful " (of a Minister) (*R.S. Deb.*, 6.4.72, col. 205)
" Sanctimonious hypocrite " (*Aust. Sen. Hans.*, Pt. II, p. 1067)
" Scarecrow causes no fear " (*M.P.V.P.*, 14.7.72)
" Servile Election Commission " (*India L.S.*, 3.4.72, c. 244)
" Sexual intercourse " (*Zambia P.D.*, Vol. 29, c. 177)
" Shady, anything that is you want to put under the table " (*Aust. Sen. Hans.*, Pt. I, p. 2029)
" Shabby stunt " (*N.Z. Hans.*, Vol. 379, p. 1271)
" Shut your mouth " (*Q'ld. Hans.*, p. 2124)
" Sit down, you mongrel " (*N.S.W.L.A.*, p. 2871)
" Smear " (*N.Z. Hans.*, Vol. 380, p. 1952)
" Snide comments " (*N.Z. Hans.*, Vol. 381, p. 2700)
" Snivelling remark " (*Aust. Sen. Hans.*, Pt. II, p. 1288–9)
" Snotty nose " (*Q'ld. Hans.*, p. 92)
" Stick to the truth " (*N.Z.Hans.*, Vol. 381, p. 3511)
" Stranger to the truth " (*N.Z. Hans.* Vol. 380, p. 2353)
" Stupidity " (*M.P.V.P.*, 19.12.72)
" Tell the truth " (*N.Z. Hans.*, Vol. 379, p. 1678)
" Tell us wholesale lies " (*Aust. Sen. Hans.*, Pt. I, p. 154)
" Thief and a brigand " (*Malta*, Sitting 64, 27.3.72)
" Treachery " (*M.P.V.P.*, 19.7.72)
" Truth, distortion of " (*N.Z. Hans.*, Vol. 379, p. 1173)
" Tune of, Labour Government would dance to the " (*N.Z. Hans.*, Vol. 379, p. 1076)
" Twisted " (*N.Z. Hans.*, Vol. 379, p. 1116)
" Twisting my remarks " (*N.Z. Hans.*, Vol. 381, p. 3239)
" Underhand " (*N.Z. Hans.*, Vol. 381, p. 3117)
" Untrue " (*N.Z. Hans.*, Vol. 379, p. 1097)
" Untruthfulness " (*N.Z. Hans.*, Vol. 379, p. 1650)
" Untruth " (*Aust. Sen. Hans.*, Pt. I, p. 2291)
" Untruth, He told an " (*N.S.W.L.C.*, Vol. 98, p. 5604)

" Upstart " (*N.Z. Hans.*, Vol. 379, p. 1237)
" Vandals " (University students) (*R.S. Deb.*, 17.11.72)
" Wasting time " (Zambia P.D., Vol. 29, c. 147)
" Welsh " (*N.Z. Hans.*, Vol. 378, p. 754)
" Who came in (to Parliament) by a ballot clerk's error " (*N.S.W.L.A.* p. 2208)
" Will not the face of the Prime Minister be blackened " (*India L.S.*, 17.8.72, c. 215)
" Why don't you go back to bouncing cheques and go to Court " (*N.S.W.L.A.*, p. 1528)
" Yes men " (*Gujarat Procs.*, Vol. 36, c. 919)
" You make me fed up " (to the Speaker) (*Malta*, Sitting 111, 19.9.72)
" You stole the files and the police came to take them away " (*Malta*, Sitting 60, 1.3.72)

## XIV. REVIEWS

*The European Parliament:* Structure, procedure and practice. Sir Barnett Cocks (London, Her Majesty's Stationery Office, 1973, £6·75).

In the years in which Britain remained on the threshold of the European Communities, it had time to observe their structure, workings and development. British political observers, economists and scholars devoted considerable and at times ardent attention to the subject, and in the last few years the English press and English publications have given more space to Community problems and the debate surrounding them than the press of some Member States. After its failure in 1951 to join the Coal and Steel Community, the first of the three European organisations (whose establishment it had encouraged), Britain very soon realised that the European Community was far from being a traditional international organization: it had not simply set itself general goals to be achieved through an institutionalised, wide-ranging and sustained dialogue with no real commitment but had also and above all acquired the power to enact regulations and laws in specific economic, commercial, financial and social fields. In short, the European Community legislated and its laws and regulations were automatically enforceable in all the Member States.

Britain undoubtedly needed some time to recover from its astonishment at seeing six sovereign states submitting (sometimes with little enthusiasm) to decisions which, though reached by institutions in which each of them had a say, were dictated by common necessities that threatened to upset national structures and in some cases encroached on immediate national interests. In its slow and difficult progress, the Community even succeeded in weathering a number of political and institutional crises which some well-informed observers had described as the final, mortal blow.

Faced with this European Community, exercising effective legislative power, it is hardly surprising that British observers paid particular attention to the democratic character of its institutions. For Great Britain, the continental idea of the separation of executive and legislative power is neither familiar nor constitutional. Its government and parliament are completely integrated and in the British political system the power of decision is always exercised through and with parliament.

It was therefore to be expected that British observers would be especially interested in the Community institution which should in theory guarantee the democratic character of the Community: the European Parliament. This interest led to one of the earliest and best studies on this institution by Murray Forsyth, a senior research officer

of P.E.P. (Political and Economic Planning), published in London in 1964 with the title *The Parliament of the European Communities.*

From the very start, this Parliament gave rise to conflicting emotions of disappointment, surprise and hope. Included almost as an afterthought in the Treaty establishing the European Coal and Steel Community and then in the Treaties establishing the Economic Community and Euratom, it had only a controlling power, a right of censure (which is unusable in practice) and a consultative function. Legally and institutionally, it played no part in the decision-making process. In these circumstances, Parliament could have become a " rubber-stamp institution ", giving its detailed approval to proposals submitted to it by the Commission and Council.

But its members, parliamentarians appointed by the national parliaments, decided otherwise. Inspired by the political resolve to develop with all the means at their disposal the embryo of a parliamentary infrastructure of the European Communities, they organised the European Parliament on the basis of the traditions and working methods of national parliaments. Far from remaining content to assess the management of the Communities' affairs, they gradually persuaded the Commission and, to a certain extent, the Council of Ministers to take part in a continuous dialogue and even to engage in advance discussion of action programmes, the budget and decisions to be taken in the various areas covered by the Treaties. By holding increasingly frequent committee meetings and plenary sittings, the European Parliament enabled citizens of the Member States and other interested parties to form a critical opinion of the aims and effects of the activities of the European Communities.

This development has been slow and difficult, and even after twenty years—when the Community has been enlarged by the accession of Great Britain, Ireland and Denmark—far from complete, the ultimate goal being responsible and decisive participation in the formulation of Community legislation.

Sir Barnett Cocks, Clerk of the House of Commons and a leading authority on British parliamentary tradition, has followed this development from the sidelines, not only with keen interest but also with the eye of an expert. As a close observer of the experiments in international and European parliaments in the I.P.U., the Council of Europe, W.E.U., the North Atlantic Assembly and, on a more practical plane, the European Community, he wanted to provide British M.P.'s, who were about to take their seats in the European Parliament, with a manual enabling them to play a full role in an institution which was already hard at work and already had its own traditions and procedures. Sir Barnett Cocks has succeeded in every respect. His book is neither a doctrinal work nor a critical analysis. It is a well-documented, objective, detailed and accurate report on the European Parliament at the beginning of 1973, its history, its exact position among the Community institutions, its powers, its links with other international

organisations, its procedure and present means of action, its limits and possibilities. In an annex, he summarises the major questions debated in Parliament since 1958. Sir Barnett Cocks' book is thus both a reliable source of reference and a working manual which will take a leading place among the few studies of real quality on the European Parliament.

Only minor criticisms can be levelled at this book. Although I find its generous presentation pleasing, I should have preferred the book to have been easier to handle. It was superfluous to reproduce the text of the E.E.C. Treaty, which covers only one sector of Community activities. More complete editions of the Community Treaties, embodying the annexes, additional protocols, the association agreements and the essential basic texts, are widely available.

It can only be hoped that an increase in the real powers of Parliament, its adaptation to the new situation created by the enlargement of the European Community and the strengthening of the democratic structure of the Community will make the publication of a second revised edition necessary in the near future.

(*Contributed by Georges van den Eede, a Director General of the European Parliament.*)

*Australian Senate Practice:* Fourth Edition. J. R. Odgers (Australian Government Publishing Service, Canberra, 1972).

To Second Chamber fans—and there are some—this is a fascinating work. Mr. Odgers' House combines many of the features of the Senate in Washington with some of those of the House of Lords just before it was brought low by the Parliament Act of 1911. After seventy years, the Senate has retained all the powers with which it started, and seems if anything to have strengthened its determination to uphold the rights and interests of the States, which was in the eyes of many its prime original purpose. At the same time it appears to have maintained an originality and initiative which has enabled it, in the last year or so, to inaugurate a notable experiment in a new system of Standing Committees. Mr. Odgers is plainly one of the keenest admirers of his House, and he writes in its defence with a freedom which brings envy to those who must read and write the rather stodgy idiom of Erskine May. Discussing an attempt in 1931 to abolish the Senate, Mr. Odgers waxes indignant—" Members of a major political movement were, apparently, content to see the Senate disappear and the parliamentary government of the Federal Commonwealth rest in one House whose members are elected in proportion to population . . . the astonishing inconsistency of the proposal becomes apparent . . .". There would be trouble, I think, if Clerks in certain other capitals wrote like that; but we ought to regard Mr. Odgers as lucky.

One of the points of greatest interest in the growth of the Senate and the Australian Constitution is the change that has taken place in

the concepts of prorogation and dissolution. I suppose the parliaments of the Australian States, some of which had been in existence for half a century when the Federal Constitution was instituted, may have evolved variations on the pure English doctrine before 1900; but it seems that the general intention of the makers of the Federal Constitution was to follow the English example, and to regard prorogation or dissolution as killing all business in progress in both Houses and preventing any continuation of the functions of either House or any Committee. Yet by reason of the fact that half the Senators survive a dissolution, the Senate has evolved the doctrine that it is not subject to dissolution in the same way as is the House of Representatives. This enables Committees of the Senate to function, apparently, after a dissolution, and Bills to be carried over from one session to the next. It even enables the Governor General, it seems, to give the Royal Assent to Bills after the Parliament has been prorogued. All these things, of course, would be anathema at Westminster.

The fourth edition of Mr. J. Odgers' work contains about a hundred pages more than the previous one, and on a rather cursory comparison it seems that the extra material is fairly evenly spread throughout the work. The new Committee system, of course, gets a little more than its fair share—indeed Chapter XX, on Committees, has been rewritten; but on the whole it seems that the author and his collaborators have been pretty uniform in adding new material and precedents throughout the work. The last edition was published in 1967, and we may wish and expect to see, perhaps, a quinquennial stream of editions flowing from the pen of Mr. Odgers and his successors: no doubt his name, like that of Erskine May, will come to be used as synonymous in future ages with the work he has so successfully launched.

(*Contributed by R. W. Perceval, Clerk Assistant of the Parliaments.*)

## XV. RULES AND LIST OF MEMBERS

### The Society of Clerks-at-the-Table in Commonwealth Parliaments

*Name*

1. The name of the Society is " The Society of Clerks-at-the-Table in Commonwealth Parliaments ".

*Membership*

2. Any Parliamentary Official having such duties in any Legislature of the Commonwealth as those of Clerk, Clerk-Assistant, Secretary, Assistant Secretary, Serjeant-at-Arms, Assistant Serjeant, Gentleman Usher of the Black Rod or Yeoman Usher, or any such Official retired, is eligible for Membership of the Society.

*Objects*

3. (*a*) The objects of the Society are:

(i) To provide a means by which the Parliamentary practice of the various Legislative Chambers of the Commonwealth may be made more accessible to Clerks-at-the-Table, or those having similar duties, in any such Legislature in the exercise of their professional duties;

(ii) to foster among Officers of Parliament a mutual interest in their duties, rights and privileges;

(iii) to publish annually a JOURNAL containing articles (supplied by or through the Clerk or Secretary of any such Legislature to the Officials) upon Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

(iv) to hold such meetings as may prove possible from time to time.

(*b*) It shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon these subjects which any Member may make use of, or not, as he may think fit.

*Subscription*

4. (*a*) There shall be one subscription payable to the Society in respect of each House of each Legislature which has one or more Members of the Society.

(*b*) The minimum subscription of each House shall be £10, payable not later than 1st January each year.

(*c*) Failure to make such payment shall make all Members in that House liable to forfeit membership.

(*d*) The annual subscription of a Member who has retired from parliamentary service shall be £1·25 payable not later than 1st January each year.

*List of Members*

5. A list of Members (with official designation and address) shall be published in each issue of the JOURNAL.

*Records of Service*

6. In order better to acquaint the Members with one another and in view of the difficulty in calling a full meeting of the Society on account of the great distances which separate Members, there shall be published in the JOURNAL from time to time, as space permits, a short biographical record of every Member. Details of changes or additions should be sent as soon as possible to the Officials.

*Journal*

7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be £2·50 a copy, post free.

*Administration*

8. (*a*) The Society shall have its office at the Palace of Westminster and its management shall be the responsibility of the Clerk of the Overseas Office, House of Commons, under the directions of the Clerks of the two Houses.

(*b*) There shall be two Officials of the Society, one appointed by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, London; each Official shall be paid an annual salary, the amount of which shall be determined by the two Clerks. One of these Officials shall be primarily responsible for the editing of the JOURNAL.

*Account*

9. Authority is hereby given to the Clerk of the Overseas Office and the Officials of the Society to open a banking account in the name of the Society and to operate upon it, under their signature; and a statement of account, duly audited, and countersigned by the Clerks of the two Houses of Parliament at Westminster shall be circulated annually to the Members.

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## XVI. MEMBERS' RECORDS OF SERVICE

**Note.**—**b.** = born; **ed.** = educated; **m.** = married; **s.** = son(s); **d.** = daughter(s).

*Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat individual records on promotion.*

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# INDEX TO VOLUME XLI

## ABBREVATIONS

**(Art.)** = Article in which information relating to several territories is collated. (Com.) = House of Commons