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A
NEW REFORM BILL

BY

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By MRS. SIDNEY WEBB.

To-day there is a deepening conviction that our machinery of government is no longer equal to its task. Indeed, there are many who think, and not a few who say, that unless we can rationalise the constitution and activities of British Parliamentary institutions, so as to render them an efficient organ for continuous social readjustment and progress, there will ensue a slow decay of our standards of civilisation; accompanied, it may be, by a dictatorship, either a Fascist dictatorship, in the exclusive interest of men of property and men of rank, or a Communist dictatorship in the assumed interest of manual workers eager for the equalitarian State. To those who believe in political democracy and desire equitable social reconstruction, such a prospect spells disaster—a disaster all the more tragic because it is unnecessary. Hence it is imperative on all students of the world of politics to discover the evil and seek the remedy.

THE EVIL TO BE REMEDIED.

First let us realise the nature of the evil complained of. It is the paralysis of public business in the House of Commons that leaps to the eye. "The House of Commons," Mr. Lloyd George told a representative of *The Manchester Guardian* the other day, "is like an old windjammer—which was equal to the traffic of 100 years ago, but cannot cope with one-hundredth part of the enormous trade of to-day." "Each session of Parliament," he added, "is over-loaded and the Plimsoll line is completely submerged."

1.—AN OVER-TAXED CABINET.

I am disposed to put the emphasis higher up. The primary evil is an over-taxed Cabinet; over-taxed beyond human capacity for thinking and taking decisive action.

Year by year the public affairs transacted by this little group of some twenty persons have become ever more multitudinous and diversified. Think of the growth of the social services—each branch with a technique of its own. There is the old-established postal, telegraph and telephone services and the startling emergence of broadcasting with all its implied political and educational uses. There is public education from the infant school to the university, from technical institutes to public libraries. There is public health, including not only the prevention and cure of all sorts of diseases, but also house sanitation and main drainage, slum clearance and plans for re-housing the inhabitants. There is the control of the lunatic and the care of the feeble-

minded, together with the maintenance of prisons and reformatories. There is town planning, rural amenities and the country's water supply; there are old age and widows' pensions (not to mention war pensions), and there are the recently established social services of Labour Exchanges and of State insurance in all its branches. There is the supervision of local government, including local finance and Local Acts, the rectification of areas and the granting of new powers; there are the semi-centralised services of roads and transport, of electricity, docks and harbours and the newcomer—hydraulic power. Beyond and above all these centrally controlled and sometimes centrally managed social services, there is the ever-extending regulation of private enterprise in the interests of the producer and the consumer alike, from Factory and Mines Regulation Acts and Trade Boards to the Development Commissioners; from the adulteration of food to the Consumers' Council. During the last decade, successive Cabinets have had to grapple with unemployment, not merely the maintenance and training of the unemployed, but the actual prevention of the occurrence of unemployment from whatever cause it may be due. A bare thirty years ago, Mr. Gladstone rebuked Keir Hardie for daring to mention unemployment in the House of Commons—a subject which the Great Man thought totally unfit for the consideration of the Cabinet or Parliament. To-day a Conservative Opposition proposes to turn out a Labour Government expressly on account of its failure to prevent the mass unemployment brought about by the world's slump in prices. Nor is this enlarged and complicated task merely a question of administration or the supervision of administration: it entails a perpetual stream of new legislation involving several scores of bills each session, each one initiated and drafted in the department of a Cabinet Minister to be passed by him through all the stages of Parliamentary procedure. Finally, there is the annual raising, through a wide range of taxes, the right incidence of which is of vital importance to all sections of the community, of eight hundred million pounds annual revenue; together with the allocation of this enormous sum, according to priority of need, between such diversified and often conflicting claims as growing establishment charges, the repayment of the war debt, national defence, the organisation of nationalised services, the grants in aid to local authorities, and the subsidising, directly or indirectly, of certain spheres of profit-making enterprise.

When we pass from home affairs to the external relations of Great Britain we see a like increase in magnitude and complexity. In pre-war days foreign affairs consisted, in the main, of alliances, avowed or unavowed, with or against particular Governments; alliances secretly contrived by the Ambassadors and the Foreign Ministers of the various Powers. To-day we are building up a new public authority, a super-state, with its international assembly, its international executive, its international law and its international

courts to interpret that law. That is why our leading Ministers, the Prime Minister, the Foreign Secretary, the Chancellor of the Exchequer, even the President of the Board of Trade, spend so much of their time at the Hague, at Geneva or Washington, or in London itself, immersed in discussion with the representatives of other Powers. And if we turn to the other department of external affairs, Great Britain's relation to its sister Dominions and dependent Colonies, the three Secretaries of State for India, for the Dominions, and for the Colonies respectively, not only survey an area and population ever so much larger than that of the British Empire of fifty years ago, but they are met in every direction by problems and questions immeasurably more intricate and dangerous than those of the Victorian era.

Is it surprising that, with such an impossible task, the Cabinet has ceased to be an effective Council of State?

Each Minister has necessarily to manage his own department with the minimum of consultation with his colleagues. This avoids delay; but it sacrifices co-ordination and Cabinet solidarity. The activities of the isolated Ministers do not form a policy; and their claims on the present all-too-scanty Parliamentary time, or on the revenue, are settled by a scramble instead of by a carefully concerted allocation. In Parliamentary circles, it is an open secret that the Cabinet Council never considers the forthcoming estimates of national expenditure as a whole. The Chancellor of the Exchequer, advised by Treasury officials, is left to settle the estimates of each department with the Minister concerned, the matter not being brought up for Cabinet decision unless agreement cannot be reached. There is like concentration of responsibility in the Chancellor of the Exchequer and his department in respect of the nature and amount of the proposed levies; a decision revealed to the Cabinet usually only just before it is published in the Budget speech.

Once we have adequately realised the unmanageable bulk and complexity of the home and foreign affairs assumed to be transacted by the twenty Cabinet Ministers, either individually or collectively, it is easy to understand, though not to excuse, the two more notorious and sensational evils arising out of the present machinery of government, first, the growth of what is decried as "bureaucracy" and, secondly, the congestion of business in the House of Commons so vehemently criticised by Mr. Lloyd George.

2.—AN HYPERTROPHIED BUREAUCRACY.

I will take for granted, to quote the words of John Stuart Mill, that it is "inexpedient to concentrate, in a dominant bureaucracy, all the powers of organised action in the community." But how can this evil be avoided if each Cabinet Minister, however assiduous and able he may be, has neither the time nor the energy for the business he is assumed to control? For, in order to avoid

a too unwieldy Cabinet, some of the ministries have come to include so many different services, that it is impracticable for one Cabinet Minister to survey and control the day-by-day administration of his department. How is it possible, for instance, for a newly-appointed Minister of Health to master the technique of a score of branches, with separate and distinctive activities, ranging from the prevention and cure of all diseases to the supervision of local government, from slum clearance, housing and water supply to the intricacies of health insurance? And is it likely that the President of the Board of Trade can tackle even the more important of the issues raised in the seven or eight thousand letters which arrive addressed to him each morning? Moreover, owing to social prestige and apparent autocratic power, the Cabinet Minister is expected to interview innumerable personages representing organisations or interests closely connected with his official work; whilst his evenings are taken up with public dinners and social functions more or less concerned with the office he holds. Over and above these departmental duties are the frequent Cabinet Council and Cabinet Committee meetings and attendance in Parliament. Hence the undue reliance on the judgment of the permanent officials; not only in matters of routine and technical detail, but in questions involving crucial principles, with which the official concerned may be honestly out of sympathy with the party in power. "The nearest thing to a puppet in our political system is a Cabinet Minister at the head of a great public office" scoffs Mr. Bernard Shaw in his Preface to *The Apple Cart*. I may add that, after forty years' experience of trying to get this or that legislative proposal or administrative reform adopted, if I have easy access to his permanent officials, I hesitate to trouble the Cabinet Minister, for the sufficient reason that I assume that he will be ignorant of the ins and outs of the subject, and that he cannot have his hand on all the parts of the working machine.

3.—AN EMASCULATED HOUSE OF COMMONS.

Now it is evident that this over-loading of the Cabinet, while it inevitably magnifies the responsibilities and the activities of the civil service, must disable and demoralise the House of Commons.

The six hundred members, many of whom enter the House full of enthusiasm, brimming over with determination to cure the social evils they have witnessed—evils that they and their families may have actually experienced—over-crowding, sweated wages, constant terror of unemployment—find themselves, not with too much to do, but with nothing whatever to do that seems to be worth doing. For the first six months of a member's life he may be amused, even enlightened, by looking on at carefully staged performances by Ministers and ex-Ministers: if he is a caricaturist or a journalist, he may pick up remunerative copy. But this passive listening to one debate after another, with the sole relaxa-

tion of walking through the division lobbies according to the instructions of the Party Whips, is deadening to the strong and demoralising to the weaker brethren. Their rebellion against it only makes matters worse. The tumultuous exuberance of the rank and file of the Members of Parliament of the present century is such that a large proportion of them, unlike their predecessors of the nineteenth century, refuse to listen silently to the few score of regular debaters—largely drawn from the front benches—who expound and criticise the Government Bills. These Bills have themselves increased in number, owing to the ever-widening range of legislation and administration. But the number of members who insist on taking part in debate has increased tenfold. Against this incessant determination of hundreds of members to talk on every subject, every improvement in procedure of the past half-century, from the excision of merely formal resolutions to the encroachments on "Private Members' time," and even the closure itself, has proved ineffective. The cumulative result is that not one-tenth of the subjects can be dealt with that the 615 members are burning to bring forward; not one-fifth of the legislation called for in the public interest can be put into any King's Speech; and only a small proportion of the Government measures actually proposed in any one session can be, even by every permissible use of the closure, either made law or definitely rejected by Parliament; whilst all concerned—advocates of reforms and sufferers from grievances, local administrators and departmental heads, Ministers and rank and file members—endure an abiding sense of wanton frustration due solely to the imperfection or inadequacy of the Parliamentary machine.

There are some who say that this alternating enervation and exasperation of the M.P.'s would be remedied by so altering the constitution and procedure of the House of Commons, that each Cabinet Minister would be required to submit, to an appropriate Standing Committee, not only his legislative proposals in all their technical detail, but also his day by day administration, exactly as is habitually done by the chairmen of the various committees of municipal bodies, such as the London County Council. As will presently appear, I see great advantage in the committee form of government for home affairs. But quite apart from the constitutional question whether government by *responsible bi-party committees* can be grafted on to government by a *responsible one-party Cabinet*—any such procedure would be an unendurable addition to the toil of the already over-taxed Minister. The plain truth is that the greater the congestion of business—the more multitudinous and diversified the affairs transacted—the less Cabinet Ministers can take the Members of Parliament into their confidence; and the more they are driven to rely on the closure. British Parliamentary Government, whether surveyed from the Cabinet or from the House of Commons, is to-day like the stomach

of a man who habitually over-eats. The only remedy is to reduce the amount of food he has to digest. That is why, among the wiser heads of all parties, you have the cry of devolution.

"I am not sure," sums up that experienced and level-headed parliamentarian, Sir Herbert Samuel, "whether the best way to relieve the present congestion in Parliament is not to invite our Scottish friends to manage their own business in their own Parliament in Edinburgh."

Granted: but why endow the Scot with a first-class liner running thirty knots an hour and leave the Englishman and Welshman with what the Liberal leader has politely termed a windjammer. Why not ask our friends in England and Wales to manage their own internal affairs in their own assembly or assemblies?

Here I may observe that neither Sir Herbert Samuel nor the present writer can claim originality for the proposal to devolve a large portion of the business of the Cabinet and the House of Commons on a directly elected but subordinate national assembly and its executive. Indeed, it is one of the oddities of British politics, that so long as Irish Home Rule was an unsettled question, the leaders of both political parties played about with the notion of national assemblies, designed to legislate on and administer the internal affairs of the three or four separate nationalities constituting the United Kingdom. Even as late as June, 1919—owing to the devoted propaganda of Mr. Murray Macdonald, M.P.—the House of Commons passed a resolution setting up a conference of both Houses, to work out a scheme of federal devolution for England, Scotland, Wales and Ireland respectively. Presided over by the Speaker (Lowther, now Lord Ullswater), this conference actually presented a unanimous report (Cmd. 692 of 1920) in favour of a devolution of extensive powers to separate legislatures for England, Scotland and Wales, Ireland having been meanwhile otherwise dealt with. But the 32 representatives of the Lords and Commons differed widely, and as it seems to me, irrevocably, as to the constitutions and powers of such subordinate legislatures. Rather than criticise this somewhat muddle-headed and inconclusive report and its dissenting memoranda, I prefer to set out the following scheme of reform.

THE PLAN OF REFORM.

I do not propose any radical alteration in the British Constitution. Under my plan of reform, the supreme authority for Great Britain remains, as at present, formally with King, Lords and Commons in Parliament assembled; substantially, under the Parliament Act of 1911, with the Cabinet and the House of Commons. It may be desirable to "mend or end" the House of Lords. It may be expedient to alter the method of election or the procedure of the House of Commons. It may be wise to reduce

the number of M.P.'s to about 300. But these changes are irrelevant, and can take place or not take place, without affecting the present scheme.

1.—DEVOLUTION.

The essence of this scheme is summed up in the word devolution—the devolution of business from the Cabinet and the House of Commons to another authority. Hence the pivot of this scheme is the creation, by a Parliamentary statute, of a new National Assembly, and what is most important, with its own national executive, for Great Britain, or alternatively for England and Scotland separately; it may be, if Welshmen insist on it, also for Wales. Personally, I think it would be a mistake to separate Wales from England; partly because of the relative poverty of Wales, but also because North Wales and South Wales seem to have less in common with each other than each has with the neighbouring English counties. Indeed, so far as the distinctive purpose of devolution is concerned, I should be glad if the Scot would insist on his immemorial right to govern England and refuse to be restricted to an assembly sitting in Edinburgh. I should prefer one assembly and one executive for the whole of great Britain. For the larger the area comprised within the jurisdiction of the new authority, the more complete can be the devolution of work, from the Cabinet and the House of Commons, to this new authority. For instance, it would be inexpedient, if not impracticable, to break up into separate units of administration, for England, Scotland and Wales respectively, the Factory, Workshop and Mines Regulation Acts, the Trade Boards, the Labour Exchanges, and the network of unemployment insurance, the control of transport and the activities of the Consumers' Council. Moreover, owing to the motor-car and the telephone, mass production and mass distribution, *the smaller area, as a unit of administration, is always tending to become obsolete.* But I recognise that efficient administration is not the only test of good government; there is also the consciousness of consent, and this may take the form of racial self-consciousness and a consequent demand for separate authorities for what are deemed to be distinct species of human beings, with different faculties and different needs, inhabiting England, Scotland and Wales respectively. Moreover, in Scotland, at any rate, there is already a peculiar body of law, a characteristic structure of local government and separate executive departments, located in Edinburgh, for education, and health, for agriculture and fisheries, for lunacy and prisons. Hence I suggest one of two compromises. Three separate assemblies might be set up for England, Scotland and Wales; and the services necessarily common to the United Kingdom might be administered by a series of joint committees, on the model of the existing Joint Committees for Health Insurance, the

decisions of these indirectly elected bodies being ratified by each assembly. Or, as I should prefer, as more likely to combine economy with efficiency, one National Assembly might be created for Great Britain. In this case the Scottish, Welsh and English members might meet separately in London, Edinburgh and Cardiff, for purely sectional business; whilst the whole of the members might assemble in London for the formal ratification of the sectional decisions and for the administration and legislative development of such services as are necessarily co-extensive with Great Britain.

In order to facilitate the exposition of the scheme, I will assume that this latter compromise is adopted, and that there will be one National Assembly and one executive; and I will leave it to any reader who prefers the plural to the singular, to substitute, in the following pages, the numerals "two" or "three" for the "one" I prefer.

2.—*THE NATIONAL ASSEMBLY.*

I propose that the members of this National Assembly should be directly elected on the same franchise as the House of Commons—I suggest about 300 members for England and Wales and perhaps 50 members for Scotland. I think that they should be elected for a fixed period, preferably three years, without liability to premature dissolution, and should thus be quite disconnected from the polling day of the House of Commons. Whether the single-member constituency, with or without the alternative vote, or the multiple-member constituency with proportional representation, be adopted as the electoral basis of the new authority, will probably depend on the balance of opinion in the particular House of Commons translating the scheme into law.

3.—*SPECIFIC STATUTES TO BE DEVOLVED.*

At this point let us consider the intriguing question of the type of devolution to be embodied in the statute. The usual procedure in establishing federal constitutions appears to be devolution by subjects; some subjects being reserved for the larger, or more sovereign authority, whilst others are devolved on the smaller or subordinate authorities. Sometimes this subject definition is of the vaguest character; for instance, in the British North America Act, 1867, establishing the Dominion of Canada, Section 92 allots a number of specified subjects to the provincial governments, ending up with the general power to "make laws in relation to all matters of a merely local or private nature in the province." I venture to suggest that it would be wiser to adopt a more limited and explicit type of devolution: a devolution not of subjects at all, but of specific statutes or groups of statutes. It might be inferred that this leaves the proposed National Assembly without any legislative powers; in fact, in exactly the

same position as the London County Council or the Manchester Municipal Corporation. But that need not be so. In a fit of absent-mindedness—another phrase for the subconscious wisdom of the British race—the House of Commons, plagued with acute congestion, emitted what is now termed “administrative law”—a type of devolution arousing the wrath of eminent jurists. “It is one thing,” indignantly declares Lord Hewart, in describing this “New Despotism,” “to confer power, subject to proper restrictions to make regulations. It is another thing to give those regulations the force of a statute. It is one thing to make regulations which are to have no effect unless and until they are approved by Parliament. It is another thing to make regulations, behind the back of Parliament, which come into force without the assent or even the knowledge of Parliament. Again, it is a strong thing to place the decision of a Minister, in a matter affecting the rights of individuals, beyond the possibility of review by the Courts of Law. And it is a strong thing to empower a Minister to modify, by his personal or departmental order, the provisions of a statute which has been enacted.” (*The New Despotism*, by Lord Hewart, p. 19.)

It would be easy to cite endless examples in the statutes of the last two decades of this devolution of wide legislative powers to Government departments, under such plausible headings as “power to remove difficulties,” or “in order to meet unknown future conditions”; coupled with the clause, “that the Rules and Orders shall be of the same effect as if they were contained in this Act.”

Now it is clear that, whilst there may be grave objections to this new type of “administrative law” if it be devolved on Government departments, which may mean, in practice, on a permanent official, not even the Lord Chief Justice can object, on constitutional grounds, to the devolution of these powers of amendment and extension of existing statutes to a National Assembly, having exactly the same moral authority, from the standpoint of political democracy, as the House of Commons itself. Incidentally, I may observe, that this new device of administrative law, more especially the clause “shall be of the same effect as if they were included in the Act,” would, according to recent judgments, exempt the National Assembly from having its administrative and legislative activities open to *ultra vires* proceedings in the Courts. And if it were thought necessary to curb this unlimited power “to remove difficulties” and “to meet unknown future conditions,” in order to invade spheres quite unconnected with the original Act, it might be left to the Speaker of the House of Commons, on the complaint of a member of the National Assembly, to certify or refuse to certify as within the meaning of the clause, the proposed amendment or extension of the statutes. Should the Speaker

refuse certification, it would be always open to the National Assembly to promote a Bill in the House of Commons to alter the statutes in any way that was necessary for the new departure.

I may remark in passing, that under this plan of reform, amendment or rejection by the House of Lords, in all the devolved services, automatically disappears.

4.—*THE SERVICES TO BE DEVOLVED.*

Upon this new National Assembly and its Executive, would be devolved a long row of public services. Thus, the plan contemplates the transfer to the new authorities, from the Cabinet and Parliament, of the business of half-a-dozen or more of the present Ministries—the Ministry of Health, the Board of Education, the Ministry of Labour, the Ministry of Agriculture and Fisheries, the Ministry of Transport, the Ministry of Mines and the Office of Works, together with certain branches of the Home Office and the Board of Trade, *e.g.*, the Factory and Workshop department, the Patent Office and the Consumers' Council.

Thus the National Assembly and its Executive will supervise, not only the local authorities exactly as they are at present supervised by the Cabinet and the House of Commons, but also the new specialised Commissions, such as the Electricity Commission, the London Traffic Board and the B.B.C. Private Bill legislation, whether affecting the constitution and powers of railways and other companies, or of local authorities and public utility corporations, will plainly fall, not to the House of Commons, but to the National Assembly. Besides this first instalment of statute law there is no reason why there should not be a progressive devolution from the House of Commons to the National Assembly, of statutes creating public services yet undreamt of, exactly as there has been a progressive enlargement of the spheres of existing local authorities.

It will be noted that all these departments of administration have been invented since 1832, mostly in the last thirty years. They constitute, in fact, a new kind of government—national housekeeping—quite separate and distinct from the exercise of sovereignty, national defence and the maintenance of Courts of Justice. The services involved partake ever less and less of the nature of the exercise of sovereign power, determining the relation between individuals or groups of individuals in the manner of a monarch dealing with his subjects. They become more and more of the nature of a mass of rules and conventions adopted, as occasion arises, for the organisation of social utilities so as to secure their regular and uninterrupted function. This modern State, indeed, is now increasingly seen as a congeries of public corporations—central and local—analogue to the consumers' co-operative movement, except that membership is necessarily uni-

versal in order that, by careful and continuous planning, the whole body of citizens may attain higher standards of civilisation.

5.—FINANCE.

But what about finance—the biggest puzzle in any scheme of devolution? In the space at my disposal I could do no more, even if I had the requisite knowledge of detail, than set out the fundamental considerations. It is, I think, essential to the completeness of the devolution, that the National Assembly should have its own revenue, independent alike of the House of Commons and the Chancellor of the Exchequer. It is indispensable to genuine efficiency, no less than to economy, that the National Assembly should be made to feel effectively its responsibility to the electorate whose money it is expending. But, on the division of services proposed, the National Assembly will be much more of a supervising and legislative than a spending authority.

The total expenditure of the British Government is approximately eight hundred millions, of which I reckon the Chancellor of the Exchequer and the House of Commons will, under this scheme, continue to be responsible for about six hundred millions, a sum which includes the service of the national debt, national defence, war pensions, post office, Courts of Justice, and prisons, together with foreign, dominion and colonial affairs. The National Assembly, on the other hand, would require for devolved services, something less than two hundred millions (education, health, labour, agriculture, transport, etc.). But this includes the one hundred and ten millions for grants in aid of the local authorities, now paid by the Chancellor of the Exchequer. If these were stabilised (say decade by decade) and paid in a lump sum to the National Assembly for distribution among the local authorities, there would remain only some eighty millions to be provided annually for all the other expenditure on the devolved services. Whether this need could best be met (as was proposed by the Ullswater Committee of 1920) by the devolution of suitable existing taxes; or by allowing the National Assembly to issue precepts to the local authorities; or by permitting it to devise new forms of taxation, such as the taxation of site values, not conflicting with those required by the Chancellor of the Exchequer—or by any combination of these—must be left to be settled by more experienced financiers than myself. I will only suggest that, whilst there are undoubtedly advantages in putting the National Assembly under an obligation to bring home to the consciousness of every elector the fact that the national expenditure is rising, this is not necessarily secured by the simple device of causing the aggregate of expenditure to result in an increase in the rates and taxes. It is not merely that the financial revolution involved under the Local Government Act of 1929 in “de-rating,” together with the sudden exaggeration of the system of Grants in Aid, will, for a number

of years, prevent any precise or accurate comparison of the successive yearly burdens in particular localities. Apart from this transient difficulty, the device of making taxation vary with expenditure has, to a great extent, lost its efficacy in producing economy. Merely to increase the fees for local licenses or the entertainment tax, the taxes on motor vehicles or wireless sets, the precepts to the local rating authorities, or even a directly levied separate rate on every householder, would not, in fact, bring home to the consciousness of the average elector that the National Assembly has become extravagant in its staffing, excessive in its requirements from the local authorities, or unduly ambitious in its legislative schemes. On the other hand, it would clearly be desirable to require the Finance Committee of the National Assembly to consult the Chancellor of the Exchequer privately, and in due time (and perhaps to obtain his sanction) before even proposing to raise a loan, or to recommend to the National Assembly any expenditure on capital account involving a loan.

7.—MEASUREMENT AND PUBLICITY.

If, however, we are to bring home to the consciousness of the electorate any recklessness or profligacy in the financial policy of the National Assembly—and the same is true of the House of Commons—we must adopt some more effective device than making its extravagance result in an increase of taxation. The first requisite is a comprehensive independent audit in its most modern developments, including stores as well as cash, not merely verifying initial outlay, but also comparing maintenance charges, and above all not stopping at surcharging illegal expenditure, but going on, year after year, to report fully in the frankest terms on the financial position and policy of the National Assembly, as disclosed by the continuous investigations of the audit. This duty might well be imposed by statute on the Comptroller and Auditor General, who would need for the purpose a separate highly qualified staff, and who should make his reports, not to the House of Commons, but direct to the National Assembly, which might be required to deal with them, as is the practice of the House of Commons, in its own Public Accounts Committee, independent of its Finance and other committees. But in the stress and complication of modern life, in an electorate numbering 28 millions, a mere auditor's report is not enough. Why should it not be published at a nominal charge (say, one penny); or even officially posted to every elector? Why should not the purport of the report be broadcasted to every licensed wireless receiving set, and the members of the National Assembly be invited to explain, at meetings of their constituents, their reasons for the expenditure that they have incurred, and their justification of the financial policy that they have adopted?

8.—GOVERNMENT BY ADMINISTRATIVE COMMITTEES.

How would the National Assembly be organised? In what way would it administer all the social services for which it was responsible? We have two models before us. There is the ancient constitution and procedure of the House of Commons—what is called the Cabinet system of government. In this case the score of members of the Cabinet, nominally appointed by the King, are actually selected by the incoming Prime Minister—the statesman “sent for” by the King because he is the recognised leader of the party in power in the House of Commons. Once in the seat of office, the Government, through its several members, controls Whitehall, and is responsible for all the legislative activities of the House of Commons. The 600 private members, as I have already described, are practically powerless, except for purposes of obstruction, in deciding what shall be the legislation enacted by Parliament.

On the other hand, we have the modern system of administration by committees as worked out by the British municipalities and county councils. To my mind the second of these two models is the one that ought to be adopted for the new National Assembly. Let me explain exactly what would happen. At its first meeting the Assembly would elect its chairman and other officials and pass its standing orders. At the second meeting a whole series of committees would be elected, to direct the work of the Whitehall departments, including a General Purposes Committee and a Finance Committee. The heterogeneous departments now making up the Ministry of Health might, for instance, be presided over by a series of separate committees, for such subjects as housing and town planning, hospitals and medical treatment, open spaces and rural amenities, lunacy and mental deficiency, pensions, insurance and public assistance, and Private Bill legislation. All the members of the Assembly would find themselves on one or other of these committees, political parties being represented according to their strength on the National Assembly. Each committee would elect its own chairman, who, besides presiding over its deliberations, would become the head of the executive department concerned. Every new departure in administration, every proposal for legislation, would be brought by the chairman before the committee, and it would be the committee’s proposal which would be submitted by him to the National Assembly.

Note how far greater under this system of government would be the control exercised by the elected representatives than it is in the House of Commons. Every item of the proposed expenditure of any committee of the National Assembly (exceeding some stated amount) would be reported to the Finance Committee for its prior sanction, either as part of the routine disbursements under previously sanctioned Annual Estimates, or as new expenditure

urgently required which has to be subsequently authorised by Supplementary Estimates. The annual budget of the National Assembly, with its proposed reductions and additions in expenditure and taxation—instead of being sprung on the House of Commons overnight, would also have to pass through the Finance Committee, prior to its submission to the National Assembly.

Further, any need for "administrative law" in its bureaucratic form of "departmental legislation" would automatically cease to exist; all amendments and extensions of existing statutes, together with the appropriate statutory rules and bye-laws, would be discussed and decided by the committee concerned with the particular service and afterwards submitted by the chairman to the National Assembly for enactment.

But this is not the only advantage of the committee system. Under the Cabinet system, one team goes out as the other team comes in, and any experience and keenness which may have been developed in a Minister, is lost to the administration. Under the committee system, zealous and experienced members of the Minority Party will continue to share, sometimes as vice-chairmen, or at any rate as members, in the work of the particular committees in which they are interested. To my mind, this continuous use of the abler members of all parties, in the day by day administrative and legislative activities of the National Assembly, is of immense value in any machinery of government. So far as party interests are concerned the group of chairmen chosen by the numerically superior party to preside over the politically crucial committees would doubtless confer regularly together on questions of party policy. In this way there would be evolved (as in the London County Council) as much of concerted party influence as is desirable and no more. The pivotal feature of our party system, the sudden dissolution and change of Government following the rejection of any Government measure, would, from this sphere, vanish completely.

9.—WHAT WOULD BE LEFT TO THE HOUSE OF COMMONS.

What, then, it may be asked, would be left to the Cabinet and the House of Commons? Quite as much, I reply, as any one group of Ministers and any one Assembly can adequately attend to. First, of course, constitutional legislation and reform. Then all the issues of foreign affairs; all the problems connected with the Dominions; our relations with India; our direct administration of territory exceeding in area the whole of India, namely, the fifty odd separate colonies, protectorates, mandated territories and other dependencies. With all this goes necessarily the steadily growing work connected with the League of Nations, the Hague Court, the Permanent Mandates Commission, and the Interna-

tional Labour Office. Allied to these are control of foreign trade, of currency, of weights and measures, and of migration. Nor can we forget the complicated issues and essential services of disarmament on the one hand, and national defence on the other—the Army, Navy and Air Force. Moreover, there is the huge burden of the national debt, with its obverse in the swollen income tax, surtax and death duties, and along with these also the customs and excise duties. There is, further, the greatest of all national services, the Post Office, which is becoming every day more bound up with the postal, telephone and wireless services of the dominions and colonies, and also with those of foreign countries. We may imagine Parliament also keeping its hand on the main body of law and the administration of justice.

Finally, Parliament would keep all its sovereignty. It could at any moment end or mend the National Assembly; it could by new legislation amplify or contract—above all, it could interpret or clarify—the powers which it had devolved, whenever practical experience or some unforeseen judicial decision called for their amendment. In fact, under the foregoing scheme, the Cabinet and the House of Commons would retain all the functions of government known to Pitt and Canning, to Peel and Palmerston, and even to Gladstone and Disraeli prior to the seventies.

THE BASIC PRINCIPLE OF THE SCHEME.

My final word brings me to the philosophy of the subject. The scheme here advocated involves the advance of the British Constitution to a new kind of federalism. In the United States, in Canada, in Australia, and now in several of the new European States, we see federations based on unions of geographical areas, where every citizen votes at two elections, one for the smaller area—State or Provincial Parliament and Executive and another for the Federal Government and Executive. For the relatively small and densely populated Great Britain, where urban and rural districts are inextricably entangled, the splitting up of authority by geographical areas is out of date. What we require, if we are to sweep away the three-fold evil of an over-taxed Cabinet, an hypertrophied bureaucracy and a paralysed House of Commons, is the differentiation of one authority from another according to the services rendered. Governmental functions in Great Britain of the twentieth century fall easily into two main groups, one concerning sovereignty, overseas relations, national defence, the main body of law, and the administration of justice between man and man, all functions based on the exercise of power; the other relating to social services, such as public health and education, pure air and pure water, insurance and industrial regulation, town planning and open spaces—all essentially subjects for organised co-operation amongst citizens to supply their common needs and fulfil their aspiration for a better and nobler life.

To mix together the issues arising out of these two strongly contrasted groups is illogical and confusing. How can electors vote intelligently on such lumpings of widely disparate issues about which they may want to give contradictory verdicts? They may approve of the Government policy in one group of questions and condemn it in another. An elector may be an internationalist and a pacifist, whilst upholding competitive profit-making enterprise as the best form of social organisation; he may be a fervent believer in free medical treatment and the endowment of motherhood, and yet be a militant imperialist intent on holding and extending a distinctively *British* Empire. It is only by making "cross-voting" practicable in regard to the two fundamentally contrasted groups of issues that the true verdict of the electorate can be given. And the same is true about representatives in Parliament and colleagues in the Government. So far as international affairs are concerned or the relations of the white to the coloured races, Lord Cecil and Lord Irwin may find their spiritual comrades in Mr. MacDonald, Mr. Henderson and Mr. Wedgwood Benn; but they may altogether object to government control of industrial enterprise, extension of the school age, or maintenance with training for the unemployed. It is this heaping up of multitudinous and disparate issues and of problems irrelevant to each other in the Cabinet, in the single representative assembly and at the polling booth, that is jamming the existing machinery of government and bringing political democracy, with its implication of the consciousness of consent on the part of the people, into a discredit as dangerous as it is unwarranted.

NOTES.

HOUSE OF COMMONS COMMITTEES.

1 (Page —).—The proposal to convert each Cabinet Minister into the chairman of a committee drawn from the membership of the several parties in the House of Commons—a proposal with which the Rt. Hon. F. W. Jowett, M.P., has specially associated himself—is best described in a report embodied in *The Reform of Parliament*, a pamphlet published by the Independent Labour Party. The same pamphlet contains also a rival report, which sets forth the disadvantages and difficulties of applying such a system to the present work of Cabinet Ministers and Parliaments; and examines an alternative suggestion, namely that of establishing, in connection with each Ministry, a purely advisory committee of Members of Parliament, whom the Minister may consult without necessarily accepting their decisions. I may observe that either of these schemes for the reform of the House of Commons would be all the more practicable if that body were relieved of half its present work by devolution to a new National Assembly.

The arguments against the substitution of administrative committees for Ministers, as set out in the second report, appear to me, in respect of the greater part of the present work of the Cabinet and Parliament, unanswerable. At any rate, in connection with Foreign Relations, Dominion Affairs, Colonial Administration and Fiscal Policy, the attempt to base a one-party Cabinet system upon a series of bi-party committees seems hopelessly unpracticable.

Moreover, whatever improvement in House of Commons procedure might result from either form of committee, it is clear that their establishment would do nothing to relieve Ministers from their insupportable burden. It would, on the contrary, greatly increase their work, and make their position quite impossible. Even the mild alternative of giving each Minister an advisory committee of Members of Parliament of all parties, whilst it might occupy and even educate the members, would be a new tax on the time of the Foreign Secretary, and a new opportunity for premature "leakage"; calculated to lessen efficiency without in any way increasing the control of the House of Commons as a whole and without diminishing the influence of the bureaucracy. There seems, in fact, no half-way house between the device of government by a single supreme one-party committee (the Cabinet), responsible to the elected assembly for every department, and that of government by a series of bi-party committees, each separately responsible for its own department to the elected assembly. The former device, with its concentration of authority, its avoidance of premature publicity, and its presentation to the electorate of a definite choice between alternative administrations, appears the more advantageous, if not unavoidable, for foreign and overseas relations, for issues of supreme importance, and for momentous new departures in policy. The latter device (the so-called Committee system) offers advantages in securing greater concentration of thought on each department, enlisting the willing co-operation of all sections of opinion, and in ensuring greater continuity of administration. For these reasons I have adopted it as best suited to the proposed National Assembly, which would, in the main, be concerned not with supreme issues but with developing policies already determined in principle in respect of public health, education, unemployment and the maintenance of the standard of life.

But the House of Commons is not likely to multiply, in either form, little committees of members as screens between Ministers and itself. More probable, and as I think, more dangerous, is the growth of a demand (as in Australia) for the control of Ministers, not by Committees of the Legislature at all, but by Committees of the Party Caucus. In Australia, the Party Caucus openly decides who shall form the Cabinet, and now seeks to dictate the measures which the Cabinet shall initiate, and which the Party Majority in the Legislature shall enact. This, in my view, is the very negation of Political Democracy.

ADMINISTRATIVE LAW.

2 (Page —).—This term is loosely used (as by Lord Hewart in *The New Despotism*, 1929) to include four different objects of dislike, between which it is important to distinguish. Originally the term meant only the *droit administratif* of France, where a special code of law is applied by special tribunals in suits against the State or its officials (see *Précis de Droit Administratif*, by Hanrion; *History of French Public Law*, by Brissaud; *Law in the Modern State*, by Duguit, translated by H. J. Laski). This has no relation to English practice. But apart from legislation by Parliament,

we have much Delegated Legislation, specifically entrusted under Statute to particular legislative organs (e.g. the Bye-Laws of Local Authorities and of Railway Companies; the Orders of the Privy Council under the Emergency Powers Act; even the quasi-legislative "warning notices" of the General Medical Council). This may be distinguished from Departmental Legislation, now denounced as law-making by bureaucracy, where Parliament has empowered particular Ministers, either to make Rules or Orders amplifying general statutes in elaborate detail (the voluminous Statutory Rules and Orders which far exceed in length the Statutes themselves); or to do what is necessary to bring Statutes into operation, or "remove difficulties" in their application, even to the extent of altering the provisions of the Statutes themselves. The furthest extension of the term is to the procedure by which, under Statutory Authority, not only Parliament, but even the Courts of Justice are left on one side. This development, better termed Departmental Awards, is seen where Parliament gives power to particular Ministers to act as the final, and, indeed, as the only tribunal of appeal against orders by Local Authorities (e.g. the Arlidge case). For all these varieties of British practice, see *The New Despotism*, by Lord Hewart, 1929; *Administrative Law*, by F. J. Port, LL.D., 1929; *Justice and Administrative Law*, by W. A. Robson, B.Sc.(Econ.), LL.M., Ph.D., 1928; *Comparative and Administrative Law*, by F. J. Goodnow, LL.D., 1903; *Delegated Legislation*, by Cecil J. Carr, LL.D., 1921.

COMMITTEE PROCEDURE.

3. (Page —).—This committee procedure has, in England and Wales, been elaborated in a century of practice substantially on identical lines, but with local differences, first by the Borough Councils under the Municipal Corporations Act, and since 1888 by the County and District Councils under the Local Government Act. It may be added that it forms a part of the new Constitution of the Colony of Ceylon, coming into force in 1931. Based essentially on the necessity of each committee submitting successive reports of its provisional decisions for ratification by the full council, this procedure has reached in the London County Council a high degree of efficiency, at the relatively small cost of extensive printing. It now achieves, in combination (a) the private consideration by each committee of reports by officials; (b) the communication to the whole council of all the decisions or proposals of the committee; (c) the accompaniment of each of these by adequate printed explanations, prepared by the Chairman of the Committee, of the facts and reasons on which the committee's recommendations are based, thus dispensing largely with Ministerial oral expositions; (d) the printing in special type of the actual recommendations, to which alone the council will be committed; and (e) the accompaniment of them, on the same page, by any necessary report by the Finance Committee on the subject. The printed agenda of the London County Council—in marked contrast, it must be said, with that of many important Municipal Corporations, which often contain little more than an "epitome" of the committee's minutes—is thus a lengthy document, not only constituting an intelligible record but also placing every Councillor, if he will but read, in possession of everything needed for his understanding of every issue coming before the Council. No adequate comprehension can be gained of the working of the London County Council without careful study of the form of its agenda, a little known but invaluable contribution to Political Science. At each Council Meeting the Chairman of the Council calls upon the Chairman of the Committee to move the reception of his Committee's report, which is almost invariably done without

any speech. The Chairman of the Council then puts each numbered paragraph separately to the Council, whereupon discussion may ensue. As each paragraph affords its own explanation, and most of them are non-controversial, the majority are rapidly agreed to without discussion. But any recommendation, large or small, may be challenged, debated, amended to any extent, or rejected; and every controversial issue is thus fought. It should be said, however, that the London County Council imposes a time limit for speeches of fifteen minutes, at the expiration of which the Chairman asks whether it is the pleasure of the Council that the speaker continue. Permission to continue is habitually accorded, *nem. con.*, but, except in cases of important explanations or arguments, this is hardly ever taken advantage of for more than a few minutes beyond the quarter of an hour.

The National Assembly would, like the London County Council, frame its own Standing Orders, subject to any statutory prescription. One of the matters to be thus prescribed would doubtless be the limits of the latitude to be allowed to the Committees for immediate action without prior ratification by the full Council. Another might deal with Payment of Members. It may be suggested that proper provision for the necessary expenses of members should be made by Statute, whether (as a minimum) travelling and hotel expenses, together with payment for loss of remunerative time, as now given to Scottish County Councillors; or (as I think preferable) a common minimum of £400 a year and railway fares (as in the House of Commons) for what would be, during the sessions, practically full time service. In lieu of the present Ministerial salaries, the National Assembly might be left free to settle what additional payment should be made to the Chairman and Vice-Chairman of the Council and the several Chairmen of Committees, which might vary with the amount of executive work thrown upon each of them.

FEDERATION BY SUBJECTS.

4. (Page —).—The historical student will not think the analogy too far-fetched. The federal states of modern times, created when the territorial basis had become dominant in law and administration, have naturally been based on the geographical distribution of their populations. Yet it is easy to trace in every federal constitution, the influence of "subject" equally with that of "place." The functions of the State or Province are always largely those relating to a common "house-keeping" by the citizens, whereas those reserved to the superior federal authority deal principally with subjects of another kind, such as external relations, means of transport and communication, the common indebtedness, etc. It may be suggested that the present tendency towards a transfer of functions from states or provinces to the federal authority is largely because its smaller area is no longer suited to the administration of some social services. In the United Kingdom, the relations between the National Government and the Local Authorities exhibit a like tendency, the supply of electricity and the regulation of road traffic being better administered in larger units and less narrowly circumscribed areas. In Governmental organisation it is the influence of neighbourhood, not that of subject, that is passing away. In the new services of state insurance and pensions, for instance, the areas over which the central or subordinate authorities have jurisdiction are, geographically, indeterminate; the obligations and benefits involved following the insured or pensionable persons, wherever they may be resident; in some cases to places outside Great Britain.

Moreover, both unitary and federal governments to-day, leave an increasing share of authority to vocational organisation, which often ignores geo-

graphical boundaries. Thus, in the United Kingdom, the General Medical Council which has, in fact, both legislative and judicial authority, exercises these functions over all its registered practitioners, whatever their race, nationality or residence. The current tendency is for other professions to become "self-governing" on a vocational, not territorial basis. A "union of professional associations" would be, so far as its quasi-governmental functions extended, a federation by subjects. But this tendency to subordinate the area to the subject matter of the service, wherever it may occur, has its limitations. There are still many services, where the primary consideration is that of the common neighbourhood of the persons concerned, and it is these services which are still best managed by the inhabitants of particular localities within the sovereign state: for instance, cleansing and paving, small parks and playgrounds, baths and wash-houses, public libraries and local museums and art collections, and, I think, the all-important service of elementary and secondary education. Hence the persisting need for maintaining and perfecting our system of local government, even if we make it responsible to the National Assembly instead of to the House of Commons.

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