

The Emergency Procedure of the State Council

I.

THE Mother of Parliaments is a remarkable old lady who has succeeded in impressing many of her better qualities upon her numerous progeny. Her daughters differ so widely among themselves, however, that something must be attributed to their respective fathers. The Ceylon State Council was intended by the Donoughmore Commissioners to be a very peculiar body having some, at least, of the virtues of the House of Commons, the Assembly of the League of Nations, and the Little Poppleston Urban District Council. In the main, the virtues of the House of Commons have proved to be dominant. It is essentially a legislative and not an administrative body. It never sits in executive session. It pays little attention to its Executive Committees. Its peculiarities are not in any great measure due to the Donoughmore Commissioners.

Among the more important characteristics which distinguish legislatures is that of size. The House of Commons, on the rare occasions when everybody is present, is not a committee meeting but a great assembly. Its members sit in serried ranks to the right and the left of Mr. Speaker, on the steps between

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the benches, and in the Members' gallery. They like to pretend that they propose to act as the Grand Council of the nation; but they will not; they have come really to listen to a speech, or a series of speeches, by eminent statesmen. The individual, unless he be the eminent statesman, is a person of no great importance, one of the crowd of 615 members. At the other extreme, at the dinner hour on Derby Day, when the honourable member for the Poppleston Division of Boreshire holds the floor, addressing an attentive nation and a few honourable members on his favourite subject, he is still one among 615, though six hundred of them be engaged on important duties elsewhere. The procedure, the atmosphere, the general tone, of the debate assume that absent friends are present. Indeed, if the word goes round that "Winston is up" many of them will be present. They will come trooping in from the lobbies, the smoke rooms, the bar, the library, the dining room, the terrace, and all the clubs from St. Stephen's to the Junior Constitutional. Nobody, except the Chairman and Deputy Chairman of Ways and Means, ever pretends that the House of Commons is a committee. In the State Council sense, it never is a committee. It is always and inevitably a debating assembly. The cross-talk which is the normal practice of the State Council in committee is utterly impossible in the House of Commons, simply because 615 members, present or absent, cannot be a committee.

It is important, too, that the individual member, in a House of 615 members, is unimportant. The dignity of his office is at least as great. It is something, after all, to be honourable member for the Poppleston Division of Boreshire. Yet in the House itself, where all men and women are honourable, he is but one of a crowd. He has not even a seat, still less a desk, to himself. One can be a member for a Parliament and yet "meet" another member for the first time at a county agricultural show, or at the Empress Hotel, Blackpool, on the occasion of the party's annual conference. When there are 615 members one more or less does not matter. Nor can the member expect to speak often. Three or four speeches a session are his ration, unless he be a minister, a member of the Shadow Cabinet, or one of the minorities favoured by Mr. Speaker because they are minorities. It is, for instance, unlikely that he will be able to speak in the Budget debate. Three days—or four if the Chief Whip be in a generous mood—are all that the Government can afford. It is true that the House sits continuously from 2.45 p.m. to 11.30 p.m., and that speeches tend to be much shorter; but by the time that the Chancellor of the Exchequer, the "Shadow Chancellor," the Financial Secretary to the Treasury, the third party's financial expert, and the dozen or so persons with some knowledge of the subject have had their say, there is not much time for the ordinary back-bencher to survey affairs of State from Health to Overseas Trade and back.

Because the House of Commons is a debating assembly, it is not much interested in petty details of administration. The Donoughmore Com-

missioners drew attention to the different attitude of the Ceylon Legislative Council. They did not, however, give all the reasons. The small size of the governing class in Ceylon, the close family relations, the highly personal system of public administration (hardly anybody in England has heard of Sir Robert Morant, the ablest civil servant of this century), the absence of general topics of conversation like the weather, football, test matches, plays, books and the state of business, all help to make personal questions of absorbing interest. To these general characteristics must be added the special features of the Ceylon Constitution, whereby all responsibility before 1931, and a substantial share of responsibility since 1931, have been owed in the last resort to the King in Parliament. These constitutional features partly explain, for instance, the ridiculous system of Estimates and Supplementary Estimates, whereby a sub-head can be inserted for Rs. 300.00 and the whole Constitution made to creak for Rs. 20.00. In Great Britain a Supplementary Estimate, except for a definite development of policy, is one of the administrator's seven deadly sins. In Ceylon the only effective way of stopping such constitutional excrescencies, a power of virement or transfer vested in the Treasury, is barred.

In the State Council the members are usually present: in the House of Commons they are usually absent. In the State Council there is a quorum of 20, and it is the duty of Mr. Speaker to see that there is a quorum. In the House of Commons there is a quorum of forty and, except in a division, it is nobody's business to see that a quorum is present. During the dinner-hour, indeed, a count cannot be demanded. A vast amount of nonsense is written on this subject (and indeed on most subjects) by leader-writers. The honourable member for the Poppleston Division of Boreshire is a most estimable person. He is indeed a most useful member when the Chief Whip has a committee upstairs, or has to keep the debate going while the Minister is briefed by an Assistant Secretary, or has to get his men back from the Carlton; but it cannot be denied that the honourable member is inclined to be tedious. Nothing that he will say will have any effect here or elsewhere, now or in the future. The honourable member has a conscience and must be allowed to relieve it occasionally; but it is surely one of the privileges of a British subject not to have to listen to the honourable member's speeches. It is unfortunate that the gentlemen of the press in the gallery, having bitten their pencils to pieces, get a sudden inspiration and count the number present. It is not that the House is uninterested in the Gold Standard or the future of the British Empire, but only that it is not interested in the speeches of the honourable member for Poppleston. Moreover, it is frequently forgotten that the interest of a debate is quite different from the importance of the subject-matter. It was complained that the British North America Act, 1867, was passed as if it were a Bill for the union of parishes. How else could it have been passed? All parties in Canada, the legislatures of Nova Scotia and New Brunswick, and His Majesty's Government, had agreed to create

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a Dominion. When the Colonial Secretary had given his explanation and the "Shadow Minister for the Colonies" had blessed it in the name of the Opposition, there was really nothing more to be said. Canada ceased to be a subject of debate when the Canadians settled their differences: and there was still Ireland.

The greatest difference of all, however, is that whereas the State Council consists of 58 members and three Officers of State, the House of Commons consists of two parties and a few hangers-on. On one side is His Majesty's Government; on the other side is His Majesty's Opposition. They almost monopolise the show, and they are certainly at the top of the bill. The whole procedure of the House hangs on this fact. So essential is the Opposition to the conduct of proceedings that if there is a genuine national coalition (which happens, fortunately, only in time of war) a "Shadow Opposition" has to be created. The Government cannot govern unless it has a majority; but if it has a majority it governs, by arrangement with the Opposition, the House as well as the people. The business of the House is arranged by the Government in agreement with the Opposition.

The process is supremely simple.¹ The business of the House of Commons is almost entirely legislative (including financial). Except for certain Wednesdays and Fridays, the time is taken for Government business. The Home Affairs Committee of the Cabinet is thus able to plan nearly the whole of the programme of the House for the whole session. Included in that programme, however, is a substantial number of measures on which general discussion is possible—the King's speeches beginning and terminating the session, the twenty days given to the Estimates, the adjournment motions at Christmas and Easter, and the Appropriation and Consolidated Fund Bills. The subjects for discussion on these occasions are settled between Government and Opposition from week to week. Every Thursday, therefore, the Leader of the House informs the Leader of the Opposition, in answer to a question, the programme for the coming week—which has, of course, already been settled between the Chief Whips. Thus, if the Appropriation Bill is down for next Thursday, it may be agreed to have a debate on social insurance. Theoretically, any member may raise any other subject he pleases; but members are supposed to *debate*, not to exhibit the bees in their bonnets, and any apiarist will be frowned upon by his Whip (and the House) and will find considerable difficulty in catching Mr. Speaker's eye on a future occasion. If next Thursday is a Supply day, the Opposition may decide to criticise the Government's colonial policy, and so the Colonial Office vote will be put down. At any time, of course, the Opposition can get a debate on a specific motion by asking the Government to find a day or, if the case is extreme, putting down a vote of censure. If, however, a matter of urgency arises, it is possible to move a motion for the adjournment of the House that day, with the result that, if the Speaker agrees

1. Jennings, *Parliament* (Cambridge, 1938), pp. 133-146.

that it is "a definite matter of urgent public importance" and a sufficient minority agrees, the matter is debated at 7.30 p.m. that evening. People with bees can either put down motions and ballot for priority, or utilise the half-hour which can be devoted to the adjournment motion every evening except Friday.

The whole procedure is at once flexible and orderly. Each member knows several days ahead what subject is going to be debated (subject to emergencies) and can take some trouble over the preparation of his speech. The programme is planned in such a way that all the subjects of topical interest are covered. Urgent questions can always be brought up, and the intervention of the Opposition whips makes certain that the real function of the House, to criticise Government policy, is properly performed. Every debate is in truth a debate, a discussion in which a small number of members, usually those with the ideas or the knowledge or (in rare cases) both can take part. The vote is neither here nor there, for it is always in favour of the Government: but the "feeling of the House," as expressed in the debate, is extremely valuable. Being ordinary people with some genuine interest in the matter, members express the doubts and hesitations of ordinary people. They are not experts, and nobody except themselves ever pretends that they are. They represent that illusive "public opinion" which lies hidden somewhere in popular government. The Government, in turn, can explain; and it is remarkable how frequently the uninformed criticism which appears in the *frains* and the newspapers melts away when a Minister makes a plain straightforward answer to the repetition of these criticisms in the House. Mr. Churchill once explained his difficulties in the coalition of 1915, when he was less popular than he is now. "I was not attacked (*i.e.*, in the House); therefore I could not defend myself." With an Opposition on the Bench opposite, there is usually no lack of opportunities for defence.

It is of course impossible to apply this system in Ceylon. Not only are there no parties and therefore no Opposition, but also the Donoughmore Constitution is so framed that it is difficult to have a Government. It is true that a substantial part of the Donoughmore scheme, that relating to the executive powers of the State Council, has for practical purposes disappeared, and also that the power of the purse has enabled the Board of Ministers to exercise some control over the actions of Executive Committees. Nevertheless, the British system implies not merely collective responsibility for finance, but collective responsibility for everything, and this in turn implies a homogeneous Cabinet in a sense quite different from that in which the term has hitherto been used in Ceylon.

The British system is, of course, not the only system of government which has worked well; but the Standing Orders of the State Council contain provisions which remind one irresistably of Charles Stuart, James Stuart and Charles Stewart Parnell. The result of the differences noted above, applied to a

procedure essentially British in its origin, has produced an impression of a badly-organized assembly. In some measure the impression is exaggerated, but it is due to a comparison with a legislature ten times the size, working a party system with almost mechanical precision, and exercising functions of control much wider in their extent and closer in their content. The State Council, like the House of Commons before modern social control developed in industrial communities, had time to waste and could therefore afford a haphazard procedure.

II.

It must be emphasised that the arrangement of the business of a legislature is constitutionally a very important subject. One does not get democracy merely by having a representative system and a wide franchise. Though members of all legislatures, like most other people, exaggerate their own importance, they are very ordinary people acting, or trying to act, as representatives of public opinion. It is therefore essential that their procedure should enable debate to exercise two functions, to educate public opinion, and to express public opinion. The House of Commons, in spite of the defects in its procedure² and its composition,³ fulfils both of these important functions. The State Council, under its ordinary procedure, does not perform either function as well as it ought. There is here no question of limitation of powers. The State Council has not the legal power, under the present Constitution, to do all that it wishes; but there is nothing to prevent it from debating anything it pleases.

The Standing Orders provide⁴ that, unless the Council otherwise decides, the Council shall meet on Tuesdays, Wednesdays, Thursdays and Fridays in alternate weeks, each meeting beginning at 2.30 p.m. or at such other time as the Council may from time to time determine. A sitting of the Council shall end not later than 7.30 p.m. unless the Council, on a motion made for the purpose with the consent of the Speaker, otherwise resolves. This is a relic of the famous "eleven o'clock rule," designed to prevent the Irish from keeping the House of Commons up all night, and still used to prevent the Opposition from obstructing the Government. In fact, there was often difficulty in keeping a quorum late in the evening, and when the blackout restrictions were imposed the Council decided to adjourn earlier.

It is by no means easy to interpret the Standing Orders relating to the organisation of business. Certain preliminary matters—swearing in of members, messages from the Governor, announcements, laying of papers, petitions, notices of motion, and questions—are placed first on the orders of the day.⁵ The "notices of motion" are oral notices. They really have no

2. Jennings, *Parliamentary Reform* (1933).

3. Jennings, *Parliament must be Reformed* (1941).

4. S.O. (State Council) 23-25.

5. S.O. (State Council) 35(1).

effect except to give publicity to the member and his motion (often a desirable procedure), for an oral notice of motion is not effective unless written notice be given to the Clerk,⁶ and notice may be given to the Clerk without oral notice in Council.⁷ Order 41 provides that "all motions, of which notice has been received by the Clerk not less than five days before a meeting, shall be included in the order of the day, but unless the Council otherwise orders, no debate thereon shall take place unless five days have elapsed since the appearance of the notice on the order of the day."⁸ What this probably means is that, when the Clerk receives notice of a motion, he shall place the notice with the order of the day and that, when it has appeared on the order of the day for five days, debate on the motion may take place. Moreover, Standing Order 35(2) says that the order of the day shall include the specified matters mentioned above "and also such other business as may conveniently be dealt with on such day in the order in which they will be transacted." The only way to make sense out of Standing Orders 35 and 41 is to assume that the latter refers not to motions but to notices of motions. That is, when notice of motion has been given for five days, the motion may be put down on the order of the day if there is time for it. In practice most private members' motions refer to matters within the jurisdiction of an Officer of State or an Executive Committee and must be referred to the Office or Committee without discussion.⁹

The "other business" referred to by Standing Order 35 is the main business of the Council. Consideration of that business may be postponed, however, for any of the following reasons:—

- (a) an urgent motion concerning privileges is moved;¹⁰ or
- (b) a motion for adjournment on a definite matter of urgent public importance is moved;¹¹
- (c) a member of the Board of Ministers moves to take the time of the Council for urgent business.¹²

If the Council proceeds with the order of the day the following rules as to priority apply:—

- (1) Consideration of private members' motions shall ordinarily commence at 5 p.m. on Thursdays, unless the Council otherwise determine.¹³
- (2) The order in which private members' motions shall be taken shall be decided by ballot.¹⁴

6. *Ibid.* 41(2).

7. *Ibid.* 41(1).

8. Author's italics.

9. S.O. (State Council) 57.

10. *Ibid.* 43.

11. *Ibid.* 42.

12. *Ibid.* 38.

13. *Ibid.* 58(2).

14. *Ibid.* 58(1).

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- (3) A report from an Executive Committee presented in accordance with Article 46 or Article 47 of the Order-in-Council shall be considered in Council upon the day appointed by the Board of Ministers, unless the Council shall defer the report to another day.¹⁵

As the Council now operates, this list includes none of the most important of the agenda. There are very few reports from Executive Committees under Articles 46 and 47 of the Order-in-Council, and most business may be classified as follows:

- (i) The Appropriation Bill and Supplementary Estimates;
- (ii) Motions by Ministers for the allocation of loan funds;
- (iii) Government Bills;
- (iv) March resolutions and other motions by Ministers on behalf of Executive Committees;
- (v) Motions to approve regulations.

Government has not priority for any of these, unless they can be said to be "urgent," and for that purpose a motion has to be moved and passed.¹⁶ Also, it appears that any member may have a motion put down for any particular day.¹⁷

The consequences of this liberty—or licence—are important. First, there may be considerable delay in Government business, due to the insistence of private members that their motions and Bills be taken first. In time of emergency such delay—in spite of the safety-valve in Standing Order 38—might be serious. Secondly, Mr. Speaker has the function of arranging business where the Standing Orders contain no provision.¹⁸ This compels him to decide between Government business and private members' business and to decide priority among private members' Bills, though private motions have to be moved according to priority in a ballot.¹⁹ It is a well-known principle, to which the Speakers of the House of Commons adhere firmly, that Mr. Speaker shall exercise no function which may lead to controversy or accusations of partisanship. Thirdly, business ought never to be arranged on the floor of the legislature. The State Council, being small, is less likely to be stampeded than a larger legislature; nevertheless it is clear that business cannot be arranged by large committees and in the heat of debate. Moreover, the order in which business is apt to be determined not by the importance of the subject-matter but by the popularity or unpopularity of the member. Fourthly, business is arranged in the Council itself only by lengthy and sometimes confused discussion or cross-talk. The State Council in normal times wastes a considerable amount of time through members—including Ministers—drawing attention to their motions and begging that they be taken up. Fifthly, there being

Ibid. 96(1).

Ibid. 38.

This seems to follow from S.O. 36.

S.O. 154.

Ibid. 58(1).

no organised body like whips authorised to settle the phrasing of motions and the most convenient order, an effective debate even on urgent and important problems may not be held.

Two illustrations, widely separated in time, of the last difficulty may be mentioned. Between September and November, 1928, the Legislative Council debated the Donoughmore Report. A large number of motions was put down by unofficial members. In large measure they overlapped and in some measure they conflicted. An unusual procedure was adopted so as to get some sort of order into the debates, but there were several unnecessary discussions about procedure, and in the end a logical order was not developed. Had a similar question arisen in Canada or Australia there would have been conferences between the whips as to the most convenient set of propositions, and their arrangement in logical order, so that the whole field open for debate could be covered in a logical orderly manner. These motions would then have been put down "officially" by Ministers, Opposition leaders, or private members. Naturally, this system cannot be worked where there are no parties, but it is clear to the reader that the Legislative Council did not make its points as effectively as it could have done if somebody had *planned* the debates.

At the end of 1941, when the Japanese entered the war, the Governor addressed the State Council, which then passed with commendable promptitude a Supplementary Estimate for Rs. 20,000,000.00. In the debate the general question of the impact of war on Ceylon was discussed. The Council next met on the 27th January, 1942, when oral notice was given of nineteen private members' motions.²⁰ At the end of questions a motion for the adjournment of the Council to discuss a definite matter of urgent public importance was moved. Mr. Speaker ruled the motion out of order, and a discussion as to whether it could be raised in some other way was carried over five columns of Hansard.²¹ Next followed a discussion occupying four columns on the time of meetings.²² Supplementary Estimates arising out of the emergency were discussed for the rest of the sitting, the debate ranging over the whole problem of the defence of Ceylon.²³ There were on the order paper a War Risks Insurance Bill regarded as urgent, and a censure motion which would normally be regarded as taking precedence. The Bill was read a first time on the 28th January and was followed by an adjournment motion for the discussion of food policy. It is a little difficult to see how this debate was in order, but Mr. Speaker undoubtedly gave way to the wishes of the Council in allowing it to be moved. The motion was carried *nemine contradicente*, but the vote meant nothing whatever since it merely terminated the sitting. On the 29th January the War Risks Insurance Bill was taken through its

20. In respect of 12 of these notice of intention to suspend Standing Orders was given.

21. State Council of Ceylon, Debates, 1942, pp. 10-13.

22. *Ibid.* pp. 13-15.

23. *Ibid.* pp. 16-40.

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ing stages, though only after a discussion on the order of business occupying four columns.²⁴ On the 30th there was a two-column discussion on business,²⁵ but eventually Standing Orders were suspended to allow a motion on two motions, taken together, on the closing of schools and adjournment. The debate was adjourned to the 10th February. Leave to the adjournment to allow of a statement on civil defence was granted that day, and the subsequent debate lasted all day.²⁶ The debate on the closing of schools was continued on the 11th February and the motion to close the schools was carried.²⁷ The motion for evacuating people was formulated and carried.²⁸ The motion for censuring the Board of Ministers for lack of preparation was then moved though not without protest from another member who had a motion down.²⁹ An amendment to change the motion from one of censure to one of no-confidence being moved and after discussion about procedure occupying four columns, the debate was adjourned.³⁰ Another member then wished to suspend Standing Orders, but he agreed to put it off. Ordinary Government and private members' business was then taken. On the 12th February the vote of censure was carried and the motion lost.³¹

To one accustomed to the precision of House of Commons procedure, all this appears very confusing. Westminster is of course more accustomed than Colombo to alarms and excursions, and once more the party system would have made all the difference. It is not possible to say what would have been the British procedure because the problem would have been viewed in a different light. The reactions of public opinion in September, 1939 and May, 1940 were quite different from those in Ceylon in January, 1942. However, the procedure would have been somewhat as follows. The Government would have informed the Opposition whips that it required a vote of credit and certain legislation passed immediately. The Opposition would have replied that it would give all assistance for these purposes, but would also require a debate on the Government's policy, with which it was dissatisfied. The Government would offer a day for this purpose, and the Opposition would state that three days would be required to debate (a) civil defence, (b) voluntary evacuation and (c) food. The alternatives would then be discussed. They would be--

(1) A motion for the adjournment which would, of course, not lead to a division. This would be inconvenient, since in fact three such

4. *Ibid.* pp. 73-74.

5. *Ibid.* p. 106.

6. *Ibid.* pp. 136-168.

7. *Ibid.* p. 174.

8. *Ibid.* p. 175.

9. *Ibid.* pp. 175-185.

10. *Ibid.* p. 185.

11. *Ibid.* pp. 271-318.

motions would be moved. Also, the Opposition would probably wish to press to a division.

- (2) A Government motion to which the Opposition could move a reasoned amendment.
- (3) A vote of no-confidence or, if the Opposition felt strongly on the matter, a vote of censure.

The second would probably be chosen. On the first day the debate would be opened by the Minister of Home Security, on the second by the President of the Board of Education and on the third by the Minister of Food, the Prime Minister winding up on one of the three days. Under this procedure, it will be seen that—

- (a) The time of the House is not wasted by wrangles about the order of business.
- (b) The Government gets the money and the power for Whitehall to carry on the war while Westminster is talking.
- (c) Criticism is preceded by explanation, so that there is no justification for a hare-hunt beginning with a story of the "I hear that" type.
- (d) Each subject is debated separately and in a single debate.
- (e) The listeners to the nine o'clock news and the readers of the morning newspapers have both sides of the case before them.
- (f) The Government is either supported or turned out. In the former case it pays some attention to the "feeling of the House"; but no government hesitates to ignore the opinions of members of Parliament where it thinks that they are hasty and ill-informed.

The last point is perhaps the most important of all. If members of Parliament in June, 1940, when the enemy was occupying the coast from Brest to Narvik, had shown signs of panic, the Government would not have given way. To do so would have been to make itself contemptible in its own eyes and, eventually, in the eyes of the people. Since members of Parliament are ordinary common people, however, the fact that they are ill-informed shows that sections of the people are ill-informed. Instructions would therefore be issued to the Ministry of Information to release more of the official information about the effects of air raids; and Ministers would take every opportunity of allaying panic and appealing to the sense of responsibility of the ordinary citizen. Meanwhile, government would be carried on coolly and expeditiously, if necessary in defiance of a hasty and groundless panic.

III.

It is, of course, not possible to reproduce this system in Ceylon. The Donoughmore Constitution does not permit the formation of a homogeneous Government, and the absence of a party system prevents the formation of an Opposition. The result is, inevitably, that members do the best they can in a sort of guerilla warfare. Nevertheless, it is clear that the Board of Ministers has tended, since the outbreak of war, to look more like a Cabinet and less like

the General Purposes Committee of a small local authority. The Emergency Standing Orders appear to be designed to enable the Board of Ministers to govern in emergency conditions, while at the same time to enable members of the State Council to carry on their guerilla warfare with fewer discussions about the order in which they shall shoot.

It is now provided that, unless the Council otherwise decides, the Council shall meet on Tuesdays, Wednesdays and Thursdays at 2 p.m. and on Fridays at 10 a.m.³² The proceedings on any business under consideration at noon on Fridays shall, unless the Council otherwise decides, be interrupted, without question put, and shall be resumed at 2 p.m.³³ This is in accordance with the general practice of the Council to adjourn for meals. The House of Commons sits continuously. For a short period early in this century there was an interval for dinner known as "the Speaker's chop." Strangely enough, it was found easier to "keep a House" during dinner than to "make a House" after a dinner interval. The House may not be counted out, however, between 1.15 p.m. and 9.15 p.m.³⁴

At 6 p.m. on every Tuesday, Wednesday or Thursday, and at 5 p.m. on every Friday, the Speaker shall adjourn the Council without question put.³⁵ This avoids an adjournment motion and prevents a debate. Then comes the first change of substantial importance³⁶ :—

"At 5.30 p.m. on every Tuesday, Wednesday or Thursday and at 4.30 p.m. on every Friday, the proceedings on any business then under consideration shall be interrupted; and, if the Council shall be in Committee, the Chairman shall leave the Chair and make his report to the Council; and if a motion has been proposed for the adjournment of the Council, or of the debate, or in Committee that the Chairman do report progress or do leave the Chair, every such dilatory motion shall lapse without question put :

Provided always that, on the interruption of business, the closure may be moved under Standing Order 66 and, if moved, or if proceedings under the Standing Order be then in progress, the Speaker or the Chairman shall not leave the Chair until the question consequent thereon and on any further motion as provided in that Standing Order has been decided." is further provided that³⁷ "after the business under consideration at 3.30 p.m. (or 4.30 p.m. on a Friday) has been disposed of, no opposed business shall be taken."

These are Westminster rules,³⁸ copied exactly except for the "exempted business" which would be irrelevant under the State Council's financial

32. Em. S.O. 2(1).

33. Em. S.O. 2(2).

34. S.O. (House of Commons) 25.

35. Em. S.O. 2(3).

36. Em. S.O. 2(4).

37. Em. S.O. 2(5).

38. S.O. (House of Commons) 1(3) to (5).

procedure. The purpose will not be at all evident from a casual reading. There are really two ideas behind the rules. First, there is often a considerable amount of merely formal business which need not take up the time of the Council because nobody wishes to oppose. In the House of Commons, for instance, many Bills (especially private members' Bills) go through as "unopposed business" without any debate whatsoever.³⁹ The practice is for the member to propose formally. If any member shouts "object" it is deferred; if not, it goes through to its next stage. The odd half-hour, between 5.30 p.m. and 6 p.m. (or 4.30 p.m. and 5 p.m. on Fridays) is the time for purely formal business. It could be used, for instance, for private members' business which has to be referred to an Officer of State or an Executive Committee.⁴⁰ Secondly, this half-hour is the opportunity for members to raise questions of some interest which do not need long debate, or for which time cannot be found during normal business. It is, in truth, the time for what the House of Commons, by long tradition, calls "grievances"—general complaints against the Government or even (though these are uncommon in the House of Commons) specific complaints on behalf of constituents or other private persons. For instance, if a member is not satisfied with the answer to a question, he announces: "I beg to give notice that I will raise the question on the adjournment at a convenient opportunity." No such announcement is necessary, but when the Minister's private secretary reads Hansard next morning⁴¹ he knows that he has to prepare a brief for the Minister. As a matter of courtesy, the Minister is informed of the date on which the member proposes to speak on the adjournment. The member speaks for 15 or 20 minutes and the Minister follows explaining the particular problem which is troubling the member. As worked in the House of Commons it is a most effective method which, when combined with the questioning system (which does not function well in the State Council), enables the House to exercise control over ministerial action. Few members of the State Council have yet discovered how to use the weapon that the Emergency procedure has placed in their hands. Members of the Board of Ministers would probably prefer its use to the numerous private members' motions on minor points which now litter the order paper and the agenda of Executive Committees. A private member's motion ought not to be used, according to the theory of representative government, except for a definite matter of substantial public importance. One ought not to use a sledge-hammer to crack a nut.

The third Emergency Standing Order, as proposed by the Board of Ministers, contained new rules to apply to the quorum. It is not possible to change the quorum as such, because it is laid down by the Order-in-Council.⁴²

39. See Jennings, *Parliament*, p. 349.

40. S.O. (State Council) 57.

41. If a debate ends at 11.30 p.m. Hansard is available in London at 9 a.m. next day.

42. Art. 25.

ally quite unnecessary to have a quorum of over one-third, and it is easy to see why that of the State Council should be one-half of that laid down for a body ten times its size. Also, though there is something to be said for keeping members on the premises, there is nothing to be said for compelling them to listen to the honourable member for Poppleston. In the House of Commons the quorum depends solely on a resolution passed by the House on the 5th January, 1640-41, and no attention is paid to the absence of a quorum after the House is in session (except on a division) unless some member demands a count. It is not the practice to do so except for obstructive business. Accordingly, the House of Commons never has difficulties except in the case of private members' business, when nobody (except the member) cares much. The Ceylon Order-in-Council, however, specifically provides that no business, except that of adjournment, shall be transacted unless a quorum is present, and that no amendment of Standing Orders can remove the difficulty. Following British practice, it was suggested that the sitting might be suspended for 15 minutes only in the first instance; but this was rejected by the Committee on Standing Orders because it was "not likely to achieve the object in view" and it "would unduly inconvenience members who were present."

In place of this provision, the Committee recommended that Mr. Speaker be given power, on representation by the Board of Ministers, to summon the House to meet during an adjournment. This has been British practice since 1938, though it has not been embodied in Standing Orders.⁴³

The main purpose of the Emergency Standing Orders, however, is to secure a better regulation of business. Primarily the problem is to make certain Government business can be taken. Accordingly, Emergency Standing Order 6 provides that, after the business mentioned in Standing Order 35(1) has been disposed of (*i.e.* the preliminary business up to the end of questions), Government business shall have precedence on every day except Wednesday, and shall have precedence on Wednesday if the Council so decides. This is a departure from the British rule, where Government business has precedence on all days a week throughout the session, on a fourth day for part of the session, and on the fifth day during the last few weeks of the session. It is of course realised that Government business is business put down by the Opposition, though the Government decides. Also, if the Opposition makes a reasonable request for time (*e.g.*, for a vote of censure) the Government always gives it. It is impossible to have any sort of order where the Opposition arranges business. Wrangles are inevitable in such conditions. As already been explained, it is constitutionally improper for Mr. Speaker to be asked to do it. For these reasons, and because Government business is the most important, it is inevitable that the function should be exercised

by the Board of Ministers. The *order* of Government business also is determined by the Board of Ministers.⁴⁴

The precedence of Government business might, however, be disturbed by a motion for the adjournment. Accordingly, it is provided by Emergency Standing Order 4, that on a day on which Government business has precedence no motion for the adjournment of the Council shall be made before 5.30 p.m. (or 4.30 p.m. on a Friday) except (a) a motion by a member of the Board of Ministers, or (b) a motion under Standing Order 29 or under Standing Order 32. Standing Order 29 refers to a motion for the adjournment of a debate or of the Council during a debate, or that the chairman do report progress or do leave the chair. On such a motion the debate must be confined to the matter of the motion, so that it is not permissible to raise general questions of policy by moving the adjournment during a debate. Standing Order 32 deals with motions for the adjournment for the discussion of a definite matter of urgent public importance. This is a necessary safety-valve and is particularly necessary to prevent individual cases of oppression or the performance of action which might be regarded as prejudicial to the national interest. Mr. Speaker has interpreted "definite matter of urgent public importance" rather liberally, perhaps too liberally: in Great Britain it has certainly been interpreted too rigidly.⁴⁵ In Great Britain, if permission to move the motion is obtained, the motion stands over until 7.30 p.m. Meanwhile, Government business can be continued and the Minister can prepare his brief. The latter function is particularly necessary because very often the Minister knows nothing about the facts, the trouble having arisen, probably, through the action of a subordinate officer. In the famous Savidge case,⁴⁶ for instance, the Home Secretary knew nothing whatever about the matter until his attention was drawn to it in the House of Commons. The Emergency Standing Orders adopt something like the British rule. The motion stands over until 3.30 p.m. on Tuesday, Wednesday or Thursday, or 3 p.m. on Friday. This gives two hours' debate before the debate ends under Emergency Standing Order 2.

Finally, these rules would be of no value at all if it were possible for the Council to suspend them on the motion of any member. The process of suspending Standing Orders had become a regular part of the procedure of the Council. It is almost true to say that they were more often suspended than obeyed; and it has already been pointed out that, in respect of twelve of the nineteen motions of which oral notice was given on the 27th January, 1942, it was notified that the members would move to suspend Standing Orders. Suspension should be resorted to only in the gravest emergencies, and it never is used in the House of Commons except in the first few days of a war or in a serious crisis. Certain rules, like the eleven o'clock rule, provided for their

44. Em. S.O. 7.

45. Jennings, *Parliamentary Reform*, p. 138; and see Jennings, *Parliament*, pp. 101-104.

46. Jennings, *Parliament*, pp. 95-96.

suspension. The rules relating to the order of business are not suspended. In the House of Commons, no Standing Order can be suspended in the House of Commons unless the Government agrees, for its majority votes down any motion to do so. Emergency Standing Order 8 provides that no motion shall be made for the suspension of any of the Emergency Standing Orders except by a member of the Board of Ministers. In the State Council there was some criticism of this on the ground that it prevented private members from bringing urgent matters to the attention of the Government. The Legal Secretary correctly pointed out that private members had the whole of Wednesday (whereas in the House of Commons all private members' time has been suspended since the outbreak of war) and that an urgent matter could be raised (1) on the evening of the adjournment and (2) at any time if it related to a definite matter of urgent public importance within the meaning of Standing Order 32.

The Emergency Standing Orders were originally in operation for three years, but the period has been extended and they are still in force. They have worked successfully. Government business has been expedited not only in respect of matters arising out of the war but also in respect of matters of social reform like the University Bill—it may be doubted whether the Bill would have been passed in April, 1942, if the Emergency Orders had not been in force. At the same time the number of private members' motions proposed has rapidly decreased, and it appears probable that during the course of the next few months the State Council will be, for the first time for years, abreast of its business. It can remain abreast and give itself time for the discussion of major issues like post-war reconstruction if the number of minor motions is substantially reduced. This can be effected by two methods. First, the technique of questioning might be developed so as to avoid "fishing" motions. At present, most "questions" are not questions but questionnaires. Secondly, the adjournment motion can be used. These methods are not only more convenient but also more effective. A private member's motion has to get on the order paper—which takes five days: it then has to be referred to an Executive Committee, where it gets placed at the foot of a long agenda; the Executive Committee has to take a decision and report under Standing Order 32. Usually, the report has to find a place on the order of the day. A question has to be answered within 48 hours. Where the member has to state a case, the adjournment motion provides ample opportunity. Wednesdays can then be reserved for private members' motions of major importance.

In the past much of the practice of the State Council has been based on a principle inherent in the Donoughmore system, that it is the function of a legislature to have a policy. A collection of sixty-one individuals, however eminent, cannot have a policy, except within the narrow limits of a policy. The London Council can have a policy within the framework of a mass of legislation and its duties, conferring powers, and creating control by superior authorities.

State Council of Ceylon Debates, 1942, pp. 572-574.

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The policy of the London County Council in respect of public assistance is determined primarily by the Poor Law Acts, which set out the policy formulated by His Majesty's Governments from generation to generation over the last 360 years and approved from time to time by Parliament. Those Acts confer power of control upon the Minister of Health, exercised by officials on his behalf and subject, if need be, to the control of the Cabinet. Within the narrow boundaries of the Acts, and subject to the restrictions implied in the Minister's powers, the London County Council can exercise a discretion. There is, of course, no distinction except one of degree between a legislative and an administrative act,⁴⁸ but in point of degree the functions of the State Council (even on "executive" business as the Constitution is operated) are legislative and those of the London County Council are administrative. There is really no comparison between the State Council and the London County Council. Though the latter "governs" nearly as many people, it does so over a narrow range of functions and exercises rigidly restricted discretionary powers. A broad policy can be formulated only by a small group, using the whole apparatus of administrative government, and fitting the policy of administrative authorities together by the application of consistent principles. The function of a legislature is to praise the Ministers, criticise the Ministers, check the Ministers and, if need be, turn out the Ministers. Within the limits laid down by the Constitution, the Emergency Standing Orders enable these functions to be exercised far more easily and effectively than the Council's peace-time procedure.

W. IVOR JENNINGS.
