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DISSERTATION

Presented in Partial Fulfilment of the Requirements
for the Degree Doctor of Philosophy in the
Graduate School of the Ohio State
University

By

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Ohio State University
1964

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Introduction

The purpose of this study is to examine organisation and procedure as techniques used by Parliament for discharging its functions within the framework of the political system in New Zealand. The politics of Britain, New Zealand, and to a lesser degree, Australia and Canada, are examples, with variations, of what may be termed the British Parliamentary system. This term has a quite definite and generally accepted connotation\(^1\) distinguishing it from other systems and capable of being described in terms like those proposed by Morton Kaplan, David Easton, or Gabriel Almond.\(^2\) This study however does not include comparisons

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1. This connotation is explicit in, among others:


with markedly different systems. Its concern is with organisation and procedure in the New Zealand Parliament and since Parliamentary government in New Zealand is an example of the British system, the most fruitful comparisons are those to be made with practice in Britain.

In describing the environment in terms of which the organisation and procedure is significant, Kaplan’s approach seems, therefore, more appropriate than the generalised functional formulations which Almond and Coleman have proposed for comparing western and non-western institutions.

Parliamentary government in New Zealand is a system with certain values, set by the structure of the system. It has a number of essential actors. The actors have prescribed roles or functions and they are bound by certain rules. The values, the actors, their roles and the rules can be described in some detail before any disagreement about the meaning of the term would arise among those who use it. A system ‘model’, then, is available, an analytical abstraction rather than a concrete entity, in terms of which an instance of it like the New Zealand political system may be methodically described and critically analysed. In such terms, the behaviour of one of the actors in the New Zealand example of the system may be said to be deviant from, or in conformity with, the rules. Or an actor may be said to be performing a role inefficiently in certain respects. If the behaviour of Parliament as actor is in question, its rules of organisation and procedure may be examined and possibly judged responsible to some extent for deviant or
inefficient behaviour. A similar examination of the same part of another instance of the British Parliamentary system (always bearing in mind the cultural and institutional variables which affect behaviour under rules) may suggest ways in which the inefficiency may be corrected.

To some extent too, the system itself is under examination in an exercise of this kind. Any actual example of the system depends on a number of assumptions about the workability of the system and its capacity for achieving its goals. If the evidence shows that, to a degree, perhaps because of changed conditions in which the system is operating, it is impossible for an essential actor to fulfill its role, then, to that degree, the system may be called inefficient in its own terms; that is, in achievement of system values, in a given environment.

The specification of the variables of the system and the essential relationships between them, which characterise the system, tends to discipline comparisons with features of other systems.

The values emphasised in the British Parliamentary system are those of effective government (meaning the power to make policy and execute it) and responsible government. These values distinguish it from the continental Western-European Parliamentary system or systems and from the American Congressional or Presidential form.

3"The British system, in short, underscores the supreme necessity of government, of having a recognised legitimate authority which is able to rule." Roland Young, loc. cit.
Responsibility is a value in the continental system but not the strong executive leadership which typifies the British system.\(^4\)

Traditional distrust of executive power, deep divisions in population on a regional, confessional and ideological basis\(^5\) are accompanied, on the continent by multiplicity of parties and electoral arrangements which favour multiplicity, powerful committee systems in legislative assemblies and a working emphasis upon Parliamentary sovereignty and on representation, with Cabinets relatively less dominant over Parliament.\(^6\)

The American political system, according to Spitz, 'is characterized by an ambivalence or political schizophrenia in which the majority is both directed to rule and is restrained or prevented from doing so. The principle of responsibility is simultaneously both affirmed and denied.'\(^7\) Less accurately, but more graphically,
Shaw once said that the American constitution was a guarantee to the whole American people that it never should be governed at all. Certainly 'effective government' is not so important a value in the Congressional system as in the British Parliamentary system and, if responsibility is a system value, distrust of those of whom it might be required results in a fragmentation of power which makes responsibility very difficult to assign.

The principal values of the British system, effectiveness and responsibility, though they may appear to conflict, are actually complementary. Though effective government need not be responsible, responsibility depends on effectiveness. A person or group cannot reasonably be held responsible for areas of decision making in which it does not have the power to make decisions. British system structure and rules focus power on one essential actor, Cabinet, responsible to Parliament, to realise these two values. The superficial conflict which results, in practice between effectiveness and responsibility does not take place at the expense of either in present circumstances. It is conceivable that conditions of stress, (for example, war) would make responsibility an ideal that would have to be partially sacrificed in the interest of executive effectiveness. But the degree of responsibility which Parliament exacts is not detrimental to effectiveness normally. In fact, as Mathiot points out, it is conducive to effectiveness. Mathiot recalls the British Prime Minister who complained that he had never had a chance to justify his policies because the Opposition was so ineffective.8

8 op. cit., p. 244.
A Government is more effective if it has public support. It must have an opportunity to build that support. Parliament, in holding the Government responsible, creates the opportunity.

There are other system values. Representation of interests, open discussion of legislation, the political impartiality of the Bureaucracy, the independence of the Judiciary, freedom of expression in speech and press, freedom of association, and the rule of law, are some of them. These, however, are values ancillary to responsibility.

The system actors, interlocking a good deal in their membership, are the electorate, organised groups with political interests, disciplined political parties, popular assembly, Cabinet, Opposition, Bureaucracy, Judiciary, and Head of State. The nature and role of Cabinet, popular assembly, and Opposition are the distinctive features of the system. The popular assembly consists of the elected representatives of the geographical single-member constituencies into which a country operating the system is divided. The Cabinet, which is the executive, is a group of Parliamentarians most, or all, of whom are members of the popular assembly. The Cabinet must be able to command a majority of votes in the popular assembly in support of its general policy and, as a general rule, of its specific proposals for the government of the country. The Cabinet may be chosen either by the incumbent Prime Minister or the party caucus. For their policy and its execution the Cabinet members are individually and collectively responsible to the popular assembly. They are subjected there to the criticism of the Opposition, the organised
minority of members, the leaders of which are supposed always to be prepared, if called upon to do so, to form a Government. Attainment of system values also depends on the existence of two main disciplined political parties contending for Cabinet office. Cabinets in these circumstances do not lose their majorities in Parliament except as a result of a general election reducing the representation of the governing party. It is through its control of the majority party and therefore of the popular assembly that a Cabinet is able to govern effectively. It is because voters can dismiss a Government at an election by altering the composition of Parliament that they can effectively hold a Government responsible.

The basic role of Cabinet is to use existing powers and seek more, if necessary, so as to stay in power while advancing the country's interest wherever possible. To this end it is to submit legislative proposals for the government of the country to the popular assembly, to secure their adoption by the assembly, and then to see that laws so made are executed. The role of the popular assembly is to provide the leaders in the Cabinet and in the Opposition; to deliberate on, criticise, offer amendments to, and adopt the legislative proposals emanating from the Cabinet; to act as a check or control on the whole of the government and bureaucracy in the execution of law, in the exercise of delegated legislation, in its responsibility for public corporations and local government, and in its financial arrangements; and, finally, to represent and help form an enlightened public opinion. The role of the Opposition is to offer an alternative Government and to assume the leadership in the
assembly in its deliberative, checking, and representative role.

The essential rules of the system are:

1. Free and frequent elections to be held to determine the membership of the popular assembly. This implies freedom of speech, press and association.

2. No laws to be put into effect, taxes raised, or money spent, without the authorisation of the popular assembly.

3. The leader of a party having a majority in the popular assembly always to be prepared to form a Cabinet.

4. The minority party to offer an organised opposition.

5. The Head of State to act only on the advice of the Cabinet. Cabinet to be prepared to justify publicly any aspect of its policy in the popular assembly.

6. Cabinet to resign if it loses its majority in the popular assembly.\(^9\)

These are the rules relevant to the normal functioning of the system and to this study. The system, it may be noted, is transformed under certain conditions: e.g., war, rise of a third party, or when an acutely divisive force operates in the society. When environmental conditions are such that changes in characteristic

\(^9\)This rule is absolute if a majority is lost as a result of an election. If, however, it is caused by the defection of members of the party a Prime Minister may request a dissolution and an election to test his support in the country or he may resign and advise the Head of State who might be able to command a majority if called upon to form a Cabinet.
behaviour, that is, in the essential rules, are induced, the transformation rules specify the transformation in that behaviour.\textsuperscript{10} In the British system, when the survival of the system is at stake and all other values become subordinate to effectiveness of government, for example in wartime, rules 1, 2 and 4 are suspended. The parties postpone the political struggle in the interests of social unity until the crisis is over. The system will also be in a state of transformation if a third party of a number of parties is in a position to determine majorities in the popular assembly. The operation of rules 3, 4, 5 and 7 becomes uncertain. For example, the leader of a major party will prefer to form his Cabinet from his own party, but, if it is the price of support, he may include members of another party. The Head of State may in certain circumstances exercise discretion as to whom he should call to form a Government or on the question of dissolution. A Cabinet defeated on an issue may be justified in continuing in office if it can gain support for most of the rest of its programme. A return to the normal functioning of the system will depend either on the end of the crisis conditions, or, in the case of a third party, on the decline of that party, or on its replacing one of the existing major parties, or on the development of a fairly extensive pattern of collaboration with one of the two major parties, including electoral collaboration.

\textsuperscript{10}Kaplan, op. cit., p. 10
The foregoing is not of course a complete account of the political process in any of the examples of the system. In any country with a British Parliamentary system, it may be claimed, the description does correspond with the largely conventional unwritten constitutional framework but it is not an account of the superstructure, which is in a process of constant evolution. A judgement on some aspects of the superstructure, for example, Parliamentary organisation and procedure, will not be an absolute value judgement prescribing policy, but a judgement conditional on system values. It says what is required to achieve conformity with a system model. The system defined may not be the complete political ideal in any country in which it operates. It could be argued, for example, that the House of Lords in the United Kingdom Parliament is an unnecessary elaboration on the model, with some potential for subverting the values of the system, namely effective government and responsibility to the electorate. In spite of this, other values – the class system, tradition – may justify the retention of the Upper House in its presently evolving form. It is possible to distinguish too, between the system role of the Head of State and the role a king may come to play after a long reign in which he has gained a great deal of political experience. Similarly it is possible to distinguish between the reality and the system ideal of Parliamentary performance. If the reality and the ideal diverge, however, it is impossible to assert categorically that they should be brought closer by changing a rule. The superficial conflict between the Parliamentary
role and the executive role might deepen as conditions change and the requirements for effective responsible government change. The political scientist must be content to notice the effects of a rule and he may point out places where, without sacrificing the needs of the executive, the needs of Parliament may be better met.

This study focusses on procedure because it is a determinant, at least to some degree, of the efficiency of Parliament, so that the conclusions may, therefore, have some practical value; and also because 'procedure,' as Sir Kenneth Pickthorn once said, with only slight exaggeration, 'is all the constitution the poor Briton has.'\textsuperscript{11} It is hoped, therefore, that what follows is a contribution towards the understanding of the New Zealand form of the British constitution and the British Parliamentary system generally.

To these ends, after the historical development of the system in New Zealand and the general political background has been outlined, the organisation and procedure of the Parliamentary actor or popular assembly in New Zealand will be examined in relation to the functions required of Parliament under the system, namely, the provision of leadership, deliberation, checking, and representation and formation of opinion. Most relevant to the provision of leadership is a general description of the nature of the Parliamentary actor: the members, their number, qualifications, accommodation, and term of office. Relevant to the deliberative, critical function are the

\textsuperscript{11} House of Commons Deb., 5th series, 617 (1959-60), 70.
officers of the House, privileges, procedure on Bills, rules of debate and voting, and the committee system. Relevant to the administration checking function are Petitions, Question Time, Returns, Papers, motions on urgent matters, and the procedures relating to delegated legislation, and finance. Relevant to the public opinion function are broadcasting of proceedings, and the debates on the Budget, Imprest Supply Bills, the Address-in-Reply and certain motions for the adjournment of the House. In turn, each of these functions and processes will now be examined. Perhaps needless to say, the procedures mentioned are not unifunctional. The classification is in terms of major purpose.
Historical Development of Parliamentary Sovereignty. Ch. 2

The virtually complete constitutional supremacy of the New Zealand Parliament is necessary to the proper performance of its role in the New Zealand political system. The system, like the Westminster model, is valued for two main qualities: effective and responsible leadership. The New Zealand Government can make policy and execute it because it is chosen for its ability to control Parliament and so wield the supreme legal power of Parliament. Parliament, and through Parliament the Government, can be and is held responsible at elections for the whole range of state activity, again, because Parliament is supreme and has complete legislative competence. This supremacy is not derived from any one basic constitutional document. It rests on statute and convention in a century of constitutional development which will be described in this chapter.

Establishment of Representative Institutions.

The first effective legislation to provide New Zealand with representative institutions is 'An Act to Grant a Representative Constitution to the Colony of New Zealand' passed by the Imperial Parliament in 1852. The Act, apart from dividing the country into

\[1\text{Law Journal Reports Statutes (1852), 15 & 16 Vict., chap.72.}\]
six provinces with their own elected councils, also established a General Assembly of which the present General Assembly is a direct descendant. It consisted of the Governor, a Legislative Council and a House of Representatives. Legislative councillors were appointed for life by the Governor. Members of the House of Representatives were elected for five years or until the Assembly was dissolved.

The Constitution Act did not grant responsible government. In the first Parliament which met in 1854, in Auckland, the House of Representatives therefore passed a motion\(^2\) praying for the 'establishment of Ministerial responsibility in the conduct of Legislative and Executive proceedings by the Government.' The prayer was granted in 1856 after a General Election, the civil servants on the Executive Council giving way to Ministers supported by the majority in the House of Representatives. The Governor, however, still did not act only on Ministerial advice. In some matters his Instructions permitted him to make decisions without obtaining the approval of the Executive Council, either at his own discretion, or along lines laid down by the Imperial Government. There remained important limitations on the legal powers of Parliament until 1947.

The successive removal of these limitations and the general decline of the Legislative Council are the two main aspects of Parliamentary development since 1852.

**Development of Parliamentary Sovereignty.**

The convention that the advice of Ministers responsible to Parliament be accepted was established by the demands and protests of successive Ministeries. An indication that the convention had achieved some strength by 1867 was an amendment to the Instructions of the Governor requiring him to use his 'own deliberative judgment' in the exercise of the prerogative of pardon. This instruction, evidently, had not previously been considered necessary. By 1892 the convention was yet more firmly established and such gubernatorial discretion was unacceptable to New Zealand Governments. The Instructions were, therefore, further amended\(^3\) to bring the prerogative of pardon under Ministerial control except when Imperial interests were affected. Since 1892 no instance of the rejection of Ministerial advice has become public.

There remained in practice, in the relations between Governor and Parliament, two relatively important survivals of dependent status. First, the Governor, designated Governor-General after 1917, was in the position, anomalous under a British Parliamentary system, of having from time to time to tender advice to his New Zealand Ministers at the request of another government, the Imperial Government. Second, he was appointed by the Imperial Government. Both of these matters were dealt with by Imperial Conference. At the Conference of 1926 it was decided to appoint representatives of the Imperial Government in the Dominion. New Zealand did not take advantage of this until 1939 but its effect, once adopted, was to leave the Governor-General as representative of the Crown alone.\(^4\) Then, at the Imperial Conference of 1930, it was decided that a Governor-General should be appointed on the advice of the Dominion Government concerned.\(^5\) Today the conventions governing the relations between the Governor-General and Parliament in New Zealand are, in all important respects, the conventions which obtain in Great Britain between Monarch and Parliament.

The Legislative Council.

The Constitution Act provided that the Queen might authorise the Governor to make such appointments to the Upper House, the Legislative Council, as she thought fit. But interference by the Imperial


Government in the appointment of Legislative Councillors was largely precluded by New Zealand's remoteness so the Governor's Instructions authorised him to make appointments without prior approval. The development of Ministerial responsibility in the exercise of this power was quite closely parallel to its development in other spheres. Appointments were being made on Ministerial advice in 1867. In 1868 an Imperial Act confirmed all previous appointments and placed the appointing power in the hands of the Governor. By the 1890's the convention was well established that in this as in other matters the Governor could not reject Ministerial advice.

The Act of 1852 had authorised the appointment of not less than 10 Legislative Councillors. No upper limit was fixed. The Bill originally introduced in the Imperial Parliament had provided that the Council be limited to 15 members but this limitation was removed during its progress. Members of the Council were to hold their seats for life though they could resign or be disqualified by bankruptcy, loss of citizenship, treason, or certain criminal offences. Governor's Instructions in 1855 fixed an upper limit of 15 Councillors.

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The limit was raised to 20 in 1861 and removed completely in the following year. In 1866 the Council attempted to protect itself by passing a Bill limiting the membership to 38 but the Bill was dropped by the House of Representatives. A similar Bill was passed in 1868 but it met the same fate.

In 1891 the Legislative Council Act provided that all future appointments were to be for 7 years with eligibility for re-appointment. This provision, combined with ministerial responsibility for appointment and with the absence of any limit on the size of the Council, was all that was needed to accomplish its emasculation. Until the 1890's the Council had shown little hesitation in using its powers to amend or reject Bills passed by the House of Representatives. But a chamber which could be 'packed' by men of the Government's choice and whose members were dependent on the Government for re-appointment was not in a position to show the same independence. By 1947, when the National Party Opposition first introduced a Bill for the abolition of the Council, there was no disagreement about one proposition: that the Council had

8 loc. cit.
9 N.Z.P.D., 1864-1866, (July 26, 1866), 829.
10 New Zealand Statutes (1891), 54 & 55 Vict., No.25.
11 N.Z.P.D. 277 (August 5, 1947), 123.
ceased to play a useful rôle in the process of government in New Zealand. It was extremely doubtful whether it had done so for the past half-century. A second chamber is not in fact an essential part of the British political system, though practising politicians have not always realised this.

The Council had been under criticism for many years before 1947. A reform measure had been passed in 1914 providing for a Council of 40 members to be elected by proportional representation and three Maori members who were to be appointed. The operation of this Act was postponed, in ensuing years, by Legislative Council Amendment Acts, the third of which, in 1918, provided that the Act would be brought into force, at any time, not less than a year after a Proclamation by the Governor-General for that purpose. Such a Proclamation was issued in January 1920, but was cancelled before it became effective. Until its abolition in 1950, therefore, the Council was a Body whose constitution could be radically changed without its own consent. However, in spite of continued criticism of the Council, the Act of 1914 was never brought into operation. Moribund, the Council dragged out its existence until 1950 because

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it provided a useful form of political patronage.

Abolition of the Legislative Council.

The Legislative Council Abolition Bill introduced in August 1947 by the Leader of the Opposition was defeated on second reading after doubts had been raised by the Attorney-General as to the competence of the New Zealand Parliament to give effect to such legislation. An Imperial Act of 1857\(^1\) had given Parliament power to alter, suspend or repeal any part of the Constitution Act except certain enumerated sections, one of which provided for a bicameral Parliament. The Colonial Laws Validity Act of 1865 had given colonies in general the right to make laws altering their constitutions provided such legislation was passed in the manner prescribed by law then in force in the colony. The question raised by the Attorney-General in 1947 was whether the Colonial Laws Validity Act gave New Zealand power to alter the sections of the Constitution entrenched by the Act of 1857. To resolve these doubts and to avoid any future questions about the legislative competence of Parliament the Government introduced, in 1947, the Statute of Westminster Adoption Bill and the New Zealand Constitution Amendment (Request and Consent) Bill.\(^2\) Adoption of the Statute of Westminster, though it had no effect on New Zealand's competence

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\(^2\) See *N.Z.P.D.* 279, (Nov 7, 1947), 531-566, for 2nd Reading debate.
to amend the entrenched clauses of the Constitution Act, did remove limitations on her power to legislate with extra-territorial effect and to make laws repugnant to British statutes. An Act of the Imperial Parliament was necessary to give New Zealand full power to amend the constitution and the New Zealand Constitution Amendment (Request and Consent) Act\textsuperscript{16} requested and gave advance consent to such an Act. All the legislation involved was passed in 1947.

Following the defeat of the Opposition's Legislative Council Abolition Bill in the House, a Joint Constitutional Reform Committee was set up to consider the question of a Second Chamber. The Committee, after taking an enormous amount of conflicting evidence was unable to agree on any recommendations.

The Leader of the Opposition introduced another Legislative Council Abolition Bill in 1949\textsuperscript{17} but it was opposed by the Labour Government and allowed to lapse. Evidently, a severe strain might have been placed on party unity in a Legislative Council with a Labour majority, asked to sign its own death warrant. In the election campaign of 1949 the National Party pledged itself to abolition of the Council. National won the election and, a few days before

\textsuperscript{16} \textit{Law Reports Statutes} (1947), 11 Geo. 6, chap. 4.

\textsuperscript{17} \textit{N.Z.P.D.} 286, (Aug. 12, 1949), 1231.
Parliament met, announced 26 new appointments to the Council. The new Councillors were quickly nicknamed the 'suicide squad' by the Opposition. They all voted for the Abolition Bill which was introduced shortly after Parliament met. It had passed the House stages with only token opposition from Labour. It was passed by the Council with a majority of 10 votes.

The National Party had promised in the election campaign to consider, if it became the Government, alternative ways to safeguard the country from hasty legislation. A Constitutional Reform Committee was therefore set up to consider the question. The Report was presented and considered in 1952. It recommended that a Senate be created and empowered to delay legislation for two months. A total of 32 Senators were to be nominated by the party leaders in the House in proportion to political strength. Senators were to hold their seats for the same period as Members of the House of Representatives, except that they would continue to function as Senators until the next Senate had been appointed. They were to be eligible for re-appointment. The Government took no action on the Report.

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18 N.Z.P.D. 290, (June 27, 1950), No.2.
19 N.Z. Statutes (1950), No.3.
The issue was forced on the Parliament elected in 1960. They inherited a petition, presented to the previous Parliament shortly before it was adjourned, praying for a written constitution for New Zealand and a Second Chamber of Parliament. The Petitions Committee held public hearings and reported that it had no recommendation to make. Members of the Committee from both sides of the House expressed their opposition to bicameralism in the debate on the Report.

Neither of the two main parties in New Zealand now advocates the creation of a second chamber. Unicameralism, though it has not been without its critics, has produced only formal, politically insignificant, changes in the governmental process. While it cannot be said with any certainty that New Zealand will not revert to bicameralism, it seems, at present, highly improbable.

The Powers of the House of Representatives.

In 1962 the main constitutional restraint on the elected House is the need to submit all Bills for the Governor-General's assent. This is a formal, not a political, limitation, since a Governor-General's refusal to sign a Bill would create a constitutional crisis.

22 A.J.H.R., 1961, 1, 2A.
Nothing comparable to the American Constitution and the process of judicial review of legislative enactments exists in New Zealand. The sanctity of the New Zealand Constitution is in the custody of Parliament.

Apparent reservations to the sovereignty of Parliament in Constitutional Acts are self-imposed for Parliament could at any time repeal or amend them without special procedures. The position with regard to such reservations at the present time is as follows.

Three clauses of the Constitution Act of 1852 which limit the competence of the New Zealand Parliament are still in force. They are Sections 56, 57 and 58.

Section 56 gives the Governor-General power to reserve any Bill at his discretion for the Queen’s Assent.

Section 57 requires the Governor-General to obey Royal instructions regarding reservation of certain Bills. There are no such instructions in force today.

Section 58 requires the Governor-General to submit to the Secretary of State a copy of every Act assented to and permits disallowance within two years.

Since the Imperial Conference of 1930\textsuperscript{24} it has been understood


\textsuperscript{24} See A.J.H.R., 1931, 1, A-6 11.
that any Bill reserved under 56 or 57 would receive Royal
Assent if the New Zealand Government so desired and that there
would be no disallowance or even submission of copies to the
Secretary of State of Acts under Section 58. Then, under the New
Zealand Constitution (Amendment) Act, 1947, New Zealand was given
power to alter, suspend or repeal all or any of the provisions of
the Constitution Act.

One effective disallowance provision in operation is contained
in a New Zealand Parliament Act (subject therefore to repeal by
the New Zealand Parliament). This is the New Zealand Loans Amend-
ment Act, 1947,25 which confirms an undertaking given by the New
Zealand Government to the Imperial Government that legislation
which appears to the Imperial Government to damage the rights of
holders of New Zealand Government Securities will not be submitted
for assent without the consent of the Imperial Government. On the
basis of this undertaking New Zealand Government securities rank
as trustee securities in Britain.

25
New Zealand Statutes (1947), No.25.
A number of clauses in the Electoral Act 1956²⁶ are entrenched by Section 189 of the same Act. The Clauses, relating to the duration of Parliament, the Representation Commission, districting, the franchise, and voting methods, are enumerated and it is then required that no reserved provision may be repealed or amended except by a 75 per cent majority of the House or by a majority poll of the electorate. It is impossible to say what the effect would be if a Parliament were to ignore the provision. As neither the Electoral Act itself nor the entrenching clause, Section 189, is entrenched, a future Parliament could avoid contravening Section 189 by repealing it or the whole Act.²⁷

The real limitations on the powers of Parliament are political. The New Zealand political heritage is the British political heritage, one which tends to inhibit governments against drastic change of any kind unless they can be sure of popular support.

Most of this study will be concerned with Parliament in a subordinate role to Cabinet, a Cabinet which is the initiator and executor of legislation.

²⁶ *New Zealand Statutes* (1956), No.107

²⁷ K.J. Scott has indicated that the failure to entrench this clause, both in 1956 and since then, was deliberate. *The New Zealand Constitution*, (London: Oxford University Press, 1962), p.7.
It is worth emphasising, however, that the ultimate authority of Parliament is a political reality of the system, not a mere formality. The refusal by Parliament to agree to legislation proposed by a government would create a political but not a constitutional crisis. The constitutional crisis would arise if a Government continually refused to accept the verdict of Parliament. The procedure at the opening of a new parliament or of a new session admirably demonstrates both the formality and the reality of these ultimate power relations between Governor-General, Government and Parliament and its description belongs here.

Roland Young puts the point well: "Parliament is...one of the institutions of government which, on some matters, must be consulted. Consultation is the key, and Parliament is sovereign in the sense that if its consent is required and there is a conflict of wills, the will of Parliament prevails."op. cit., p.15. Young is on firmer ground here than he is when he attempts, quite unnecessarily, to argue that the essence of Parliament "is more correctly expressed by such concepts as representation, deliberation and control... than by a word /sovereignty/implying that total power is encompassed in Parliament, to be captured by a majority and for its use, only."op. cit., p.249

The everyday role of Parliament and its ultimate authority are essential parts of a political system and it is pointless and possibly misleading to weight their importance.
On the first day of the meeting of a new Parliament Members gather in the Chamber at the time appointed in the Proclamation. Commissioners appointed by the Governor-General to open Parliament (usually judges) arrive and are announced and introduced by the Usher of the Black Rod. Their Commission is read by the Clerk. Having intimated that it is His Excellency’s wish that Members elect a Speaker, the Commissioners withdraw. The Clerk then reads his Commission authorising him to administer the oath and calls the Members’ names alphabetically from the list delivered to him by the Clerk of Writs. The Members take the oath or make affirmation. The House then proceeds to elect a Speaker with the Clerk acting as Chairman.

At the next sitting Mr. Speaker takes the Chair, prayers follow, and then, in response to a message from the Governor-General, Mr. Speaker, accompanied by Members and preceded by the Serjeant-at-arms bearing the Mace and followed by the Clerk, proceeds to the Council Chamber to receive the Governor-General’s speech. The speech is, of course, the work of the Government. It outlines more or less clearly the programme of legislation which the Government intends to put before the House and other matters of policy. The speech

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*Standing Orders of the House of Representatives* (Wellington: Government Printer, 1951), No. 4. (hereafter referred to as S.O. Amendments to these Standing Orders, up to and including those adopted in June 1962 will be indicated by mention of the date of adoption of the amendment.)
is rather elaborately handed to the Governor-General. The Prime
Minister, standing to his right, walks to the throne holding the
speech conspicuously and handing it to him to read. On returning
to the Chamber, Mr. Speaker reports to the House that he has waited
upon the Governor-General, received confirmation of his election
and of the privileges of the House and repeats his acknowledgment
of the honour the House has done him in electing him.

'The House may then transact such business not involving any
debate as may be conveniently taken.' Petitions, notices of Motion
or for Leave of Absence, Questions are ordinarily received at this
time. Then, 'before the Governor-General's speech is reported to
the House by Mr. Speaker, some Bill shall be read a first time
pro forma.'

Mr. Speaker then reports that the House has attended the Governor-
General and lays upon the Table the text of his speech. At this
point a Member gives notice of Motion for a respectful Address in
Reply to His Excellency's Speech. Notices of Amendment to that
Motion may then be given and the House may adjourn.
Procedure for the beginning of an ordinary session is similar. Members gather in their chamber, prayers are read, Black Rod requests the attendance of the House in the Council Chamber, the Governor-General delivers his speech, Members return, the Speaker calls for formal business. Petitions, Questions, Reports may be presented. A Bill is read for the first time pro forma (the Expiring Laws Continuance Bill). Mr. Speaker lays the Governor-General's speech on the table. A Member gives notice that he will move a respectful Address in Reply and the Prime Minister then usually moves the adjournment of the House, mentioning his intentions as to sittings and business to be taken.

These procedures reflect both the formal inferiority and actual superiority of Parliament over Executive. The House is called together by the Governor-General, elects its spokesman at his request and files into his presence to hear his proposals for governing the country with the assistance of his Ministers. But the political relationship between him and his Ministers is demonstrated when his chief Minister publicly hands over the speech he has to read; and that between Parliament and Crown is shown when, following British tradition, the House makes a token demonstration of ignoring the Government's proposals in the speech from the throne by getting on with business of its own including a piece of legislation. It is significant that it is the Prime Minister who acts
for the House in this demonstration of independence, thus emphasising his Parliamentary status.

The development of the Parliamentary powers reflected in this opening ceremony has been reviewed. These powers are significant, however, in a context of party politics and pressure group activity which they have helped to shape and which in turn has determined the actual role of Parliament within the political system. This political background will now be described.
In the sovereignty of the elected House, in the electoral and party systems, and in the procedure for arriving at decisions in Parliament can be found the rationale of institutionalised political behaviour in New Zealand. Pluralities in single member constituencies elect representatives. A majority of representatives is necessary for Parliamentary decisions. Because Parliament is supreme Governments have to be chosen for their ability to control decision making in Parliament. They must therefore be able to command the support of a majority. This need, in conjunction with electoral requirements has been favourable to the growth of the two-party system. The growth of practices and conventions relating to the composition and responsibility of Governments can be largely explained in the same terms. The pattern of interest group activity is related to all these factors. In this chapter, the party system, the cabinet system and interest group activity will be discussed as a background to Parliamentary activity.


2 There is as yet no definitive work on parties or interest groups in New Zealand. What follows therefore is a general essay sketching the broad outlines of their development and operations. It is based in part on the works cited and partly on information obtained from party and organisation officers.
Parties.

The modern party system in New Zealand did not come into existence immediately after fully responsible government had been achieved. In the 19th Century there were political groups or factions rather than parties which would form somewhat unstable coalitions. The transition to disciplined parties took place in the eighteen-eighties and nineties. Loyalties developed between groups of Liberals, on the one hand and Conservatives on the other. At first these names were merely labels borrowed from British politics and applied to informal alliances. But in 1881 the franchise was extended and, as in England, this stimulated the growth of regular party organisation capable of making a general appeal to the electorate under one leader.

The Liberals achieved a degree of organisation in 1890 and were able to defeat a disunited and somewhat discredited Conservative Government. They offered and put into effect a programme of social and economic reform. However, the party allied small farmers and manual workers and the divergence of interests between the two gradually became apparent. From 1905 various Labour groups were created to give voice to the interests of workers. They combined to form the present Labour Party in 1916. Conservative and other opposition

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3 For the period 1890-1912 see B.J. Foster, Development of Unity and Organisation in the New Zealand Political parties of the Liberal Era, (Wellington, Victoria University thesis, unpublished, 1956.)

elements did not succeed in establishing real unity until the election of 1911 when they appealed to the country as the Reform party with a two-fold programme of eliminating alleged corruption and of providing freehold tenure for state leased farms. It was primarily a farmers' party.

Its victory over the Liberals in 1911 was not decisive but Reform was the strongest party in the House and its leader, Massey, was eventually able to form a Government. A three-party system now took shape and though Reform managed to retain the government until 1928, Labour, Liberal and Reform parties competed for power during this period.

In 1928 the Liberals took office with Labour support but, as the depression set in, Labour would not countenance proposed cuts in salaries and social services, so, in 1931, the Liberals formed a new coalition with the Reform party. Defeated by the Labour party in the 1935 election, remnants of the coalition and other non-Labour elements became the National party in 1936. The combination of two incentives, electoral requirements and the need to control Parliament by a

5For the formation of this Ministry and illuminating account of the politics of the period see W.J. Gardner, 'W.F. Massey in Power', Political Science, Vol. 13, No. 2, (Wellington : Sept. 1961) pp. 3-30

6For the history and general accounts of the character and organisation of these parties see A.D. Robinson The Rise of the New Zealand National Party 1936-1949 (Wellington, Victoria University thesis, unpublished, 1957) and B. Brown, op. cit. and see below pp. 71-72.
stable, reliable majority so that a unified appeal can be made to the electorate by a Government, here were instrumental in the formation of the National party as they were instrumental in the formation of the Liberal party in 1890. Before 1935 Reform members in the coalition had no desire to lose their identity by fusion with the Liberals (by then called the United party). The coalition was maintained to fight the election of 1935 because it 'was the view on both sides that to go to the country separately and split the anti-Labour vote was political suicide'. But a Reform party statement made it quite clear that it 'was agreeing to a co-operation between the two parties for the election. ...the two parties... would continue with their separate identity as they had done since the last election.' However, some anti-Labour elements did fight the election separately and succeeded in splitting the anti-Labour vote. The fact that Labour could not have defeated the Government except in the face of this disunity was realised fully after the elections by the shocked remnants of the coalition parties. Improved organisation appeared to them to be the best way to secure the election of a non-Labour government in 1938.

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9 ibid. p. 16.
Labour, which put into effect an ambitious welfare-state programme remained in power until 1949, obtaining its most solid support from an urban and industrial vote. Today, though there are small parties in the field, (like the Social Credit party, the Liberals - a right-wing party formed to fight the election due in 1963 -, and the communists) the only significant contenders for office and the only parties with seats in Parliament are the National and Labour parties.

It is difficult to give any definite expression of the policy difference between the two parties. Though there are individual exceptions, New Zealand politicians are not doctrinaire. The behaviour of the parties in Parliament is better explained by their awareness of the sectors from which they draw electoral support, rather than by ideological differences. Labour draws most of its support from urban areas where wage earners, trade unionists and the less well-off sections of the community are to be found. National has its solid support in the farming community and in the votes of professional and business elements in the towns.

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The two parties differ somewhat in basic organisation. Both parties provide for individual membership in branches. The Labour party also provides for affiliated membership through the trade unions. In neither party is branch activity very strongly supported, though of course some branches are stronger than others.

Above the branches, in the Labour party, are Labour Representation Committees, where branches and affiliated trade unions are represented in proportion to their membership. Most L.R.C.'s correspond to an electorate but in the four main cities where they embrace several electorates, the operating electorate organisation is the Inter-Branch Council of Branch delegates. L.R.C.'s and I.B.C.'s supervise and coordinate the activities of branches. L.R.C.'s also appoint the three members of candidate Selection Committees from the electorate, three other members of which are appointed by the National Executive of the party. Above the branches in the National party are the Electorate Committees and, above them, the 5 Divisional Committees, delegates to which are elected from Electorate Committees. An Electorate committee acts as liaison between branches and division and it is the operational unit for the campaign. It does not act as a Selection committee for candidates but it gives notice to party members when nominations are due, receives the nominations and transmits them to Division, which in turn transmits them, with recommendations to the Dominion Council, the national controlling body, for approval. The Selection committee, composed of elected branch representatives, one for every twenty members, is called together by the Electorate committee after nominations have closed. Divisional committees sup-
ervise the work of the Electorates in their area and promote various activities including women's and junior sections of the party. They coordinate publicity and other aspects of campaign organisation at elections. The Division usually has a full-time paid secretary and a number of paid organisers.

At the head of the hierarchical organisation of both parties is an executive committee - the Dominion Council of the National Party and the National Executive Committee of the Labour party. These bodies control the party organisation outside Parliament. The former consists mainly of representatives from the Divisions and the latter is elected by the Annual Conference of the Labour party.

The Annual Conference of both parties brings the rank and file into contact with the leaders of the party, gives an illusion of popular control and stimulates party loyalty. Branches, affiliations, and L.R.C.'s send delegates to the annual conference of the Labour party while Electorate committees elect delegates for National's conference.

Remits are submitted in advance in both conferences and are amalgamated and grouped by the respective executive committees.

For the prior consideration of remits the Labour Conference divides into committees whose members and chairmen are nominated by the Executive. Consequently it is able to deal with a larger number of remits than the National Conference which has no committee system.

Though both Conferences hear critical and occasional angry speeches from the floor the size of the Conferences (between three and four hundred delegates) and the prestige of leaders, are normally
sufficient to prevent the development of an embarrassing challenge to
the views of leaders.

In neither party is the Annual Conference or the national exec­
utive able to dictate to the Parliamentary party. The Parliamentary
National party has pointedly ignored conference decisions.¹² Though
the constitution of the Labour party declares that Conference is the
governing body of the party it is clear that when Conference does
adopt policy which the parliamentary party as a whole opposes, it can
be ignored.¹³ The Party's most important policy document, the Elec­
tion Manifesto, is prepared by a committee of members of the Execut­
ive and of Parliamentarians. It is not debated or approved by Conf­
ference since it is usually announced some time after Conference has
met in an election year.

The National Executive Committee of the Labour party and the
Dominion Council of the National party are strongly influenced by
their Parliamentary parties. Leading Members of Parliament normally
have a footing in both bodies. The present President of the Labour
party was, at one time, a Member of Parliament and is a Candidate for
Parliament in 1963. The Vice-President and a number of other Members
of the Executive are Members of Parliament. The President, and the
National Secretary (a full-time, paid officer), have the right to
attend caucus meetings of the Parliamentary party.

¹² See R.N. Kelson, "The New Zealand National Party", Political Science

¹³ L. Overacker, "The New Zealand Labour Party", American Political
In the National party the links between Dominion Council and Parliament are equally strong. The leader of the Parliamentary party is automatically a member of the executive of the Dominion Council. The policy Committee of the party is a six member body which includes three representatives of Council including the President and three members of the Parliamentary party including the leader. It is the leader who announces policy. Within Parliament both parties make considerable use of the caucus and of caucus committees for discussion of tactics and policy. Leaders exercise a good deal of influence over caucus but they clearly are forced to give some ground on occasions. On the floor of the House disciplined party voting, following caucus decisions, generally obtains, but certain issues, like liquor licensing, censorship and religious education are usually regarded as appropriate to a free vote.

Members of the National party in Parliament, following a policy made explicit at the Dominion Conference in 1943, have a free vote on all issues but are expected to vote, when it is relevant, in support of the party's election policy. The spirit of community and loyalty and the compromises worked out in caucus meetings are relied upon,

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rather than sanctions of a punitive kind. Individual dissent from the party line at divisions, though relatively infrequent, is tolerated. 16

Both parties, however, appoint one Senior and one Junior Whip who are generally responsible for the discipline of the party. Whips are party officers, and as such are not recognised in the written rules governing the proceedings of either the House of Commons in Britain or the New Zealand House of Representatives. In the Commons, the Chief Whip on the Government side normally holds the position and has the emolument of the Parliamentary Secretary to the Treasury. Three of his colleagues are officers of the Household and there are five Lords of the Treasury. Other assistant Whips and Opposition Whips are unpaid, apart from their Parliamentary salary. In New Zealand, since 1959 17 Whips have received an emolument in addition to their Parliamentary salary. The additional sum was £50 in 1959 for Senior Whips on each side of the House, raised in 1961 18 to £75. The Junior Whip on each side now receives £50 in addition to his salary.

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17 Parliamentary Salaries and Allowances Order, 1959/63.

18 Ibid., 1961/133.
The main duties of the Whips are to supply Members of their party with information about the business of the House, secure their attendance, arrange pairs, and arrange speakers for the debate, and speaking times. The Whip must be a procedural expert, able to take advantage of opportunities which offer themselves in the House, for party advantage. He is responsible for ensuring the attendance of Members at the various caucus committees. Whips also act as Tellers on divisions. The Senior Whip of each party counts his own party into the lobby, the Junior Whip from the other side of the House checking his list.

Somewhat at variance with the Whips' role as party officers is the duty customarily given them from time to time of maintaining order in the House as a whole. Government Whips act as Deputy Chairmen of Committees, though this places them in a delicate position. There is, therefore, a loosely observed convention that the Whip refrain from making controversial comment during committee stage in case, as Chairman, he finds himself having to deal with a situation for which he helped pay the foundation.

Though the word 'Whip' is associated with the Hunt, no rawhide lash attaches to the office. The Whip's sanctions are mainly moral or persuasive. One duty in relation to Members which is of a less gentle character is the arranging of Leave of Absence for Members of

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19 see below p.374

his party. He submits a written application to Mr. Speaker who by convention, only endorses a recommendation of the Whip. This is not, however, regarded by the Whips as an instrument of coercion.

**Parties and the Cabinet.**

From among its members in the House, the larger of the two parliamentary parties provides the Cabinet, the group of Ministers heading departments who are collectively responsible to Parliament for the government of the country. The Cabinet is, in effect, a committee of the majority party in Parliament. In Opposition, neither party offers a 'shadow Cabinet' as does the Opposition in the House of Commons, though ex-Ministers, informally, take a leading part in debates concerned with their recent portfolios.

Although Parliament is the supreme law-making body, legislative initiative comes, as in most democracies, from the Government. Being charged with the administration of law and having the information gathering resources of the bureaucracy at its disposal the government is in the best position to suggest what changes in the law are necessary. For the same reason, and also because Parliament would otherwise be overburdened, much of the working out of the details of law is left to the Government, Parliament exercising the right to veto any aspect of such delegated legislation. The leading role of the Government is, of course, also an effect of the competition for power between the disciplined parties. A majority party which hopes to be returned to office cannot afford to surrender the initiative to the Opposition.
The Government, in New Zealand, may be identified for legal purposes as the Executive Council, while in practice, by constitutional convention, government policy is made by the Cabinet. The Executive Council is comprised of the Governor-General, who presides, and all the members of Parliament whom he has appointed as Ministers. The long-standing convention that only Members of Parliament should be appointed Ministers was given statutory recognition by the Civil List Act, 1950. The Act provides further, that a person who ceases to be a Member of Parliament cannot remain a Minister or a member of the Executive Council for more than twenty-one days. It is worthy of emphasis that government leadership is Parliamentary leadership and Party leadership. The Minister spends his time - and in New Zealand it is most of his time - in the Parliamentary environment and men are, to a significant degree, creatures of their environment. Furthermore it is in Parliament that men become obvious candidates for government office. Every M.P. is constantly subject to the judgment of his peers and the standard they apply in caucus, in debates in the House, and in Committee is the standard of "ministerial calibre". This is a term which embraces a man's ability to defend and advance loyally the interests of his party. Government and Opposition leaders have been in this sense selected by Parliament for qualities that are important in Parliament. Because of these two facts the leaders are sensitive to Parliamentary influence. The actual method of selection of

\[ ^{21} \text{New Zealand Statutes, (1950), No. 99.} \]
Ministers when a Government is to be formed depends on party practice. The elected leader of the Parliamentary National Party chooses his Ministers and assigns the portfolios. In the Parliamentary Labour Party the number of Ministers to be appointed is determined and the required number is elected by the caucus. The elected Parliamentary leader of the party then assigns the portfolios. The powers and duties of the Council are laid down in Royal Letters Patent and Instructions gazetted on 24 April 1919[^22] and in statutes. Broadly speaking Government regulations made under statutory authority are given legal effect by means of an Order-in-Council.

The Cabinet differs from the Executive Council in a number of ways. The membership of Cabinet may be smaller than that of the Executive Council since a Minister without portfolio may or may not be a member of Cabinet but will be a member of the Executive Council. The Governor-General is not a member of Cabinet. Informal discussion takes place in Cabinet in which national policy is determined for submission to Parliament and the activities of the various government departments are coordinated. The secrecy of these discussion is the basis of a collective responsibility to Parliament. The general agreements reached in Cabinet will be supported in Parliament by all Ministers in spite of any differences of opinion there might have been in Cabinet itself.[^23] Similarly, when Orders-in-Council are required


[^23]: For a more detailed discussion of collective responsibility in New Zealand, see K.J. Scott, *op. cit.*, pp. 113-118.
to give effect to a decision of Cabinet, confirmation by the Executive Council is a formality and the Governor-General is not placed in the position of having to guide, and possible influence, a lively political discussion.

Cabinet responsibility is both collective and individual. However, individual responsibility does not mean quite the same thing in New Zealand as it means in Britain. Ministers in New Zealand are far more ready than their British counterparts to accept responsibility for the activities of bodies acting in the general area covered by their portfolios. They will go much further in answering questions in Parliament about the decisions of *ad hoc* boards and other statutory bodies. This attitude is perhaps explained by the fact that evidence of maladministration or some other fault in a department is not usually regarded as warranting the resignation of the Minister concerned. Ministers, in the words of a now classic statement, regard themselves as 'responsible, but not to blame'.24 A Ministerial explanation on such an occasion will not unusually refer to various civil servants who are to blame. Not surprisingly, civil servants very occasionally feel constrained to reply publicly to charges, or build up independent public support for themselves as a safeguard.25

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Cabinet Procedure.

Though Cabinet discussions are informal they are governed by procedural rules. Cabinet delegates some duties to committees. The committees may even undertake certain executive action within the limits of established government policy.

Any matter which a Minister desires to raise in full Cabinet can be brought before his colleagues at his initiative. Although the actual agenda is in the hands of the Prime Minister a matter is normally brought before Cabinet by a Minister in a previously circulated Cabinet paper setting out the question on which a decision of Cabinet is required. Cabinet is provided with a small Secretariat to whom such papers are handed and by whom they are distributed. The Secretariat also serves the Cabinet committees. In discussions of Cabinet papers, the Prime Minister or his deputy or the most senior Minister present, is in the Chair. He endeavours to gauge the general opinion. As in British Cabinet meetings it is not the practice to take a vote on issues. If there is no agreement on a recommendation embodied in a Cabinet paper a proposal may be rejected, or amendments may be considered or the matter may be referred to one of the Standing Committees of Cabinet or to an ad hoc Committee specially appointed for the purpose. Whatever the decision, it is recorded by the Secretary of Cabinet who is the head of the Secretariat and the only person permitted to be present throughout Cabinet meetings apart from Cabinet members. Occasionally when advice is sought from a departmental head or other expert he will be invited to attend while the business which concerns him is being discussed.
If a member of Cabinet has personal interests in a subject under discussion he is required to declare them and retire from the Cabinet room while a decision is being made. His absence is recorded.26

Cabinet policy discussion parallels to some extent the discussion of policy by government party caucus. 'In both parties, and particularly in the Labour party, the collective responsibility of Ministers when the party is in office is relaxed in caucus.'27 In the Labour party, important policy questions are likely to be discussed first in caucus where differences of opinion between Ministers may be clear at the outset.28 In the National party the leadership tends to have the initiative.29


The collective responsibility of the Cabinet, before Parliament, is part of the explanation of the conventions relating to Cabinet resignations, dissolution of Parliament and also of many aspects of Parliamentary organisation and procedure. The Cabinet must be able

26 Most of this information was obtained in interviews with Ministers of both parties. However, an account may be read in Political Science, 7 (March, 1955) pp. 3-10. The article, 'The New Zealand Cabinet' is by the Hon. J.R. Marshall, an experienced Cabinet Minister. A further article of his 'A note on Cabinet procedure in New Zealand' is in Political Science, 9, (March, 1957) pp. 36-7.


28 Interview with Mr. H. May, M.P.

29 P. Campbell, op. cit., I, p. 207, and see e.g. 'Caucus talks on future of Spans', The Evening Post, (Wellington : October 2, 1963), p. 20.
to command a majority of votes in the House of Representatives in support of its general policy, and, as a rule, of its specific proposals for the government of the country. A Cabinet which loses this support either resigns en bloc or the Prime Minister asks the Governor General to issue a proclamation dissolving Parliament so that a General Election may be held. The Governor-General's discretion in calling on someone to form a new Cabinet or in refusing a dissolution is crucially limited by the need to have his actions endorsed by a Ministry able to command a Parliamentary majority. Since, in New Zealand, there are two main disciplined political parties contending for office, Cabinets are unlikely to lose their majorities in Parliament except as a result of deaths, resignations of Members, elections, or because a general election reduces the representation of the majority party.

Pressure groups.

In these circumstances and in view of the supremacy of the Parliamentary parties over the party organisation outside Parliament it is not surprising that the efforts of interest groups to influence policy are concentrated mainly on the Parliamentary parties, more still upon their leaders and still more upon the leaders of the Government party, the Cabinet Ministers. However, efforts to influence the party outside Parliament may be part of a wider campaign in which groups do engage to create a public opinion which will indirectly
influence policy.  

The trade union movement is something of an exception. Instrumental in forming the Labour party, and affiliating with it in the Depression period, the trade unions permeate it at every level, and are the major source of party funds. Representatives of trade union affiliations in many of the L.R.C.'s and in the annual conference can, if unified on an issue, exercise a controlling vote, since approximately 3/4 of the membership of the party is through such affiliations. Most unions are members of the Federation of Labour founded in 1937.

The Federation of Labour and the party consult together through a Joint Council of Labour and the leader of the party and the President of the F.O.L. are expected to maintain close contact with each other. It is the practice for the Annual Conference of the F.O.L. to be addressed by the Leader of the Parliamentary party. Through these links the trade unions are influential on the party as a whole and they help determine its character. The unions, however, are not as

30 Many groups publish Journals which attempt to promote a solid group opinion among the members. The solidarity of opinion in any organisation tends to vary inversely with the coverage of the organisation. Thus the Employers Federation and the Associated Chambers of Commerce are very much less 'solid' than the more narrowly based Manufacturers Federation. The Journals are a good guide to the differences between groups belonging to the same general federation of groups.

dominant in England. Their influence has varied with the economic situation, and with the unity of the trade union movement and with personal relationships between party and Federation leaders. It was strong during and immediately after the Depression of the 1930's. It diminished noticeably in the 50's when the unity of the Federation was disturbed by its President's support of measures used by a National Government to deal with a waterfront strike in 1951 and when the President failed to establish amicable relations with the new leader of the Parliamentary party then in Opposition.

No other interest or opinion groups in New Zealand have comparable relations with either of the parties, though the informal relationship between the main farmers' organisation, Federated Farmers, and the National Party is very close.

New Zealanders are very highly organised for the protection of sectional interests. As might be expected in a country in which central government plays so prominent a part in economic life, almost every conceivable vocation or economic interest is represented by some form of association at the national level. Apart from the trade unions, farmers are probably the most highly organised and powerful, but business of all kinds is represented both in particular associations, and in general Federations of these associations.

Consultation with Government, cooperation, and the adjustment of competing interests is highly institutionalised, statutory bodies and quasi-governmental bodies having advisory and decision-making powers. For example, the New Zealand Dairy Production and Marketing Board is a statutory authority with responsibility for setting industry
policy in connection with production, manufacture and marketing. It is an independent part producer-elected, part Government-nominated body, financed by a levy on all butter and cheese manufactured so that all dairy companies share its overall cost on a pro-rata basis. It negotiates or helps negotiate prices in overseas markets and negotiates with Government on prices in the local market. The funds of the Dairy Research Institute are contributed jointly by Government and Dairy Board. Five Board members, the secretary to the Treasury, and the Director-General of Agriculture, constitute the Dairy Industry Loans Council. A Dairy Industry Council discusses the general lines of policy for the industry two or three times each year, bringing together the Dairy Board, with its Government nominees, and three representatives of Federated Farmers. A member of the Dairy Board acts as liaison with Federated Farmers, attending their conferences.

The Wool Board, the Meat Board and other statutory bodies are similarly constituted and financed. Quasi-governmental bodies are organs of cooperation between Government and the private sector. An Arbitration Court to which the F.O.L. and the Employers Federation nominates representatives hears the claims of unions and employers in wages and other disputes. In overseas trade negotiations, interests affected are represented directly in the persons of the negotiators. Various official bodies like Lands Boards, the Immigration

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32 One of the government nominees in 1962 is the head of the Dairy Division of the Department of Agriculture.

Advisory Council, the Safety Council, the Trade Certification Board, the Industrial Advisory Council have members nominated by various interest groups.

Numerous recognised channels of communication between Government departments and the interest groups most immediately affected by their work also exist. However, the secretary or permanent head of a department is readily accessible in New Zealand and on any matter of importance contact with the bureaucracy will be made at this level. But arbitration between conflicting groups is properly the job of the politician. Though he must rely on the administrative, technical and diplomatic skills of certain of his senior public servants, the politician's is the responsibility. The civil servant cannot be a satisfactory arbiter for one of two reasons. Depending on the character of his department he may be too deliberately and carefully impartial to risk policies that divide large rewards unevenly and may choose smaller, evenly divided rewards in settling conflicts between parties, or, more commonly perhaps in Departments with obvious 'constitue-

ncies', like the Department of Agriculture or Industries and Commerce, the civil servant may be a partisan, himself representative of an

34 This may sometimes be seen, though it cannot be documented on such occasions, when hearings of Petitions affecting a Departmental policy are open to the public. The petition of D.T. Johnston et al. (Journals of the House of Representatives, (1960) p. 418) was in effect a challenge to Forest Service Department policy. At the hearings, which I attended officers of that department were not merely partisan in the sense that they were defending a policy rather than considering its pros and cons. The manner in which their evidence was presented showed a very strong personal commitment. See also K.J. Scott, op. cit., pp. 145-7.
interest, namely, the departmental policy. There is no doubt that the department is in a better position than any private interest group to influence Ministers and Parliament and that for this reason private groups value highly their influence upon departments. Both these disadvantages of the public servant as arbiter increase the desirability of strong leadership in arbitration from Ministers. They also emphasize the importance of Parliament's role as a sounding board of public opinion, particularly of opinions critical of departmental policy.

Generally, interest groups do not concentrate their attention on individual Members of Parliament when they have the Government's ear. Though some Members act as spokesmen for particular interests, the 'sponsored M.P.' in the British sense, is unknown. When Government is undecided, when there is a free vote, or when a matter of purely local interest is at stake, intensive lobbying of individual Members may take place. Also when a group feels its views are not being given due consideration by Government it may ask the Opposition for

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35 see J.A. Stewart, *British Pressure Groups,* (London: Oxford University Press, 1958), pp. 153-204. There appears to be rather more lobbying of individual M.P.'s in the British House of Commons (ibid., pp. 205-237) though the real concentration of interest group activity is at the Ministerial level. This slight difference is probably due to the differences in size between the two Parliaments and bureaucracies.
support. However, New Zealand interest groups, bowing to the logic of the disciplined two-party system, concentrate their attention upon the Government. Ministers are readily accessible and groups go to the Minister in charge of a Bill which concerns them and make their views known. Ministers will also receive deputations on matters of general policy. Interest groups of importance, in turn, expect to be consulted before the introduction of legislation which affects them. It is very rare though not unknown for a pressure group to undertake direct political activity at election time. Even groups closely associated with one of the parties, like the F.O.L., and Federated Farmers, try to maintain friendly relations with the other party and refrain from directly opposing it during elections. They know that they may soon have to deal with its leaders as a Government.

The direct challenge to a Government in office, except from ideological protest groups, is rare. It was used however in 1962 by the union which represents railway servants to object to proposed changes in the method of calculation of wages rates. Pamphlets

36 Though there have been occasions when advertisements sponsored by interest groups have recommended economic policies or attitudes which could readily be identified with a particular party, I know of no instance of really active interference at election time.

37 Though details of the contributions to party funds are not available I have been reliably informed that the business community, particularly manufacturers (normally identified with parties of the right-wing) make donations to Labour party funds. See also Austin Mitchell's estimates of contributions to Labour funds from manufacturers in the 1960 election, op. cit., p. 79.
attacking the Government were issued during the course of the Bill through the House,\textsuperscript{38} and on the night before the offending clause of the Bill was to be considered in Committee, a strike of railway employees was called.\textsuperscript{39}

In providing leadership in all aspects of New Zealand public life, in formulating proposals for legislation, in discussing government proposals which affect them, in examining rules and orders made under statute which affect them, and in representing and helping to form opinion, parties and pressure groups evidently duplicate to some extent the functions performed by Parliament. But neither of the parties nor any single pressure group performs these functions in the context of as wide a range of interests and views as are represented in Parliament. In Parliament, it will be shown, the acceptable standard to which appeal may be made in debate is the community interest. In the parties or interest groups internal debate has a narrower base. The standard is the interest of members and supporters.

Thus, the main burden of political debate and criticism is thrown upon Parliament. Evidently, factors affecting the quality of Parliamentary leadership and the rules and conventions prescribing the manner in which it carries out its functions are of considerable importance.


\textsuperscript{39} See \textit{ibid.}, (7 Dec., 1962) 3238-3276, for a threat to similar action see P. Campbell, \textit{op. cit.}, I, p. 205.
'As yet,' says Lipson, 'New Zealand is a long way from a solution to the problem of securing effective, but democratic, leadership.' Comparing the members of New Zealand Cabinets with leading figures in other spheres of New Zealand life he concludes that the best human material is not attracted to the service of the state. Whether or not his assessment is correct, members of Cabinets are, first, Members of Parliament and if there are ways to improve political leadership without fundamental alteration of the existing political system they are likely to be Parliamentary reforms, affecting recruitment to Parliament.

What Laski has called the selective function of the House - 'the subtle psychological process by which one member makes a reputation and another fails to make one, with its consequential repercussions on the personnel of Governments' is not the only factor determining political leadership. The attractiveness of political life is largely a matter of the attractiveness of parliamentary life and, with the formal and informal limitations on eligibility, is not without its effect on the selection of leaders in the system. The Parliamentary term is one of the factors affecting the security of political life, in turn affecting its attractiveness and vocational composition.

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Remuneration, the party methods of selecting candidates, distribution of party support, are other important factors in this respect. The size of the House, provisions for the accommodation of Members, secretarial and research assistance, are determinants of talent available and standards of performance in the House, and again, of the attractiveness of the Parliamentary profession. These factors will be examined in this chapter.

The Life of Parliament.

The life of Parliament can be terminated either by dissolution or expiry. The Constitution Act provides that the Governor-General may, at his pleasure, dissolve the General Assembly. Today, in this as in all other matters, he is bound to accept the advice of his Ministers while they have a majority in Parliament. A Parliament expires, under the Electoral Act 1956, three years after the day fixed for the return of writs at the previous General Election. The Constitution Act of 1852 has fixed the maximum life of Parliament at five years but the Triennial Act of 1879 provided for the three year term which with only a few exceptions in crises has been the rule since.

In practice, Parliament is not normally allowed to expire.\(^5\)

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\(^4\) *New Zealand Statutes (1879) 43 Vict., No. 43.*

\(^5\) The Parliament elected in 1943 was an exception. The election was early. Return of writs was fixed for October 11 but proceedings were continued until October 12, 1946, and proclamation of dissolution was not made until November 4, 1946. The last day was given over to valedictory business but Acts which received the Royal Assent after expiry were challenged in Court, though unsuccessfully. (See *New Zealand Law Reports* (1955), Simpson v. Attorney-General.)
A few weeks before the expiry date the adjournment of the House is moved to some future date a week or two ahead. A dissolution is requested during the adjournment, a proclamation proroguing Parliament is issued, then a proclamation for the dissolution. A proclamation declaring the day on which Parliament is to meet again is issued at the same time as the proclamation dissolving Parliament. Writs for a new Parliament are to be ordered within seven days of dissolution or expiry and are to be issued by the Clerk of Writs within three days of receipt of the order to the Returning Officers in each electoral district. Writs are returnable within the time specified in the writ which must be within fifty days of its issue.

The adjournment procedure brings Parliament to a planned end and gives Members a break before elections. It enables the administrative machinery involved in elections to be set in motion early and gives slightly more leeway in arranging the date of the election.

Though Members, on being elected, make their oath of allegiance to a particular sovereign the death of that sovereign does not terminate a Parliament. Members are required to make fresh oaths of allegiance but Parliament is not required to meet solely for the purpose.

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7 New Zealand Statutes, (1956), No. 107.
8 Law Journal Reports Statutes, (1852) 15 & 16 Vict., Chap. 72, sec. 46.
9 Demise of the Crown Act, New Zealand Statutes (1908), No. 42.
Before the 1956 Electoral Act, a Parliament had the undoubted power to extend its own life by statute. The Parliaments elected in 1914, 1931, 1938 and 1951 demonstrated this. One can only speculate whether future Parliaments might feel inhibited by the 1956 Act from passing similar legislation unless supported by a 75% majority, as the Act requires.10

New Zealand's experience cannot be said to have demonstrated the superiority of the triennial system over a quadrennial system. Expert legal, political, and economic opinion has frequently been expressed in favour of increasing the length of the Parliamentary term. In particular, it has been pointed out that deficit financing in election years has produced triennial economic crises and has helped to reduce New Zealand's rate of economic growth.11 There is a three year budget cycle of austerity, relaxation, and generosity.

There are other arguments in relation to the three year term directly or indirectly affecting the efficiency of Parliament in the provision of leadership as well as in its other roles. The elections are costly to the parties in money and enthusiasm; a longer, say, a four year term, would give new Members a better chance to acquaint themselves with the traditions of Parliament and with issues. The average new Member needs a year to settle in and gain confidence and

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10 New Zealand Statutes, (1956), No. 107.

experience before he can make a worthwhile contribution to debates and committees. The longer term would allow a more leisurely implementation of the programme a party puts before the electorate and would avoid measures being rushed through in the last days of the last session. The longer term would reduce the difficulties under which civil servants operate in their planning. For example, a housing programme requires machines, architects, materials, which cannot instantly be provided when a new Minister demands an acceleration of the building programme. Works, Railways, Post Office, Army, Hydro-electricity raise similar problems. The working relationships between Ministers and the departments are affected adversely. An experienced civil servant has pointed out\(^\text{12}\) that it is difficult to get decisions from Ministers in their third year as they are preparing for elections.

Finally, the short term tends to deter prospective candidates for Parliament. Insecurity is a feature of Parliamentary life in any country and often exaggerated in the minds of the general public, which includes of course the potential candidate, who tends to overlook the phenomenon of the 'safe seat'. New Zealand swings are not significantly greater than in other countries. In the past three elections, of sitting Members contesting seats in elections since 1954 or seeking renomination by their party, five were unsuccessful in 1954, seven in 1957, and six in 1960. Other 'retiring' Members are

\(^{12}\text{Information supplied to the author.}\)
known to have submitted to party pressure in not seeking re-election. New Zealand political life is evidently not appreciably more insecure than political life elsewhere.

However, New Zealand 'swings' could take place every three years and Members from marginal and semi-marginal seats have indicated that this was a deterrent factor in their minds when they made their decision to stand.13 Other men, who would offer themselves for safe seats, have not come forward for marginal seats because the term of office was so short.

Size of the House of Representatives.

There are eighty Members of the House of Representatives - seventy-six Europeans and four Maoris. They are designated 'Members of Parliament.' Members who are serving on the Executive Council are also termed 'honourable' and there is a convention that Her Majesty be requested to allow the title to be retained by a Member who has served three years on the Executive Council. The number of Members authorised by the Constitution Act was not more than 42 and not less than 24. The first Parliament, in 1854, comprised 37 Members. Numbers were increased by legislation in the next two decades, European representation reaching its maximum in 1881 when there was provision for ninety-five Members, including four Maoris. The Maori representation of four Members was fixed in 1867 and has been retained in current legislation. The number of European Members was reduced in

1887 to seventy and raised again to seventy-six in 1900 at which figure it has remained.\textsuperscript{14}

Because New Zealand has a population of less than two and a half million, each Member of Parliament represents approximately 30,000 people. By comparison with the United Kingdom where the proportion is approximately one Member per 80,000 the New Zealander is well represented. However, the scope of government activity is wide and throws a considerable burden on so small a number of Members in debate and on committees.\textsuperscript{15} In addition, the House provides a very small pool of Ministerial talent from which to choose. The short Parliamentary term and the small size of the House may be regarded as a disadvantage under which Parliament labours in the provision of leadership. An examination of legal qualifications for membership, payments to Members, working conditions and social factors does not suggest that they are factors of comparable importance. In some respects, however, changes could be made in these latter areas which might improve the efficiency and quality of the existing membership.

Qualifications, Disqualifications and Vacancies.

The constitution and duration of the House of Representatives of the New Zealand Parliament and the qualifications and disqualifications for membership are regulated by New Zealand statute in the

\textsuperscript{14}See Scholefield, \textit{op. cit.}, p. 90.

\textsuperscript{15}see H.J. Walker, \textit{op. cit.}, pp. 43 - 45
Electoral Act 1956. The House consists of eighty Members, seventy-six from European electoral districts and four from Maori electoral districts. European electoral districts are determined by an independent Representation Commission after each quinquennial census. The Commission since 1956 consists of seven Members. Four public servants are ex officio Members and two unofficial Members (not public servants or Members of Parliament) are nominated by the House, one to represent the Government, the other the Opposition. The six members nominate a seventh Member to be the Chairman of the Commission. The four Maori districts may be adjusted by proclamation. European representation is based on total, not adult population. This favours rural areas which have the highest proportion of children and this favours the National party which is strongest in rural areas. The National party is also favoured by the concentration of the Labour vote in cities. The latter is the main distorting factor, though all other significant distorting factors also favour the National party. In the 1957 election the bias to National computed at the 48% level of the Labour plus National vote, was 3.5 seats.

16 New Zealand Statutes, (1956), No. 107.

17 R.H. Brookes, 'The Analysis of Distorted Representation in Two-party Single-Member Elections,' Political Science, 52(September, 1980), pp. 166-167, see also his 'Seats and Votes in New Zealand', Political Science, 5(September, 1953), pp. 37-44, and see K.J. Scott's proposal for correcting the vote concentration factor by redistricting after an election to remove vote-seat anomalies of that election in time for the next election: 'Gerrymandering for Democracy', Political Science, 7(September, 1955), pp. 118-127.
Subject to certain disqualifications any registered elector, and only registered electors, may stand for election to Parliament. A registered elector is, however, disqualified from being elected if he is an undischarged bankrupt or a contractor. A person who has registered as a Maori may not stand for a European electorate nor a registered European for a Maori electorate. A person is disqualified for registration as an elector if he is being detained under the Mental Health Act 1911, in prison, or entered on the Corrupt Practices List for any district. It has been specifically provided since 193618 that public servants may become candidates to be elected. They are entitled to leave of absence without pay from at least nomination day to seven days after polling day. However, if elected, a public servant is deemed to have vacated his office.19

Disputed elections are decided by judicial tribunal. An Election Petition has to be presented to the Supreme Court and trial takes place before three judges of the Court named by the Chief Justice. Their decision is final.

A seat may become vacant if an elected Member absents himself, without permission, for one whole session of Parliament, if he makes an oath of allegiance to, or becomes a citizen of, a foreign power, if he becomes bankrupt, if he is convicted for certain offences, becomes a contractor or a public servant, resigns his seat, dies,

18 New Zealand Statutes, (1936), No. 23.

19 New Zealand Statutes, (1956), No. 107. (The conditions which follow are laid down in the same Act.)
becomes mentally defective, or acts as an agent on commission for anyone wishing to sell land to the Crown. The House itself, like the House of Commons, retains itself the right to decide, when it is in session, that a by-election shall be held. The Speaker must wait for the order of the House before directing the Clerk of Writs to issue the writ to supply the vacancy. During a recess\textsuperscript{20} of the House, whether by prorogation or adjournment, the Speaker is directed to act to fill the vacancy or, if he is out of the country, the Governor-General.

\textsuperscript{20} The term 'recess' is being used rather loosely here as in the Statute. May defines it as 'The period between the prorogation of Parliament and its reassembly in a new session ... while the period between the adjournment of either House and the resumption of its sitting is generally called an "adjournment". Sir Thomas Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament, ed. by E. Fellowes and T.G.H. Coks, (10th ed., London : Butterworth, 1957), p. 278. Elsewhere (p. 179) May notes that 'When vacancies occur by death, by elevation to the peerage, or by the acceptance of office, the law provides for the issue of writs during a recess, due to a prorogation or adjournment.' According to Sir Edward Fellowes, Clerk of the House of Commons, 'the reference on p. 179 to adjournment is only meant to show that writs can be issued either during a prorogation or during an adjournment of the House over Easter, Whitsun, the summer or Christmas.' (Letter to the author from Sir Edward Fellowes.) The 1956 Electoral Act does not define the term 'recess'. It may be understood to apply, however, to any period which may elapse between the adjournment of the House at the end of a session and the proclamation of prorogation as well as to the period which follows prorogation. In that case a vacancy might occur in a recess by adjournment.
It should be noted that the House has not committed itself to any statutory time limit for ordering the Speaker to act in the case of a vacancy occurring during a session. When a vacancy occurs within the last few weeks of the life of a Parliament it is accepted practice that no motion will be moved to fill the vacancy. If a vacancy occurs earlier and there is undue delay in moving to fill it, then, on the basis of English precedent, there is no action possible in the Courts but a question or a motion in the House would be a way of raising the matter.

Evidently the legal barriers to Parliamentary candidacy are reasonable and few. It is sometimes argued that the special Maori representation is undesirable and a species of discrimination. But, in spite of the fact that the ethos of New Zealand race relations is 'we live in harmony' there is some prejudice, often unselfconscious, and this prejudice is partly caused by, and partly causes, the fact that the Maoris are an economically depressed section of the population. Their condition creates special problems and special needs and probably justifies separate representation. Public servants are in a very favourable position to become candidates compared with their counterparts in Britain. However, the traditions of the service, particularly its impartiality and anonymity, are against much use being made of these legal opportunities except by minor public servants.

As well as legal factors determining membership of Parliament there are vocational, conventional, local and status factors.
Farmers, trade-unionists and workmen, teachers and civil servants, businessmen, and lawyers are the vocations which provide most of the recruits to Parliament. These people suffer least in defeat at the hands of the electors because they can take up their former vocation relatively easily and without much financial disadvantage. Farmers particularly are able to combine their farming and parliamentary work without too much detriment to either. Teachers, lower civil servants and workmen lose the seniority they would have gained but their salary as an M.P. is a compensating attraction. The following tables show the occupational groupings of the two major parties in Parliament from the Parliament elected in 1935 to the Parliament elected in 1957. The figures include Members elected at by-elections in each Parliament including the 1957 Parliament which ended in 1960.
### TABLE I

**OCCUPATIONAL GROUPINGS IN THE LABOUR PARTY**

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\[22\textit{ibid.}, p. 35\]
Conventional factors of importance in determining Parliamentary membership are those which obtain within party organisations and affect the selection of candidates. The Selection Committee for a National party candidate in any electorate is made up of elected delegates from branches in the electorate, each branch being entitled to one delegate for every twenty financial members. Any financial member of the party may be nominated as a candidate for selection by ten or more financial members of that electorate. Though the Dominion Council of the party approves or disapproves of all nominees, the effective right of selection is in the hands of the local organisation as a result of this method. As might be expected, candidates are overwhelming local residents, and, in the rural areas from which the party derives most of its Parliamentary strength, they are people acceptable to the farming community. Talented members of the party living in urban centres are thus largely excluded from Parliament.

In the Labour party, a different set of circumstances has until recently prevented the best use of available talent. Selection committees for Labour candidates in any electorate comprise six members, three of whom are local and three of whom are members of the national executive of the party. Control is not so firmly local though a nominee acceptable to the members in the electorate is normally in a good position. Nominations may be made by any six members of the party resident in the electorate, but the selection committee may look

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23 This means a person who has paid his annual membership fee for the current year.
outside the list of those nominated. As a city-based party, Labour is not so much affected by local pride and interests in the selection of candidates. A nominee from one part of a city is normally acceptable to an electorate in another part of the same city. However, best use has not been made of available talent because vacant safe seats have attracted the best list of nominees, selections throughout the country have been made at approximately the same time, and disappointed talented nominees have been left without an electorate, even a marginal electorate. A new scheme, adopted by the 1962 Labour party conference, will involve classification of electorates as safe or marginal, candidates for the safe seats being selected first.

Age is not a factor which can be shown directly to determine the quality of Parliamentary membership and in New Zealand the evidence does not suggest any relationship between the age of Parliamentarians and the quality of those offering themselves for election. From 1935 to 1960 the average age of Members was 51 to 55 years. There was little difference between the parties. In general the party which was winning seats at any time brought younger men in, slightly reduced the average. 24

Professional status is a third potential determinant of the quality of Parliamentary membership. Higher civil servants, doctors, lawyers, accountants, architects, engineers, bankers, businessmen, university teachers all enjoy a status comparable with, or superior

to, that of the Members of Parliament, and, as a rule, enjoy greater security, better working conditions, and higher financial rewards. A survey, Social Class Consciousness in Adolescents,\textsuperscript{25} showed that Labour M.P.'s were rated by a group of adolescents "mainly middle class" and "National M.P.'s are considered to be mainly Upper Middle Class and Lower Upper Class". A comparative rating of occupations, which did not include M.P.'s, in the same survey, included three occupations considered by the majority to be Upper Class occupations - lawyer, bank manager, and architect.\textsuperscript{26} Elsewhere in the same study, the title Dr. was given a much higher class rating than the title M.P.\textsuperscript{27}

Accommodation and Working Conditions

Working conditions leave a great deal to be desired, though the New Zealand M.P. is better off in this respect than his British counterpart.

The original Parliament Buildings in Wellington were destroyed by fire in December 1907. Plans for new Parliament buildings which were approved in 1912 have never been completely executed. The present buildings are an assortment of three ages, styles and materials. There is a Library wing which survived the fire, a central portion which is pillared and marble-faced, and the old Viceregal residence which is wooden.

\textsuperscript{25}A.A. Congalton, Victoria University College Publications in Psychology, No. 3 (Wellington, 1952). p. 65.

\textsuperscript{26}\textit{Ibid.}, p. 32.

\textsuperscript{27}\textit{Ibid.}, p. 44.
The Chamber itself is comfortable and well-appointed and is in the central, new portion of the building. It compares favourably with the House of Commons, or, say, the Australian House. As in the House of Commons at Westminster, Members face each other across a rectangular hall, though at one end, in the New Zealand Chamber, the seats curve round toward an exit gangway at the south end. At the north end is the Speaker's Chair, raised and under a canopy. Gangways dividing the seats on either side lead to the lobbies. In contrast to the House of Commons each Member has a seat provided with a writing desk and a drawer. The Government front bench is to the right of the Speaker. Below the Speaker sits the Clerk at a table and in front of him is the Table of the House with racks for the Mace at its end. Above the Members are galleries for the use of public and press. On the floor of the House to the left of the Speaker, and opposite the Speaker at the end of the Chamber, chairs are placed for distinguished guests. There are chairs to the right of Mr. Speaker for departmental officials from whom Ministers may want information. Ministers leave their seats to consult officials, or if they are speaking and a question is asked, a note may be passed supplying the information.

By permission of Mr. Speaker, members of the press gallery elect a Chairman and Deputy Chairman and formulate rules governing their own behaviour and accommodation which are submitted to Mr. Speaker for approval.

Admission to the galleries, during the session, tends in practice to be informal, the messengers exercising their discretion as to
whom they will admit without a ticket. On occasions when there is competition for admittance, tickets are requested and members of the public approach their Members for them or go to Mr. Speaker's office. The right of Members to issue tickets to the galleries so as to prevent the Government packing them is now of only latent importance.

In contrast to conditions in the Chamber the offices and services provided for Members are inadequate. Many Members share offices; in this respect they are more fortunate than British M.P.'s who have only locker facilities, but an improvement would probably increase the efficiency of Members. The only secretarial assistance available is from the pool of four typists, two for Government backbenchers, two for the Opposition. M.P.'s have indicated that they personally type or write most of their own letters because of the pressure on the pool of typists. They would, if more assistance were available, use the pool for a wider range of purposes.

Research facilities available to backbenchers are small, though because they are also somewhat unsuitable for political purposes they are not fully used by M.P.'s. The General Assembly Library will find books for Members, prepare bibliographies and have photo copies of part of an article made for a Member. Three or four members of the Library Staff are normally occupied on work for Members and will write summaries of material in support of an argument in preparation for

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28 see the remarks of Mr. Walker, op. cit., p. 44.

29 Interviews with writer.
a Member's speech. The Library does not at present prepare a fully organised research paper on a subject setting out the pros and cons as does the Library of Congress.\textsuperscript{30} The main research deficiency is in party-controlled research staff.\textsuperscript{31} In this respect the National party is more fortunate than the Labour party. It has two research officers, the senior of whom, Martin Nestor, is a former public servant and M. Comm. The other is a university student, but a man of considerable experience having been from 1952 to 1959 (except for a period of nine months at Government House) a public servant. He worked in several departments including the Broadcasting Service and at the time of this appointment as Research Officer in 1959 was one of the two Private Secretaries to the Labour Minister of Public Works, the Hon. Hugh Watt. In addition to these two officers, there is, at Dominion Headquarters, a woman employed in the reading, cutting, and filing of twelve daily newspapers.

The research department produces background papers on topical subjects for circulation to M.P.'s, provides speech notes for elections, public addresses, and debates, and supplies Members with requested information. During Parliamentary sessions the Research officers have their office in Parliament Buildings and are therefore always accessible to M.P.'s. This accessibility, useful though it is

\textsuperscript{30} Interview with Mr. Wilson, the Librarian.

\textsuperscript{31} Information about research departments of the two parties was obtained in a series of interviews with the officers themselves and from examination of the work they produce; see also M. Nestor, 'The Role of Research in New Zealand Politics', Political Science, 15, (Wellington : September 1963), pp. 54 - 56
to M.P.'s, is something of a problem to the Research Officers, consuming their time. It is clearly one of the reasons why major policy research papers are not produced.

The Labour party has now only one research officer assisted part-time by a woman who clips newspapers at his direction. The research officer, Fraser Colman, was actually engaged as Assistant-Secretary of the Labour party, his predecessor in that office, R. Boord, having been elected a Member of Parliament. Boord had had an assistant in charge of research, and two women who clipped a large number of papers. The assistant in charge of research was appointed to the Board of Trade in 1960. A new research officer was not appointed and his duties were assumed by the Assistant-Secretary. A bookkeeper was engaged to take over the various accounting and recording duties which were the Assistant-Secretary's responsibility but in addition to research Mr. Colman, as Assistant-Secretary, serves the National Executive and its committees in a secretarial capacity and is in charge of the office during the absences of the Secretary. Colman, though a man of ability, is not qualified for research. He left school at fifteen and was trained as a boilermaker and it was as Vice-President of his trade union, the Boiler-Makers' Federation, and as an active party branch member and campaign organiser that he attracted the attention of party leaders and was recommended as Assistant-Secretary.

The material turned out by Colman is similar to the National party research notes and speakers' notes. However, Colman believes that his office pays more attention than does Nestor's to research for the movement rather than research on behalf of M.P.'s. The office is
deliberately not transferred to Parliament buildings during the session, according to Colman, in case its accessibility there forced a change of research emphasis. Colman's predecessor, Boord, had the same policy. A number of longer reference papers (about 5,000 words) are turned out on specific subjects like the Social Credit movement, National party taxation policy, Interest rates, Savings, The International Monetary Fund. They are of uneven quality and are, in the main, arguments and figures to bolster declared policy rather than research to serve as a basis for the working out of policy. The impression I have gained from interviews with party officers and M.P.'s from both parties and from Parliamentary officers is that the National party research office is very much more influential in the formation of policy than the Labour research office. There are sometimes references by Labour M.P.'s in the House itself to Nestor as a kind of eminence grise in the National party. One can hardly imagine similar references to Colman. In spite of this influence and in spite of the intentions of Colman both parties are deficient in fundamental policy research and proposals for reform made by the Political Science Department at Victoria University of Wellington appear justified. They are worth quoting at length.

The Creation of a Parliamentary Research Secretariat

We advocate what appears to be a new step for Commonwealth Parliaments but one which we consider very desirable under New Zealand conditions. A small step in this direction has already been taken with the payment out of public funds of the salary for a secretary to the Leader of the Opposition. We propose that a parliamentary research secretariat should be created to make available expert research and advisory assistance to both parties in the House of Representatives.
Those engaged in this research and advisory assistance would have to be properly qualified persons. They would be selected by Mr. Speaker in consultation with the respective party Whips, to whom they would be responsible for their activities.

We are aware that both parties in the House of Representatives have made some provision for research assistance out of their own funds. We consider that this service should be greatly increased and paid for out of public funds. The main reason for this is the ever-increasing amount and complexity of public business which leaves the ordinary Member of Parliament, whether on the Opposition or on the Government side, at a very great disadvantage in regard to information and advice in comparison with the Cabinet, which has all the resources of the Public Service at its disposal. While such assistance from an expert research secretariat would be extremely useful to all ordinary Members in various ways, for example, in the work of select committees or of caucus committees, it would be especially useful to the Opposition. Not only does the Opposition in our system of government need to oppose constructively, using the best available information, but it must also present itself as an alternative Government. It is in its interest (and the country's) that it should not commit itself in an election campaign to introduce measures insufficiently thought out or based on inadequate information, which are likely to embarrass it when faced with the realities of office; the assistance of those members of the research secretariat allotted to it (and responsible to the Opposition Whips) would be very valuable in this respect. The members of the research secretariat on the Government side would no doubt also be of benefit to the Government party in shaping its election policy. The greatest benefit would go to the New Zealand public.

It might be argued against the payment of research assistance from public funds that it is the duty of the respective parties to provide such service out of their own funds. The answer to this is that the volume and complexity of the work involved in governing a modern country does not bear as close a relationship to the population of the country as does the volume of political party funds. Members of Parliament should receive the necessary research assistance and if parties are not able adequately to provide it, as appears to be the case in New Zealand, then it should be paid for from public funds. Another consideration that might be noted
is that payment from party funds would naturally tend to put the research staff partly at the disposal of the party organisation outside Parliament; in our view the service should be provided exclusively for the use of Members of Parliament, in order to make Parliament more efficient."

For the highly educated and professionally trained, Parliament is not a profession made particularly attractive by its financial rewards. The man who makes a living as a professional politician is a comparatively recent phenomenon in British parliamentary life and liberal thought has not always favoured it. Bentham did, but John Stuart Mill's argument that one should attract men willing to give their time to the service of the public was more influential. In England, as May points out, a legal liability of the constituencies for payments to Members during their attendance upon Parliament existed from the earliest times and has never been removed. The practice of paying Members had fallen into desuetude by the 19th century however. Payment from public funds was often advocated during the 19th century and in 1911, after a favourable resolution of the House, the Appropriation Act provided for a salary of £400 a year to Members who were not in receipt of salaries as Ministers, Officers of the House, or officers of His Majesty's household. The sum has been raised several times subsequently.

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32 Submission of the School of Political Science and Public Administration, Victoria University of Wellington, to the Select Committee on Standing Orders, 1962, (cyclostyled) pp. 5-6.


In New Zealand, payment of Members first took the form of an allowance under the Parliamentary Honorarium and Privileges Act 1884, amended in 1887 to vary the basis of the allowance. In 1892, the Payment of Members Act provided for an annual sum in lieu of an allowance. Since the Civil List Act 1950 salaries and allowances have been fixed, by Order in Council on recommendation of a Royal Commission. An amending Act in 1955 provided that a Royal Commission for this purpose be set up within three months after every general election. Under the current Parliamentary Salaries and Allowances Order the Prime Minister has a salary of £4,750 and a tax free allowance of £1,600. Ministers holding a portfolio have a salary of £3,150 and an allowance of £550. Ministers without portfolio receive £2,500 salary and an allowance of £450. The Speaker's salary is £2,700 and his allowance is £675. The salary of ordinary Members is £1,550 and they have an allowance of between £370 and £675 depending on the classification of the electorate from urban to rural. Other payments and financially valuable privileges in connection with official duties, an accommodation allowance in Wellington while Parliament is in session, and travel, are also received by Members.

35 N.Z. Statutes, 1884, No. 11.
36 ibid., 1892, No. 53.
38 ibid., 1955, No. 57.
39 Statutory Regulations, 1961/133.
A contributory superannuation scheme for Members was introduced in 1947. The scheme now provides for a minimum retirement allowance of £350 for a Member who has served for the whole of three Parliaments. This is increased by £50 per annum for each year of additional service rising to a maximum of £700 per annum after 15 years service. An ex-Member must be 50 years of age before he qualifies. The widow of a Member is entitled to an annuity of two-thirds of the retiring allowance to which her husband was entitled at the time of his death.

Salaries and salary prospects of M.P.'s are comparable with those in the universities and in the higher ranks of the Public Service, though until 1961 they lagged behind.

The semi-aristocratic tradition of offering a form of public service rather than choosing politics as a career is not as noticeable in New Zealand as it is in Britain. There are Members who make financial sacrifices in entering Parliament and are impelled originally by the service motive but because, while in session, Parliamentary life virtually compels the full time attendance of Members a professional attitude tends to develop.

41 New Zealand Statutes, 1947, No. 57.

42 See Report of Royal Commission on Parliamentary Salaries and Allowances, 1961, p. 11. Salaries still lag somewhat. This Report contains a table prepared by the Public Service Commission showing Public Service salaries for April 1960 and 1961 as they have risen since 1959 from the levels of Member's salaries in 1959.
Some Members of the House have other occupations and sources of income. Members in safe seats can afford to be less accessible during recess than others and are able to pursue remunerative activities. In safe rural seats distance imposes a physical barrier between a Member and his constituents and leaves him relatively undisturbed. However, Parliamentary membership in New Zealand can no longer be generally regarded as a part time activity. Most Members do have to depend on their Parliamentary salaries and allowances for both living expenses and many of the expenses incurred in their work. The length of yearly session, sitting hours, and recess duties and engagements place considerable strain on a working Member particularly while secretarial and research assistance are so meagre.

Sessions and Sitting Hours.

Parliament is summoned by Proclamation issued by the Governor-General. The three year life of any Parliament is divided into three main sessions. The length of such a session varies but starts, normally, in June and ends in late October or early November. Short additional sessions are held for various reasons in the early months

43"It is well established that the work of Members is virtually full time and professional in nature. There is inadequate additional time available to them to carry on satisfactorily an occupation or a profession which requires their personal attention ... The duties of Members and Ministers are such that the assistance of their wives is more necessary than in most other occupations." A.J.H.R., 1961, H. 50, 9-10.
of the year. One was held in 1923 after a General election, to confirm a doubtful Government majority. A short session was held after the General election of 1957, in January 1958, to pass emergency taxation measures and, according to the retiring Government, to make political propaganda by dramatising the economic situation. There were early sessions in 1953 and 1956 to pass Imprest Supply and enable the main work of the session to be postponed by adjournment so that Ministers and other Members could attend conferences and other official engagements. The 1955 session was called early to hear reports of overseas conferences and adjourned till later in the year. A two day session was held in January 1954 and January 1963 to enable the Queen to open a Parliament while in New Zealand. A session is terminated when Parliament is prorogued by Proclamation issued by the Governor-General.

In the eleven years 1950-1960, Parliament was in session for an average number of 150.2 days per year of which an average of 73.5 days were actual sitting days. It sat for an average of 7.8 hours each sitting day. During this time the regular sitting hours of the House were from 2.30 to 5.30 p.m. on Tuesdays, Wednesdays, and Thursdays and from 7.30 p.m. to 10.30 p.m.

On Fridays the regular hours were from 10.30 a.m. to 1 p.m. and from 2.30 p.m. to 5.30 p.m. Friday hours were amended in June 1962 to begin the sitting at 10.00 a.m., make a lunch adjournment of only

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These figures and those in the following paragraph are based on a Table in *Journals of the House of Representatives*, 1960, p. 457.
one hour from 1 to 2 p.m. and end the sitting at 4 p.m. Late sittings are not infrequent. In three of the eleven years under review the House sat for more than forty hours after midnight, and in four other years there were totals of just over 36 hours, 25 hours, 16 hours, and 15 hours. The three mornings during which the House is not sitting are occupied with Parliamentary business. Both parties have a weekly caucus meeting and call an occasional extra caucus. Select committees meet in the mornings as do various sub-committees of caucus and of select committees.

When speaking engagements and other public appearances are taken into consideration it is evident that, during session, the M.P. has very little time for extra-Parliamentary activities. Sessions and the number of sitting days are very short compared with Britain where the House of Commons is in session for approximately nine months of the year. There might well be some increase in efficiency if Parliament in New Zealand were to adopt longer sessions. A move in this direction is indicated in 1962. Periodic short adjournments were suggested by the Committee on Standing Orders and during the adjournments called this year Select Committees have continued their work. From the point of view of the M.P. who has no other job or source of income this procedure has the advantage of spreading his Parliamentary work and easing the strain and at the same time enabling him to draw his £2.10 daily accommodation allowance for attendance at the House.
To the above factors affecting recruitment to Parliament must be added the small stage across which the New Zealand MP. moves, compared with his British counterpart. On the periphery of world events rather than at their centre, New Zealand, with its two and a half million people and its predominantly rural economy does not present so exciting a prospect of political life as does Great Britain.

Effects.

Political leaders in New Zealand are drawn from Parliament. While there are no completely objective standards by which the quality of its personnel may be measured, standards of debate and formal educational attainment are something of an indication.

Without exception, comment on Parliamentary debate has been adverse. While such comment can only be impressionistic, the impression is not one about which much disagreement is possible. It is almost impossible to imagine anyone in the House of Commons making a contribution like the following to the debate on Estimates, particularly when it is borne in mind that the Speaker is a former Cabinet Minister. The Hon. Mable B. Howard (Sydenham) said in committee that:

A racket in birdseed was still going on. She had received a letter from the Minister in which he admitted that only 40 percent of the seed in the packet was of proper quality. Who was carrying on the racket?

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46 See below pp. 373 - 4
She had not mentioned any name when drawing attention to the matter on a previous occasion but she knew who it was as she had received a letter from a firm which stated: "We quite agree with you that the tonic mixture contains a number of weed seed varieties. These are purposely included as being distinctly beneficial in the budgie's diet. After all they are only classified as weeds from our point of view as human beings, i.e., uneconomic species. A bird in its wild state does not classify them as weeds or otherwise." The birds were not wild. How silly did the writer of that letter think she was! The birds were just as tame and highly bred as human beings.47

A Royal Commission comment on debate was that "There is still widespread and often justifiable complaint at the standard or the conduct of Parliamentary debate."48

In so far as educational attainment of a formal kind may be regarded as a standard, comparisons with Great Britain are unfavourable to New Zealand. Over half of the Members of the British House of Commons were university graduates in 195949 while only one-third of the New Zealand Members were graduates. The proportion of graduates has risen as general educational standards have risen and it rises through the first to the most recently elected M.P.'s in any Parliament.50

47 N.Z.P.P.,331,(21 Aug.1962),1542,(proceedings in Committee of Supply are in reported speech).


The very general conclusions that can be drawn are that New Zealand conditions of Parliamentary life tend to favour recruitment from certain vocational groups, farmers being predominant, that party selection procedures are not those which have made the best use of available talent and that the three year term, status, pay and working conditions are not particularly attractive to able men in the absence of the sense of drama and history making that compensates for similar deficiencies in European Parliaments in attracting men to, if not always satisfying them in, a Parliamentary career.
The Deliberative Function.

The previous chapter dealt with the factors which help to determine the composition of Parliament and hence of political leadership in New Zealand. The rules which govern the deliberations of this varied assembly will now be examined.

In its deliberative, critical role, as in its checking role, Parliament helps to maintain the responsibility of the Government to the electorate. The rules of parliamentary debate allow Government proposals to be explained and subjected to criticism but they do not permit mere obstruction. They ensure that Government is able to obtain the attention of the House to consider and authorise its proposals when necessary. From such consideration they eliminate, as far as possible, sinister influence, intimidation, emotionalism, rancour, disorderly behaviour, confusion of subjects, surprise and lack of information.

The general freedom of debate and the freedom which Members enjoy from sinister influence and intimidation depends to a large extent on Parliamentary privilege. The orderly conduct of debate and the balance between Government explanation and Opposition criticism are protected by Mr. Speaker and other Officers of the House. They are safeguarded too, by the rules which Mr. Speaker enforces governing the way in which business may be brought before the House, the order and manner in which it may be discussed and the various means by which discussion is expedited and brought to a close.
Privilege. Ch.5.

Privilege and the power to punish a breach of privi-
lege or a contempt, rest, in the British Parliament, either
on the law and custom of Parliament or on statutes. May points
out that,

'Except in one respect, the surviving privil-
eges of the House of Lords and the House of
Commons are justifiable on the same grounds of
necessity as the privileges enjoyed by legis-
lative assemblies of the self-governing
Dominions and certain British colonies, under
the common law as a legal incident of their
legislative authority. This exception is the
power to punish for contempt. Since the dec-
ision of the Privy Council in Kielley v. Carson
it has been held that this power is inherent
in the House of Lords and the House of Commons,
not as a body with legislative functions, but
as a descendant of the High Court of Parliament
and by virtue of the lex et consuetudo parlia-
menti.' ¹

Under the common law, then, certain privileges of Colonial
or Dominion Parliaments are admitted as legal incidents of their
legislative authority but not the power to punish for contempt.

In New Zealand the Constitution Act, 1852, which established
Parliament, directed the two Houses at their respective

¹ op. cit., p. 43.
first sittings and thereafter as necessary, to prepare and adopt such standing rules and orders as were best adapted for the orderly conduct of their business. All such rules and orders were to be laid before the Governor for approval before they became binding, and they were, further, subject to disallowance by Her Majesty. It was also provided that 'no such rule or order shall be of force to subject any person, not being a member or officer of the Council or House to which it relates, to any pain, penalty, or forfeiture.' 2 In the requirement of approval and in the power of disallowance this section actually restricted the common law rights which the courts held to be incidental to the legislative authority of a Colonial Parliament. 3

Privilege, then, extending even to the right to make orders and rules for the conduct of its own business rested from the beginning upon statutory authority in the New Zealand Parliament.

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2 *op.cit.*, sec.52.

3 *see May, op.cit.*, pp.60-61.
The first New Zealand Act dealing with privileges was the Privileges Act 1856. In the interest of orderly conduct of business it obligated Members or non-Members of either House to obey the Speaker's rulings on pain of being placed in custody of an officer of the Legislature and becoming liable to a fine of up to £20 or one month's imprisonment.

The Houses might require the attendance of anyone, including public officers (except the Governor or military personnel) to attend the House to give evidence and, in the case of public officers, produce books, papers and documents relating to the public service, on pain of a fine up to £20 or one month's imprisonment, unless a reasonable excuse for non-compliance were forthcoming and provided that the information required could be obtained from a witness in the Supreme Court and that his expenses were reimbursed as in the Supreme Court.

Speeches of members and evidence of witnesses before the Houses were declared privileged from libel or slander proceedings unless it could be proved that they were spoken or written "without probable cause and ... actuated by malice".

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4 *New Zealand Statutes*, 1856, No.24.

5 *ibid.*, sec. 6.
Authorised publication of proceedings was also privileged. Members were exempted from jury service and from witness in Court during session.

In the provisions for penalty in this Act, the assumption of powers went beyond the Common Law rights of Colonial legislatures as they were then recorded in cases before the Privy Council. They were assumed under section 53 of the Constitution Act which provided inter alia: 'It shall be competent to the said General Assembly .... to make laws for the peace, order and good government of New Zealand, provided that no such laws be repugnant to the law of England.'

These provisions of Section 52 of the Constitution Act were repealed in the Parliamentary Privileges Act 1865 by the use of powers to amend certain parts of the Constitution Act granted by the New Zealand Constitution(Amendment) Act, 1857. The 1865 Act provided that 'The Legislative Council or House of Representatives of New Zealand respectively...shall hold, enjoy and exercise such and the like privileges, immunities and powers as on the first day of January one thousand eight hundred and sixty-five were held, enjoyed and exercised by the Commons House of Parliament of Great

6 New Zealand Statutes, 1865, No.13.
8 This provision seemed to give the Legislative Council the Commons right to initiate and amend Money Bills. However, in 1872, the Law Officers of the Crown in England, at the request of the Council, advised that in their opinion, it did not affect the legislative powers of either House. (See A.J.L.C.1872,nos.2 & 3 for this.)
Britain and Ireland and, by the Committees and members thereof so far as the same are not inconsistent with or repugnant to such and so many of the sections and provisions of the said Constitution Act as at the time of the coming into operation of this Act are unrepealed whether such privileges, immunities or powers were so held, possessed or enjoyed by custom, statute or otherwise.\(^9\)

In Britain, the Speaker lays claim at the beginning of each Parliament to the ancient and undoubted rights and privileges of the House of Commons which the New Zealand Parliament assumed in the Act of 1865. Because they are conferred thus by statute they need not be confirmed in New Zealand but in fact the same ceremonial is followed and is required by Standing Orders.\(^10\) The New Zealand formula, however, omits the special mention of freedom from arrest which, together with liberty of speech in debates, access to Her Majesty, and favourable construction on proceedings, are specifically requested by the Speaker of the House of Commons.

Neither in Britain nor New Zealand does privilege protect Members from arrest for criminal offences, though 'a service of a criminal process on a Member within the precincts of Parliament,'

\(^9\) *op.cit.*, sec.4.

\(^{10}\) *s.o.*, 10.
whilst the House is sitting without obtaining the leave of the House, would be a breach of privilege, and in all cases in which Members are arrested or sentenced the House must be informed. In New Zealand the effect of conviction for a crime punishable by death or by imprisonment for a term of two years or more is to deprive the Member of his seat. In any lesser crime a Member would resume his seat on completion of his sentence.

Members are protected from committal for contempt of court unless the contempt is criminal. According to May, each case is open to consideration when it arises; and although protection has not been extended to flagrant contempt, privilege might still be allowed against commitment under any civil process, or if the circumstances of the case appeared otherwise to justify it. The privilege extends also to witnesses called before Parliament or before one of its committees.

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11 May, op.cit., p.79. In New Zealand 'the Speaker is not bound in his decisions by the decisions of the House of Commons; he is only bound to use the rulings of the House of Commons as a guide.' New Zealand House of Representatives, Speakers' Rulings, (Wellington : Government Printer, 1954) 102/4 (hereafter, S.R.).

12 New Zealand Statutes, 1956, No.107. Sec.32.

13 op.cit., p. 83.
Freedom from arrest in civil actions or suits has lost most of its value as the practice of imprisonment in civil process has gradually been abolished. In New Zealand, the existing extent of the privilege as it affects civil process is defined in the Legislature Act 1908.\(^\text{14}\)

Members and officers of the House, when not in attendance on Parliament, if they are summoned to appear before a Court of Record (certain Higher Courts named in the Act) as either party or witness in a civil proceedings or as a witness in a criminal proceedings to be held while Parliament is in session or within ten days before, may apply to the Court in question for an exemption, which the judge is required to grant unless irreparable injury to any party would result. An order may be made for attendance at some future date, at least ten days after the end of the session.

Where, under otherwise similar circumstances, Members or officers are in attendance on Parliament and receive such a summons, they may apply to the Speaker or the Acting-Speaker for exemption.

Under the same conditions as to time of attendance, a summons to appear before a minor court is automatically void. Where civil proceedings against a Member are set down for or are likely to come on for trial or hearing during session or within ten days before or 30 days after session the Member may make application to Speaker or Court (depending on whether or not he is

\(^{14}\) New Zealand Statutes, 1908, No. 101
in attendance on Parliament) to obtain an adjournment of the proceedings, accompanying his application with his affidavit that it is necessary that he attend the trial or hearing. The application is to be granted if no irreparable injury to any party would result.

A privilege analogous to freedom from arrest, stemming from the assumption of the rights and privileges of the House of Commons, is that Members are exempt from jury service. According to May, 'the service of Members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts ...' In New Zealand, before the 1865 Act made the specific claim to this privilege unnecessary, exemption from jury service during session time was granted by the Privileges Act 1856.

Members' freedom of speech is still strongly protected. Under the Privileges Act 1856 speeches of Members and evidence of witnesses before the House were declared privileged from proceedings for libel or slander unless what was said was malicious. Authorised publication of proceedings in Parliament was also protected. It was thought necessary in the 1865 Act which repealed the above, to make special provision again for the protection of publication of authorised papers. Civil or criminal proceed-

15 op.cit., p.77

16 New Zealand Statutes, 1856, No.24. sec.11.
ings in respect of such publications were to be stayed by the Court on receipt of a certificate from the Speaker. The protection was also extended to abstracts from such papers provided that in the opinion of the jury they were published bona fide and without malice.

This provision was based on the Parliamentary Papers Act 1840\(^{17}\) which had been passed in England following the decision in *Stockdale v. Hansard*\(^{18}\) that defamatory statements in a report were not privileged by virtue of the House's order for printing. It was later included in the Defamation Act.\(^{19}\)

Two subsequent New Zealand Acts further defined the privileges, immunities and indemnities of witnesses. The Parliamentary Privileges Act 1865 Amendment Act, 1875,\(^{20}\) extends to witnesses examined before either House or Committee the same immunities as witnesses have in the Supreme Court, while the Parliamentary Witnesses Indemnity Act, 1883\(^{21}\) protected a witness who was under oath and liable to the penalties of perjury, as provided in the 1865 Act, from action or prosecution 'for any act or thing done by him before that time and revealed by the evidence of such witness',

\(^{17}\) *Law Journal Reports Statutes*, 1840, 3 Vict.chap.9.

\(^{18}\) see *May, op.cit.*, p.58.

\(^{19}\) *New Zealand Statutes*, 1954, No.46.

\(^{20}\) *ibid.*, 1875, No.20.

\(^{21}\) *ibid.*, 1883, No.3.
on production of a certificate that he had been required by resolution of the House to answer.

The extent of the privilege as it applies to Members is absolute in respect of speeches in the House but this is not to say that the House itself will not discipline Members if they abuse the privilege. Standing Orders relating to questions and the conduct of debate give some idea of what the House will tolerate from individual Members. They prescribe offensive words and protect other Members, the judiciary and the Monarchy.

The claim to favourable construction on proceedings of the House is now little more than a formal courtesy though it was 'a valuableright forthe Commons in dealing with Tudor and Stuart Sovereigns, when the practice still existed of addressing the Crown in words composed by the Speaker rather than by the House.'

Freedom of access to His Excellency is exercised by the House as a body, through the Speaker, though the whole House may accompany the Speaker. The privilege could be valuable today as ceremony lending greater effect to an address of the House. It does not extend to individual members and so is valuable in its

22 see May, op. cit., p.p. 53, 65.
23 see S.O. 78, 96, 173-178.
24 see May, op.cit., p.88.
25 S.O. 386, 387.
negative aspect. It means that His Excellency 'receives only the decisions of the whole House and cannot take notice of matters pending in the House, still less of debates or the speeches of individual Members.' Furthermore his Excellency may be excluded for the same reason from the deliberations of the House even as a spectator.

**Breach of privilege and contempt.**

These are, as has already been noted, different offences, the first being some violation of the rights of the assembly and its Members in their legislative capacity, the second, analogous to contempt of court including disobedience of its legitimate commands and libels on the assembly or its officers or Members.27

The distinction is of no practical importance either in Britain or New Zealand. Contempts are frequently referred to as breaches of privileges and, thoroughly confusing the two, under Standing Orders of the House of Representatives in New Zealand, a person who commits any breach of privilege may be adjudged by the House guilty of contempt.28 Standing Orders refer to certain acts specifically as breaches of Privilege. The unauthorised publication or divulging of proceedings of Select Committee before the Report of the Committee has been presented to the House, is made a breach of Privilege.29

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26 see May, *op. cit.*, p.87  
27 ibid., p.43  
28 S.O. 393  
29 S.O. 337 - 8
It is contrary to the law and usage of Parliament that any Member of the House should be permitted to engage, either by himself or any partner, in the management of Private Bills before the House for pecuniary reward. It is contrary to the usage and derogatory to the dignity of this House that any of its Members should bring forward, promote, or advocate in the House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward. 30

Current Standing Orders refer to certain acts, specifically, as contems. Any Member absent from the House for more than seven consecutive sitting-days without leave of absence is guilty of contempt. If a person is required by order of the House to attend at the Bar of the House or before a Select Committee and if he or the keeper of a prison in whose custody he is, disobeys the order of the House, the person or keeper may be adjudged guilty of contempt by the House.

If a person summoned before a Select Committee does not comply with the summons, the Committee may direct its Chairman to report this to the House and the person may be adjudged guilty to contempt or ordered to attend at the Bar of the House.

Tampering or deterring or hindering witnesses, on Motion after notice is adjudgable as contempt.

30 S.0. 391-2. These two Orders with S.0. 393 are Part XXXIII of Standing Orders and are headed 'Privileges.'
Any stranger who interrupts the orderly conduct of the business of the House or of any Committee is held guilty of contempt.

It may be stated generally that any act or omission which obstructs or impedes either House or Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.

A more comprehensive account of those offences which have been judged contempts in British practice is given in May. Briefly, the following classes of behaviour must be added to those already described as Breaches of Privilege or contempts:

1. Abuse of the Right of Petition - frivolity, misrepresentation or threats in or accompanying petitions.
2. Conspiring to deceive the House in any way.
3. Molesting Members, Witnesses, Officers or Petitioners or attempting to influence them improperly.

Raising a Matter of Privilege.

So much importance is attached to the protection afforded by privilege that matters of privilege have a higher priority than

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33 ibid., p. 109 - 133.
any other form of business. An urgent Motion, directly concerning privileges of the House, takes precedence over other Motions and Orders of the Day.\(^{34}\) If a matter of privilege suddenly arises, in or outside the House, the Member speaking in any debate or proceeding may be interrupted.\(^{35}\) An adjourned debate on a Question relating to any privileges of the House stands first on the Order Paper for the Day to which the debate is adjourned.\(^{36}\) No Notice of Motion is required if a breach of Privilege is brought up at once, but if twenty-four hours or a considerable interval be allowed to elapse without any notice being taken of the breach, it cannot be brought forward without previous notice. Notice having been given, the matter stands first on the Order Paper for that day and no other business, without the consent of the House, will be allowed to take precedence over it. However, an alleged breach of order, not noticed at the time, cannot be raised later as a breach of privilege.\(^{37}\)

\(^{34}\) [S.O. 101]

\(^{35}\) [S.O. 179, 180]

\(^{36}\) [S.O. 185]

\(^{37}\) [S.R. 86/3 & 4 and 89/1]
The House, not the Speaker, decides whether a breach of privilege has been committed. The Speaker only decides whether prima facie there has been a breach before putting the question to the House. The House normally refers the matter to a Committee for consideration and report.

Penalties for Breach of Privilege and Contempt.

Though the Constitution Act prevented the imposition of 'pain, penalty of forfeiture' the powers assumed by the Privileges Act of 1863 were inclusive and included the penal jurisdiction of the House of Commons. Commons is considered to have the power to commit offenders to prison until prorogation, when, if not sooner discharged by the House, they are immediately released. Commons may, however, decide that an offender has been insufficiently punished and recommit him in its next session. There is some doubt, according to May, about Commons' right to impose fines. They were imposed before 1666 but not since then. The doubt arises over the status of Commons as a Court of Record. In the past the House has resolved that it is a court of Record and has acted as such, but, May observes, its claim to this status 'once firmly maintained, has latterly been virtually abandoned, although never

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38 S.R. 86/5
40 May, op. cit., p.102
distinctly renounced. In New Zealand, it has been assumed the House does have the power to impose fines. The last fine was imposed as recently as 1896, to be devoted like previous fines to the General Assembly Library. Furthermore, Standing Orders (1929) provided that Members guilty of contempt were liable to be fined, at the discretion of the House, no more than £50.

Today, the most important aspects of privilege and powers to punish for breach of privilege are in protecting freedom of speech in debates and in preserving the confidence of those who appear before Parliamentary Select Committees. The first of these protects Members from slander actions. The second prevents the Press from publicising leaded inter and intra-departmental disagreements, intra-party disagreements and the opinions of experts whose position requires anonymity. The general value of privilege is that it enables Parliament to perform its critical deliberative function free from interference by other branches of Government and from certain kinds of community interference and influence.

41 ibid., pp. 90-91
42 N.Z.P.D. 93,(17 July, 1896), 336
43 Standing Orders of the New Zealand House of Representatives, (1929), No.80. However the Select Committee which recommended revision of Standing Orders in 1929 thought it desirable "that the authority of Parliament to inflict fines and otherwise safeguard its privilege be supplemented by statutory enactment" A.J.H.R. 1929, H-I, I.18; there has been no such enactment.
To a very large extent the orderly conduct of debates and therefore their quality and effectiveness depend on the presiding officer, Mr. Speaker. The role of the Speaker in the British Parliament is quite different from that of the Speaker in the U.S. House of Representatives. His is not a position of power capable of being used to determine, even to a degree, what decision is taken or what legislation is passed. His recognition power is not a significant factor in determining which influential views shall be heard or given most weight though it may be used to prevent too much of the time of the House being wasted by some well-known protagonist of an extreme view. He does not control or become a party to manœuvre in accepting Motions and in accepting closure. The disciplined two-party system renders such considerations, for the most part, irrelevant. The Speaker's role in the British system is dependent on the assumption that there may be two sides to a question and that if both sides are heard better decisions will be taken. In other words, the ethos of Parliamentary debate is rational rather than interest and area representational though it is both. Members explain, not so much their bargaining positions, but the terms in which proposed legis-

1 As Jennings explains 'the community interest' is also the argument best calculated to appeal to Treasury (Parliament, 2nd ed. London, Cambridge University Press, 1957) p. 29. Thus the ethos is reinforced.
lation may be judged right or wrong, in the community interest or contrary to it. The order which the Speaker maintains is assumed to be an aid to rational discussion, not simply a way of allowing interests and opportunities to be represented. Many of the rules he enforces about the content of debate have the same objective and are based on the same assumption.

Historically the principal role of the Speaker in Britain was to act as the link between the House of Commons and the Crown. Because the primary responsibility for the orderly management of the business of the House also rested on Speaker's shoulders, Commons and Crown struggled long for the control of the office and not until Charles I's defeat at the hands of Parliament was the principle established that a Speaker has "neither eyes to see nor tongue to speak in this place but as the House is pleased to direct..."^2

During the 18th century and the early 19th century the power which the King had thought it desirable to control was coveted by the leaders of the majority party in the House. With the exception of Onslow (1727-1761) Speakers held government office and spoke in debate. The impartiality which Onslow had shown, gradually, during the 19th century, came to be expected of his successors.

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It became the practice not to oppose the re-election of the existing Speaker either in his constituency or in a new Parliament under a new Government.

Today the Speaker is independent and impartial both in presiding over the House and representing it in all its external relations. The symbol of the authority of the House, the Mace, precedes him when he enters or leaves the Chamber. All the prestige and dignity of the House attaches to him and by virtue of his office, he takes precedence immediately after the Lord President of the Council.

Although the role of the Speaker in the New Zealand House of Representatives is analogous to that of the Speaker of the House of Commons he cannot be said to enjoy quite the same prestige. One reason for this is that his dignity is less deliberately bolstered by pomp and ceremony. For example, he comes below the newest appointed member of Cabinet in order of precedence and his official residence is a rent-free flat in Parliament buildings, contrasting with the great house in the north wing of the Palace of Westminster where the British Speaker (alone of Her Majesty's

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3 However Speakers Fitzroy and Clifton Brown were opposed in 1935 and 1945 respectively by Labour Candidates.

subjects) holds levees which are attended in Court dress.

Another reason, possibly, is that his political impartiality is not so complete nor so well safeguarded by convention as it is in Britain. The British Speaker, once appointed, divests himself of his party character. "He resigns from his party, has no communications of a party character and is prevented from advocating the claims of his constituents." In New Zealand, Mr. Speaker retains his party membership, often quite actively. For example, the Speaker in the 1957 Parliament, the Hon. R.M. Macfarlane, attended and spoke at Annual Labour Party Conferences.

The Speaker does not take part in debates or vote while in the Chair, though he has a casting vote in the case of a tie. Speakers' Rulings provide that his casting vote is given in favour of advancing a Bill a stage further so as to allow the House another opportunity of expressing an opinion, or so that the existing state of things shall continue.

When the House is in Committee, however, and the Speaker is not therefore in the Chair, he may exercise a deliberative vote and though Speakers generally refrain from doing so, the Hon. R.

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6 S.R. 103/3; see also an amusing exchange on this point in the customarily equal valedictory adjournment division of 1946, *N.Z.P.D.*, 275, (October 12, 1946), 772
McKeen, Speaker in the 1946 Parliament frequently voted in Committee as did the Hon. R.M. Macfarlane in the 1957 Parliament. The narrowness of government majorities in New Zealand's small House sometimes makes this necessary. Sir Arthur Guiness who was Speaker from 1903 until his death in 1913 made more use of the Committee session than any other Speaker, using the opportunity to speak on the needs of his district. On one occasion the undesirability of this practice was well demonstrated. Sir Arthur was called to order in Committee but defied the Chair. Another member, T.M. Wilford, saved the situation by demonstrating its implications. He moved that the Speaker's ruling be obtained.

The convention by which the Speaker's seat is not contested in Britain does not obtain in New Zealand and Speakers campaign in their constituencies on a party programme and are occasionally defeated. The convention in the United Kingdom by which the

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7 See e.g., Journals (1960) pp. 127, 197, 200, 269.
8 See Evening Star, (Dunedin, 2 June, 1951), p.5.
9 Speakers Lang, Barnard, Schramm were defeated in the General Elections of 1922, 1943 and 1946 respectively.
Speaker in the former Parliament is always re-elected by new Parliaments is for that reason not established in New Zealand. Major changes of government since 1890 have been those of 1891, 1912, 1928, 1935, 1950, 1957 and 1961. Only in 1928, 1950 and 1961 did the possibility of the re-election of the Speaker in the former Parliament present itself. In 1928, the occasion of the least radical of these changes of government, (the two main parties in opposition were close enough politically to form a coalition government three years later) the ex-Speaker was re-elected by the House. The man in question, Sir Charles Statham, was an Independent. The Hon. R.McKeen, Speaker from 1946-49, nominee of the then Labour Government, was not re-nominated in 1950 though he had been re-elected to Parliament and the Hon. R.Macfarlane was not re-nominated in 1961. In 1891 there was no former Speaker in the House, Sir Maurice O'Rorke having been defeated in his constituency. 1912 was not the occasion of a new Parliament. In 1935 and 1958 the previous Speaker had retired. (Sir Charles Statham and Sir Mathew Oram respectively.)

The Speaker is elected by a new House as soon as the Members have been sworn. A Member, when called upon, names some other Member present and proposes that he 'do take the Chair of this House as Speaker.' The Motion must be seconded. 10 Normally a

10 S.O. 8.
Government leader moves the election of a Speaker and some care is taken to ensure that he is someone acceptable to both sides of the House. The Speaker must enjoy the confidence of the House both as its traditional spokesman and, more relevant today, as its impartial presiding officer. A proposed Speaker is not ordinarily, therefore, opposed; the last opposed election was in 1923 when the election of Charles Statham was opposed by McCombs. There had been opposed elections before that in 1891 and 1894. The same considerations apply to the election of the Chairman of Committees. The present Chairman of Committees, however, was elected in 1961 only after heated opposition had been overcome by a division. 11 In the 1957 Parliament, the nominee, Mr. Jack, had frequently been unruly, questioning decisions of Mr. Speaker. Since his election the Opposition has expressed confidence in him and it is now clear that the interest in procedure which led to his exchanges with Mr. Speaker serves him well in the Chair.

If only one Member is proposed and seconded he is called to the Chair. He then stands in his place and expresses his sense of the honour proposed to be conferred upon him and submits himself to the judgement of the House. On being again unanimously called to the Chair he is led to the Chair by his proposer and

seconder and standing on the upper step, returns his acknowledgements to the House. Some N.Z. Speakers\textsuperscript{12} make the show of reluctance which is traditional in Britain in the House of Commons and which marks the past dangers with which the Spokesman of the House was faced in confronting the Monarch. The new Speaker then sits and the Mace, which, before, lay under the Table is laid upon the Table. After speeches of congratulation by Members, the House adjourns to enable the Speaker-elect to present himself to the Governor-General.\textsuperscript{13} When, attended by his proposer and seconder and other Members, he presents himself, His Excellency confirms the choice of the House. The Speaker then lays claim to the privileges of the House, which are confirmed and, when the House meets again he reports these proceedings.

If two Members are proposed and seconded for the Speakership, they submit to the judgment of the House in turn. If neither is adopted the Clerk of the House calls for further nominations. The Member finally elected is conducted to the Chair and the procedure as for uncontested elections is followed thereafter.\textsuperscript{14}

\textsuperscript{12} See e.g., \textit{Evening Post} (Wellington : 28 June, 1950), p.10.

\textsuperscript{13} Procedure for the election of the Speaker is laid down in S.O. 8.

\textsuperscript{14} S.O. 12
Where more than two Members are proposed they are voted for in turn, the doors being locked and, unless one candidate is declared elected at any stage by an absolute majority, the candidate with the smallest number of votes retires until after successive votes, two Members are left. They are voted upon and the candidate with the highest number of votes is declared elected and conducted to the Chair, the usual procedure then being followed.\textsuperscript{15} If it is desired to propose a Member who is unavoidably absent his consent in writing must be produced to the Clerk. Thereafter, if he is elected, such proceedings as the Governor-General may approve for confirming the choice of the House and laying claim to its privileges are to be taken and reported to the House at its next sitting.\textsuperscript{16}

The British conventions have been referred to with wistful approval by a retiring Speaker conscious of the importance of the impartiality of his Office, but they would be difficult to maintain in New Zealand. In a Parliament which has only 80 Members, Governments frequently hold office on very slender majorities. A party could hardly afford to write-off one of the seats to its opponent at a General Election because it happened to be Mr. Speaker's. A Government has no guarantee that the Speaker's

\textsuperscript{15} SC. 13

\textsuperscript{16} SC. 15
casting vote in the event of a tie, would not be used to
defeat it, as in 1862. Nor is Mr. Speaker's impartiality in
observations and rulings on debate taken so much for granted that
a Government does not want to ensure that his powers are exer­
cised by someone likely to co-operate in the despatch of business.
From the point of view of the Opposition there would ordinarily
be some reluctance to improve the position of a Government with
a very slender majority by contributing a Speaker from its own
ranks.

Various suggestions have been put forward as means whereby
the Speakership might be made less dependent on party. Sir
Mathew Oram, on retirement, suggested that a Speaker should be
elected for a fixed period, say for two Parliaments, a period
which could be extended by unanimous address by Parliament to the
Governor-General. On election as Speaker, Oram suggested, the
Member's seat should become vacant and a new Member appointed by
the electorate concerned.

This would comply with the requirement that
when he was elected, the Speaker should be a
Member of Parliament, but it would ensure that
once he was elected he would be completely ab­
ove the battle, freed from all political ties
whatsoever - an independent Chairman in fact as
well as in theory. This procedure would also

17 N.Z.P.P. 1861-63 (July 28, 1862), 476.
have the advantage of not saddling Parliament for a lengthy period with a Speaker who might be unsatisfactory or unacceptable. 18.

Oram also mentioned with approval the practice in the Dail Eireann under the Electoral Act of 1937. It is provided that, at dissolution, when the outgoing Chairman has not announced before the dissolution that he does not desire to become a Member, he shall, without actual election be deemed to have been elected. 19

Any proposal for a fixed term, even if only for the life of two Parliaments, has to be considered in the light of the importance of having a Speaker who possesses the confidence of the entire Parliament. The major and probably decisive objection to Sir Mathew's proposal is that it could, possibly, saddle a new Parliament with an unsatisfactory Speaker for three years. Not on every occasion when a new Speaker was being elected for a six-year period would a new Government, formed from a party which had

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19 Under this Act (Saorstat Eireann, 1937, No.25) the Speaker is deemed a Member for his constituency, or, if a boundary change has taken place, for the constituency declared to correspond to his previous constituency. Constituencies are multi-Member and, at the General Election, a writ for one less Member is issued.
been out of office for some time, have in its ranks Members not required as Ministers and of proven ability in the Chair.

Then, Sir Mathew's proposal would have to be accompanied by a provision to exclude a Speaker from membership of the House for at least three years on completion of his term. Without such a provision a Speaker who intended to seek re-election to Parliament would be even more dependent on party than he is now, particularly in the second half of his term, since he would be in search of a constituency. This provision could be made less harsh by being made subject to a further provision that, at the end of a six year term, a Speaker could be appointed with the unanimous consent of the House, for a further term.

An alternative suggestion is that the Speaker in one Parliament be confirmed in office for the next Parliament by unanimous vote of the outgoing House for a further three years. If the seat were not contested, this decision, since the smallest possible majority in New Zealand is a majority of two, could not affect the ability of one of the parties to form a government, though in the case of a party other than the Speaker's it could improve its working majority by one vote. The main objection to this proposal is that it would leave a constituency virtually unrepresented. The effect of present practice is much the same but

From a Senior M.P. in an interview.
in New Zealand a constituency does have the power to reject a man who has become Speaker. In Britain, though the convention of non-opposition makes rejection less likely, it is also possible.

If provision were made for a by-election on re-election of a Speaker in this way, it would always pay the Government to propose, on first attaining office, someone from a safe seat, thus, all other seats remaining unchanged, standing to increase its working majority by one, after three years. For the same reason, it would always pay the Opposition, if a Speaker has proved impartial, to support such a man for a further term.

If both parties gained the same number of seats after an election, as almost happened in 1957, the constitutional problem would not be fundamentally different from what it would be if there were a tie under present circumstances. The Governor-General would presumably seek agreement on a caretaker government until another General Election could be held.

If the number of Members of Parliament were substantially increased, as they might well be in face of the volume of work, British practice, resting on convention, might become feasible.

**Other Officers**

**Deputy Speaker and Acting Speaker.**

N.Z. Standing Order 24 which is modelled on the British House of Commons, Standing Order 96 (1) directs that

Whenever the House shall be informed by the
Clerk at the Table of the unavoidable absence of Mr. Speaker, the Chairman of Committees shall perform the duties and exercise the authority of the Speaker in relation to all proceedings of the House, as Deputy Speaker, until the next meeting of the House and so on, from day to day, on the like information being given to the House, until the House shall otherwise order; provided that if the House shall adjourn for more than twenty-four hours the Deputy Speaker shall continue to perform the duties and exercise the authority for twenty-four hours only after such adjournment.

Other Standing Orders provide that if both Speaker and Chairman of Committees be absent the House may call on any Member, on the motion of a Minister, to take the Chair as Acting-Speaker; that, at any time, during a formal sitting, at the request of the Speaker or Deputy-Speaker, without formal communication to the House, any Member may take the Chair temporarily as Acting-Speaker; and that in any of the above three circumstances, 'every act done and proceeding taken in or by the House shall be as valid and effectual as if Mr. Speaker himself had been in the Chair.'

This last provision is apparently intended to confer upon Deputy and Acting-Speakers the same authority as was conferred on the British Deputy-Speaker by the Deputy Speaker Act, 1855. Under the terms of this Act, if the unavoidable absence of Mr. Speaker has been formally announced by the Clerk at the Table and the Chair has been taken by the Deputy-Speaker, every Act of the House or Deputy-Speaker is as valid as if Mr. Speaker were in the Chair, except that

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21 S.O. 25, 26, 27.

the Deputy has no power to appoint to any office except for such time as he shall continue as Deputy-Speaker.

There are, however, some limitations on Mr. Speaker's deputies in New Zealand. Quite apart from other arrangements for the performance of his statutory duties under the Electoral Act and in relation to vacancies, are the restrictions in Standing Order 197 which allows a Motion to close debate only when the Speaker or, in Committee, the Chairman, is in the Chair. This Standing Order is modelled on S.O. 29 of the House of Commons: Commons' practice does not apply it when the absence of Mr. Speaker has been formally announced. The same procedure is followed in New Zealand in the case of a formally announced absence though there are few precedents, New Zealand Speakers having only rarely been absent from the House for illness or any other reason.23

Sir Mathew Oram was absent from 30th August to 6th September, in 1955, because of illness. Before that Sir Maurice O'Rorke was away ill on three separate days in 1901. In the intervening years there were short absences for reasons other than illness, the longest being in 1950 for Sir Mathew Oram to attend the opening of the new House of Commons. There were closure motions in his absence, but the question of the ability of the Deputy-Speaker to accept them was not raised. (see N.Z.P.P. 292 (12 Oct., 1950), 3344-9 & 3359.)
Chairman of Committees and Acting Chairman.

By resolution, the House appoints a Member to be Chairman of Committees to preside over Committees of the Whole House. As in the case of the Speaker, deputies may be appointed to exercise his powers. The Chairman of Committees is usually a Government nominee proposed by the Leader of the House. He has a casting vote on Committees and, like the Speaker in the House, does not exercise a deliberative vote. Though he usually votes in the House, he does, to some extent, avoid taking part in controversial debates.

The Clerk of the House.

The efficiency of Parliament depends a great deal on the Clerk and his office. While the principal duties of the Clerk and the Clerk-Assistant relate to the conduct of debates and the decisions arising out of them, he also has duties under the Electoral Act, 1956, and as Chief Permanent Officer of Parliament is responsible under Mr. Speaker for the services of the House, including maintenance of buildings and grounds, catering and library.

On the floor of the House, his chair is in front of, and below, the Speaker's Chair. When the Speaker is weak and has a poor grasp of procedure the Clerk is forced to help him constantly and make up for his deficiencies. The Clerk, as a permanent officer, normally has a knowledge and experience of procedure greater than that of Mr. Speaker. There were seven Speakers, from 1930 to 1963,

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24 S.O. 30, 32, 35
25 S.O. 141
but only three Clerks. Though Speakers have served as ordinary Members or as Ministers before appointment, or as Committee Chairmen and may have a good working knowledge of the rules, the Clerk's responsibilities in connection with Records, form of business, the Order Paper and the advancing of business following decisions of the House, require him to study and understand the rules and their purposes to a far greater degree. In addition, since Clerks are chosen from the legal profession, their training equips them for and inclines them towards such study.

The Clerk's notes of proceedings are the official Journals of the House. He has custody of the Journals and all records, papers and accounts. The destruction of old records or their preservation is at his discretion and within his authority.

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26 One of the three Clerks, Bothamley, was in office for only a year. He was a person of considerable seniority and his was virtually a retirement appointment.

27 S.O. 58

28 S.O. 60
He prepares the Order Paper for each sitting day, receives all Petitions, Notices of Motion and Questions and ensures that they are in conformity with Standing Orders. He directs the printing of Bills which are passed and presents them for Royal Assent (unless they are Appropriation Bills which are to be presented by Mr. Speaker.) He is thus familiar with every aspect of Parliamentary procedure and in the best position to see any part of the procedure in relation to the whole. He has at his table in the House works of reference such as May, Standing Orders, Speakers' Rulings, Journals, and Order Books. His knowledge and advice on Questions of Order are on numerous occasions each day called upon by the Speaker and Members generally. He has, in addition, the formal duties of reading whatever has to be read to the House during its deliberations, of acting as Chairman for the election of Speaker and of reporting a vacancy in the Speakership to the House if it occurs during a session.

The Clerk and other administrative Officers are appointed by the Government on the recommendation of Mr. Speaker who has control

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29 S.O. 244.

30 Bound volumes of the Order Papers which announce business before the House each day.

31 S.O. 5 - 8.

32 S.O. 14.
over them. Their salaries, increments and bonuses are determined by the Government. The Clerk's immediate subordinate is the Clerk-Assistant who deputises for him in his absence and takes his place at the Table when the House is in Committee of the Whole. The Second Clerk-Assistant is the Clerk of Journals and Records and a number of Committee Clerks are the other main Officers.

The Serjeant-at-Arms has duties similar to those of his counterpart in the House of Commons in England. He is an adjunct to the authority of Mr. Speaker. He precedes him with the Mace when Mr. Speaker enters or leaves the House and in his official dealings with the Governor-General. He has to maintain order in the visitors' galleries and lobbies and executes Speaker's warrants for the commitment of people ordered into the custody of the House. He also has immediate control over the Messengers and Orderlies, though they are subject to the administrative control of the Clerk.

The Speaker and other Officers of the House under his control have an indispensable role in preserving the freedom and balance of debate. An able Speaker and Chairman of Committee, well

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33 S.O. 399

34 Two other Officers of the House, not under the control of Mr. Speaker, the Controller and Auditor-General and the Ombudsman, will be considered in relation to the checking function of the House.
served by permanent staff, can contribute a great deal to Parliamentary efficiency. There is no doubt that Members of Parliament do have to be controlled. Anarchy is an impossible ideal and, no matter how concerned are Members with the dignity of Parliament and of their profession, the House falls into disorder when there is no firm control from the Chair.

Observation of Speakers, Chairmen, and Deputies over a number of years suggests that there are certain characteristics which are useful in the Chair. The Speaker should be a man of some dignity and physical presence so that the silence required by Standing Orders when he rises to his feet is automatic. He should have a voice that can be easily heard throughout the House. His hearing and eyesight should be acute. He should be a man who can be firm without losing his temper or becoming flustered or overbearing. The House will respond generously to a short, cogent and witty lecture designed to turn away wrath, but will resist an autocrat. The Speaker must have a good sense of the needs of both sides of the House and, impartially,

35
S.O. 148
co-operate with the Government in the despatch of business while preserving the rights of the Opposition to criticise. There are no absolute rules for preserving the balance and the Speaker must be sensitive, therefore, to the mood of both sides of the House, in his rulings.

He should, finally, have, or be capable of acquiring, a thorough grasp of the rules and the various conventions governing their application.

These rules and conventions will now be discussed.
Initiation of debate  Ch. 7.

It is the essence of rational discussion that all the participants be talking about the same thing and so only one thing at a time. The primary rule of debate, therefore in Britain and New Zealand is that it must begin with a Motion. There must be no debate without a Motion.¹ When, as sometimes happens, a debate does appear to be developing out of an informal exchange between Members or out of a piece of occasional business like a Point of Order, Ministerial statement, or personal explanation, Mr. Speaker prevents its extension by reminding the House that the matter in question cannot be debated without a Motion. Following this rule, the main criterion governing admissibility is whether the contents of a speech are relevant to the subject under debate. To be consistent with the principle of majority rule the rules governing the acceptance of motions and amendments to Motions must be designed to ensure that the majority does not, by any of its decisions on one Motion prevent a favourable decision on some preferred Motion. At the same time the rules must prevent, as far as possible, the obstructive use of Motions, wasting the time of the House and hindering Government business. They should also provide time for the House to prepare itself for the discussion of business brought before it, particularly when such business is introduced by the Government. New Zealand rules governing order, precedence and interruption of business and the form in which Motions are to be

¹S.O. 159 & S.P. 60/1 & 2.
presented are, with one difficult exception, in conformity with these requirements.

Notice of Motions

In its widest sense the term Motion includes any proposal made for the purpose of eliciting a decision of the House. A distinction may be drawn between Substantive or Independent Motions which initiate debate, and dependent or subsidiary Motions, which are related to the independent Motions, the general rule being that the former require Notice, whereas the latter do not. However, certain Substantive Motions either by Order or courtesy of the House do not require notice: an urgent Motion directly concerning privileges of the House does not require Notice and votes of thanks or condolence are usually moved without Notice by Leave of the House though they are substantive. On the other hand, the suspension of Standing Orders, normally Subsidiary in the sense that it is a mere procedural preparation for some other Motion, may not be moved without Notice if there are less than forty Members present. The rationale of these rules relating to notice and distinguishing between substantive and dependent Motions, is the prevention of surprise.

Surprises consist in precipitating a decision, either by taking advantage of the absence of many of the Members, or by not allowing the assembly either the time or the means of enlightening itself.

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2 S.O. 101 & 393
3 S.O. 400
4 Bentham, op. cit., II, 302.
The House protects itself against surprise not only by the required notice of Motions but by a quorum rule, by papers dealing with daily business of the House and by a rule prescribing the order in which business is to be taken.

**Quorum**

The House may not proceed to business unless a quorum is present. As Bentham points out,

> there are many cases in which it would be too dangerous to permit a small portion of the assembly to act alone. It is better not to have any decision, than to have one which does not unite a certain proportion of the suffrages of the whole body. The number necessary for rendering any act of the assembly legal, should be fixed beforehand.

A quorum should not be so large as to make it a possible instrument for thwarting the will of the majority of a well attended House. In New Zealand a quorum is constituted by 20 Members, including the Speaker.

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5 S.O. 48. However, when the House is summoned to the presence of the Governor General or his Commissioners it is not to be counted and proceeds to business on its return until notice is taken of the absence of a quorum. (S.O. 49).

6 *op. cit.*, II, 307.

7 S.O. 47.
Papers dealing with Daily Business

'It is proper', says Bentham,
that the assembly should previously have before its eyes
a statement of the business with which it is to be engaged,
that nothing may be left to chance, and that it may not be
exposed to surprise.\(^8\)

He proposed therefore daily published registers of Motions, amendments and Bills likely to be brought before the House.

Most of the various Papers in the "Vote" and the "Order Book"\(^9\) dealing with the daily business of the House of Commons in the United Kingdom have no New Zealand counterparts. The business of the New Zealand Parliament was smaller in volume and far less complicated than that of the House of Commons in earlier years and the printing facilities available were correspondingly less adequate.

Today, in New Zealand, the media by which information about proceedings is conveyed to Members are the Order Paper, Supplementary Order Papers, the Supplementary List of Papers for Consideration, Bills, Bills amended in the course of their consideration, Hansard sheets, Hansard 'pinks', the Journal, and various items placed on the notice board including a daily list of notices of Questions handed in which is really the proof of the list which will appear on an Order Paper.

The Order Paper is issued twice daily except on Fridays. It is prepared by the Clerk of the House (as directed in Standing Order 62). A proof copy is circulated early, usually by 9 a.m., a hand-corrected copy is placed on the notice boards at 11 a.m. and a corrected copy

\(^8\) op. cit., II 352
is circulated to Members at about 2 - 2.30 p.m. The corrected copy is the one sent to subscribers. On Fridays the House meets at 9.30 a.m. and a corrected copy only is circulated at 9. a.m.

The proof copy contains the business ordered by the House to be set down for consideration, and each morning the new copy will incorporate progress made on existing Orders and new business introduced during the previous day's sitting. The Government has the right to have its Orders of the Day and Notices of Motion placed upon the Order Paper in the rotation in which they are to be taken, and the Corrected copy of the Order Paper may contain alterations in the list of Orders of the Day made at Government request. At the head of every Order Paper is a list showing the order in which classes of business are to be called and taken as laid down in Standing Order 64. Below that appears the date and then information about the specific items of business to be considered in each class. Of these, Orders of the Day and Notices of Motion constitute the main business. At the end of the Order Paper appears a list of petitions handed in each day, announcements about meetings of Select Committees on that day (when they are known in time for inclusion), and, when Reports of Select Committees have been ordered to lie on the Table, a list of the Committees reporting. Questions for oral answer are listed under the various days on which they are to be asked and answered. Questions for written answer are also listed and on the due date the reply is printed beside the Question.

10 S.O. 69 a.
A Supplementary list of Papers for consideration is circulated weekly and also when such Papers are due to be considered. Papers appear on the Order Paper on the day after they are presented but are removed to the Supplementary list until dealt with by the House. Bills, that is, draft legislative proposals, and Bills as amended during the course of consideration, are, of course, occasional papers issued when required. Supplementary Order papers are issued to show amendments to be proposed to Bills in progress, usually in the Committee stage.

Mention should be made here of the 'Agenda'. Not properly a Parliamentary paper it shows the way the Government intends to deal with the day's business and is really a kind of prompt sheet for the leading actors. So that Government manoeuvres shall not be revealed to the Opposition, this Paper is treated as Highly Confidential and is circulated only to the Prime Minister, Speaker, Clerk and Assistant Clerk. One copy is filed.

Hansard, the familiar name for the Official report of Debates is circulated to Members in 'sheets' (32 pages unbound, covering 2 or 3 days), 'pinks' (a number of sheets, stapled and indexed under a pink cover) issued to Members and subscribers, and bound volumes of convenient size, issued at the end of session with a sessional index. The bound volumes are numbered and show the Parliament and session. Type-scripts of Members' speeches are sent to them immediately the speech has been made and they have a limited right of revision.

The Journal records what the House does, not what it says. It is comprised, in accordance with Standing Order 58, of the notes of
proceedings compiled by the Clerk. It is typed under his supervision, with each page initialled by the Speaker. The typed sheets are the equivalent of the Votes and the proceedings issued daily in the British House of Commons. They are available for consultation by Members in the loose-leaf volume to which they are added each day, but, naturally, because of the inconvenience involved are almost never consulted.

The fact that Votes and Proceedings are not issued daily places considerable responsibility on the Clerk for the accuracy of the Journal. In England, its issue affords an opportunity for scrutiny of the record by those who made it. The Clerk's Table is often very busy and his notes are likely to be very brief, on sheets of paper or in the margin of the Order Paper. He makes a fair copy from his rough draft as the opportunity occurs during the sitting, but these are still notes, and, even with the check by Speaker, too much reliance would appear to be placed on their accuracy. The daily issue of Votes and Proceedings would be the best remedy for this situation but a very simple improvement could be effected by placing a carbon copy of the typed daily notes on one of the Notice Boards where it would be drawn to the attention of Members.

Ordinarily the Journal is printed sessionally, but on occasions, when one session is short, two are printed together. Minutes of the proceedings of the Committees of the whole House which do not appear in the daily entry of the Journal are added at that time.
Hansard and the Journal are, primarily, records but, in much the same way as the minutes of the previous meeting of any society are a preparation for the current meeting, they serve to remind Members of what has already been said on an interrupted debate or of the stage reached on a piece of business. Thus the matter may be taken up again rapidly with all the implications which have previously been brought out firmly in mind.

Order of Motions and Precedence

The order in which substantive Motions are brought forward for discussion is determined partly by the order laid down for consideration of classes of business at any sitting and by the rules governing variation in this order. At the beginning of each sitting, after prayers have been read by the Speaker, the House proceeds, in the following order, to Private business, presentation of petitions, presentation of Papers, Notices of Motion, Unopposed Motions for Returns, Motions for Leave of Absence, Questions for Oral Answer, Leave to Introduce Bills, Reports of Select Committees, Consideration of Papers, Orders of the Day and Notices of Motion in the order in which they are set down on the Order Paper.\(^{11}\) Government Orders of the Day have preference over others and Government Notices of Motion over others except on Wednesdays when Private Members business has precedence, and on the first six Thursdays in the session when Private Members Public Bills have precedence after any Local Bills have been di-

\(^{11}\)S.O. 64 (13 June 1962)
sposed of, and on the first ten Thursdays when Local Bills have precedence. This order is observed subject to the precedence, over all other business, of the debate on the Address in Reply to the Speech from the Throne and the debate on the Budget. It is also frequently varied by Leave and preceded or interrupted by the receipt of Messages from the Governor-General. It is subject also to the rules governing the interruption of business at certain times and to the rule which requires that the House proceed to Orders of the Day at 7.30 on Tuesdays, Wednesdays and Thursdays and on Fridays at 2 p.m. and the rule that any Motion to alter sitting times shall state the time at which the House is to proceed to Orders of the Day.

Form of Motions

A number of rules govern the form in which substantive Motions may be made. A Motion must be moved by the Member in whose name it stands unless the Member assures the Chair that he has the authority of the absent Member to move his Motion. This is an elementary protection for absent Members and avoids wasting the time of the House. However, a Motion standing in the name of a Minister may be moved by one of his colleagues without assurance of his consent. The

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12 S.O. 68  
13 S.O. 19 & 296  
14 S.O. 382  
15 S.O. 65  
16 S.O. 87 & S.R. 81/4
principle of collective responsibility enables one Minister always to act for another. Again the rationale is avoidance of surprise. To move a Private Member’s Motion, in his absence, might be a way of defeating his Motion.

All Motions must be seconded, except formal Motions relating to an Order of the Day or the proceedings of the House, or some matter of frequent occurrence not customarily involving debate such as a Motion for Leave of Absence. No seconder is required for a Motion moved by a Member of the Government or a Privy Councillor. This is the British rule and applies to Motions moved by Ministers in New Zealand and not seconded. A Motion moved in Select Committee or Committee of the Whole House does not need a seconder. Practice relating to the seconding of Motions ensures that the House does not waste its time debating a proposal backed only by its mover. In Committee the informal nature of the discussion explains why the requirement is waived. When a Motion, other than one of those excepted above is not seconded it may not be further debated, but shall forthwith be dropped, and no entry thereof shall be made in the Journals.

The exceptions to this rule do, in fact, make the seconded Motion a rarity. The Motions in connection with the first ten classes of business are formal. Most relatively unusual substantive motions are moved by a Minister. The Motion for an Address in Reply is tradition.

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17 S.R. 81/3
19 S.O. 329 & 276
20 S.O. 104
Finally seconded.

A Motion having been made and, where necessary, seconded, and thereupon proposed to the House by Mr. Speaker, a seconder may reserve his speech for a later stage of the debate by rising and bowing to the Chair when a seconder is called for. This rule has its main use in the case of amendments requiring to be seconded. It has the brief tactical advantage of surprise which, since in this case it is primarily an Opposition weapon, is not without its merit, obliging the Government to be prepared to defend all the implications of its own proposals even in the event of a concentrated attack on one of them through an amendment. The House is not large enough to provide experts among M.P.'s on every conceivable subject and the average M.P. is not an intellectual giant. The Opposition therefore cannot be expected to detect and expose every flaw in legislative proposals. The most it can do in addition to providing a debate on the political principles underlying legislation is to hit often enough at weak spots, and search deeply enough for them to keep Government on its toes so that it will present only legislation prepared with sufficient care as to be immune from criticism. A Government not so prepared would be more at a loss for a reply to an attacking amendment briefly and suddenly thrust on it. The reservation of the seconder's speech is a marginal advantage in this respect.

21 S.O. 103
22 S.O. 188
Complicated Motions may be divided by order of the House or Committee.\textsuperscript{23} This rule follows an ancient rule of the House of Commons. Though today's Motions are usually the expression of a party's case and objections to parts of it can be signified by bringing amendments there are occasions when a free vote and free expression is allowed by one or both the parties - on religious matters and on licensing for example - and in such cases the possibility of greater clarity in debate by voting on one thing at a time could arise, and inadvertent 'shutting out' amendments might be avoided, by division of questions.

After a Motion has been proposed from the Chair it is deemed to be in the possession of the House, and cannot be withdrawn without leave of the House.\textsuperscript{24} The mover of a Motion may rise and express his desire to withdraw it and Mr. Speaker takes the pleasure of the House and, provided no-one objects, declares the Motion withdrawn. If an amendment has been moved to the Motion it cannot be withdrawn until the amendment has been disposed of. This rule prevents a Motion being used to avoid or at least delay discussion of an embarrassing subject by moving, with Notice, to discuss it and then withdrawing the Motion after the Mover and seconder have stated their views. In putting the Question, Motions are restated in full to avoid any confusion. The Speaker rises at the conclusion of debate and, with the preface "The Question is" he repeats the terms of the Motion and asks

\textsuperscript{23} S.O. 107
\textsuperscript{24} S.O. 105
for a Voice vote, using the words 'As many as are of that opinion say "Aye"' and then 'the contrary "No"'. He then gives his judgement as to whether the Ayes or Noes have it. If this judgement is challenged a division follows. The decision thus elicited from the House turns the Motion into either a Resolution or an Order.

'Resolutions' declare the opinions and embody the purposes of the House. By 'Orders' the House directs subordinate bodies and persons (such as its committees and its officers), and also regulates the progress of its own business (when action by itself is not explicitly mentioned).

Thus the various readings of a Bill are Ordered to be set down, but, after the Third reading, it is Resolved by the House that the Bill do pass, the Bill then embodying the purposes of the House.

By discharge and rescission procedures, the House may reverse a previously expressed decision. An Order may be read and discharged even though it has been debated. A Resolution or other vote of the House may be read and rescinded; but not during the same session unless seven days notice be given. Discharge and Rescission of decisions of the current session stand opposed in spirit to the rule that no question, Bill, or amendment may be proposed which is the same in substance as any question which has been resolved during the same session. Though on the face of it, a new question is proposed by a Motion to discharge or rescind, in effect the same question is submitted to ano-

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26 S.O. 115.

27 S.O. 114.
ther vote. May comments that the practice is rare because it is real-
alised by both Houses in England that the rights of minorities would be threatened if the majority refused to abide by decisions regularly come to, however unexpected. It is possible that a Resolution expressing the agreement of the House on some subject in a way that has affected the behaviour and anticipations of the Opposition could by this method be legally broken to the advantage of the majority party. Recission would also enable a splinter group holding a balance of votes to hold a Government to ransom for the whole of its legislative programme for a session. The general effect, as Bentham observes, would be "to diminish the confidence in the wisdom of the assembly and in the duration of the measures it adopts." The process is necessary in cases where a mistake has been made either in procedure or expression and the real intention of the House has thereby been thwarted. For example, an Order for Second Reading of a Bill might be put down, before attention was drawn to the fact that it involved an appropriation and should therefore have been introduced in Committee of the Whole. The Order would be discharged and the Bill withdrawn. In cases where the discharge of an Order or rescission of a Resolution would not restore the status quo ante (e.g. where a Resolution is wrongly reported from Committee) an Order declaring proceedings 'null and void' is used. In cases where a

28May, op. cit., 417.
29op. cit., II, 302.
mistake can be corrected or account be taken of changed circumstances by a Motion modifying a Resolution such a Motion is allowable.\textsuperscript{30} Discharge procedure is most frequently used to discharge an Order for Third Reading of a Bill so that the Bill may be sent back to Committee for amendments which the Government wishes to make.

Following the principles which apply to the question of discharge and rescission is the rule that a Motion should not be the same in substance as one already decided in the same session.\textsuperscript{31} A substantive Motion expressive of a principle would not be held, however, to shut out a Bill on the same subject since the Bill would incorporate conditions sufficient to differentiate its subject matter.\textsuperscript{32} A Motion from which all the words after 'that' have been omitted without other words being added has not in strictness been decided and may be submitted again in substance to the decision of the House. So also can a Motion which has been superseded by a temp­orising or non-committal amendment ... or by a conditional prohibition, as soon as that condition has ceased to operate.\textsuperscript{33}

However, an amendment which substitutes words hostile to the original Motion is an exception. It does produce a decision. It is moved in two stages, the first of which is that the words proposed to be left out stand part of the question. The affirmative or negative answer to this question expresses technically only a preference for

\textsuperscript{30} May, op. cit., 416.
\textsuperscript{31} S.O. 113.
\textsuperscript{32} May, op. cit., 401. 
\textsuperscript{33} May, op. cit., 411.
taking a decision on the original Motion or the amendment respectively, but it is held also to imply the rejection of the amendment or the rejection of the original Motion respectively. In such a case the possibility of an intransitivity in ordering of preferences does not arise. Even where the negative answer to the question, resulting in the omission of the words, is not followed by a decision to substitute the hostile words, this has been treated in the House of Commons as equivalent to a decision against the original Motion.\(^{34}\) The reverse of this exception occasionally applies in the Committee of the whole. The Committee is considering matters already agreed to in principle so it is rarely in order to leave out all words after 'that' in a Resolution. Certain reasoned amendments of this kind have however been allowed on non-financial Resolutions preliminary to the introduction of Bills.\(^{35}\) The rule has also been held not to apply to Motions dealing with the procedure of the House.\(^{36}\) Where attempts are made to evade the rule by raising in a slightly altered form a Motion which has been negatived, Mr. Speaker determines its acceptability after study of precedents.

No Motion may anticipate an Order of the day or another Motion of which Notice has been given.\(^{37}\) Following British practice this

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\(^{31}\)May, op. cit., 411.

\(^{35}\)May, op. cit., 608.

\(^{36}\)May, op. cit., 402

\(^{37}\)S.O. 97.
rule is applied so that a matter is not anticipated unless it is contained in an equal or in a more effective or stronger form than the one already before the House. A Bill or other Order of the Day is more effective than a Motion. A substantive Motion is more effective than a Motion for adjournment of the House or an amendment (including a Motion for the adjournment to discuss a matter of urgent public importance). To prevent abuse of the rule which might arise from the bringing forward of Motions to prevent their being brought up by others, it is left to Mr. Speaker to determine whether a discussion is out of order by having regard to the probability of the matter anticipated being brought before the House within a reasonable time. The only rulings on anticipation have been applied to debates. It has been ruled that 'the fact that a Bill is before the House dealing with some point in the Budget does not ipso facto prevent the discussion of such point in the course of the debate on the Financial Statement, and a Motion for a Return seeking information on that point is in order.' As in England, it has been ruled that the fact that a matter is before a Select Committee in some form does not prevent its being discussed by the House. But Members have to avoid reference to the fact that the matter is before the Committee.

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38 May, op. cit., 404.
40 S.R. 54/3-6.
Dependent or Subsidiary Motions

The three classes into which Campion divides subsidiary Motions: Ancillary (Motions which are customary incidents in the completion of a piece of business, carrying a Bill, for example, from one stage to another); Superseding (recognised forms for averting decision on a Question by superseding it) and Amendments (which seek to modify a Question proposed from the Chair) can be used in considering New Zealand practice.

In Britain, some Ancillary Motions have become so formal that they are put by the Speaker without being moved or are merely recorded in the Journals without ever being proposed to the House. Superseding Motions is a device of debate used to avert a decision altogether or delay it. One form in British practice is the Motion that 'the House do now adjourn' or that 'the debate be now adjourned', the first superseding the Question altogether, the second postponing it until some future day. The superseded Motion can however be revived. In New Zealand only a Minister may move the adjournment of the House unless the Motion is for the purpose of discussing a matter of urgent public importance. In England, the Ministerial monopoly of this Motion applies only before or between Orders of the Day, not during the course of debate. In New Zealand a Motion for the adjournment of the debate to a later hour, or another day, may be moved by any Member but the Question is to be put forthwith and determined without amendment or debate. Only a minor delay

\(^{41}\) op. cit., p. 171. \(^{42}\) S.C. 181.
is thereby effected if the Motion is defeated. Earlier Standing Orders\textsuperscript{43} provided that if such a Motion were negatived it could be moved again later if nine other Members supported it. The omission of this provision from revised Standing Orders conforms with British practice.

Dilatory Motions are also possible in the Committee of the Whole. A Committee of the Whole House may not adjourn its own sitting, or put off the consideration of any matter to a future sitting\textsuperscript{44} but a Motion may be made that the Chairman 'report progress and ask leave to sit again',\textsuperscript{45} or that the 'Chairman do now leave the Chair.'\textsuperscript{46} In both cases the Question is put forthwith and decided without amendment or debate. When directed to report progress the Chairman is to leave the Chair without Question put. He resumes it however to continue with other business if there is any.\textsuperscript{47} The Motion to report progress and ask leave to sit again has thus a brief dilatory effect or enables proceedings on a Bill to be postponed to some later sitting. The Motion that the Chairman do now leave the Chair, if carried, supersedes the further proceeding of a Committee on the matter or Bill then under Consideration. The Bill is dropped from the

\textsuperscript{43} S.O. (1929) 190.
\textsuperscript{44} S.O. 280
\textsuperscript{45} S.O. 283
\textsuperscript{46} S.O. 284
\textsuperscript{47} S.R. 22/2
Order Paper. The Chairman leaves the Chair and then resumes it to carry on with any other business which is before the Committee.\(^48\)

In British practice, when a Bill is disposed of in this manner it disappears from the order book, though it can be revived by an Order of the House, proceedings being resumed at the point where they were interrupted by the Motion to leave the Chair. Only a Member in charge of a Bill may move to report progress and direct that he does not wish the Chairman to ask leave to sit again. The Motion serves to withdraw a Bill in the Committee stage. Withdrawal could be prevented by defeating the Motion or by some Member moving to add the words "and ask leave to sit again".\(^49\) Standing Order 282 provides that when all the matters referred to a Committee of the Whole House have not been considered the Chairman reports progress, or no progress, as the case may be, and, when so directed by the Committee, asks leave to sit again. This order also comes into force when the appointed time comes for the Chairman to leave the Chair and is an automatic direction, not originating as a Motion. The Chairman automatically asks leave to sit again.

'The previous question' another form of superseding Motion is not provided for in current Standing Orders in New Zealand. In England where it is now used very infrequently,\(^50\) it is put to the

\(^{48}\)S.O. 284.

\(^{49}\)S.R. 22/1

\(^{50}\)It was last used in 1943, see Campion, \textit{op. cit.}, p. 173.
House of Commons in the form 'That the Question be not now put.' Resolved in the affirmative, the Speaker is prevented from putting the Question which was before the House, though the original Motion may be brought forward on another day. Resolved in the negative, it brings about an immediate closure of debate, The original question must be put forthwith, without amendment, debate, or Motion for adjournment being allowed. The Motion is subject to the limitations that it cannot be moved on an amendment, on a Motion relating to the transaction of public business or the meeting of the House, or in Committee. It may be superseded by a Motion for the adjournment. Former Standing Orders in New Zealand allowed the same procedure, though it was provided that if the Motion were negatived the debate was to proceed.\(^5\) The provision avoided the unwanted result of closure, which led to the decline of the popularity of the Motion in Britain. It gave it exactly the same effect as a Motion for the adjournment of the debate to another day. Current Standing Orders by leaving out provision for the previous Question as a dilatory Motion recognise this fact and prevent the Motion being used as a second Motion for the adjournment of debate by a Member whose first Motion for adjournment of debate has been negatived.

Dilatory Motions are justified to the extent that they are used as an auxiliary to procedure which allows numerous opportunities

\(^5\) 3.O. (1929) 203.
for discussion before legislation is passed. Except in an emergency, the hasty passage of legislation is always open to objection. No matter how much time a nation-wide party and a Parliamentary party caucus may have given to the consideration of policy which is the basis of a Bill, to rush a piece of legislation through all its stages is to run the risk of turning out a piece of bad or insufficiently publicised legislation. Neither the members of a Parliamentary party caucus, nor the delegates to an Annual Conference, nor the rank and file members of the whole party active in Branches can be said to constitute a representative sample of the population. The effects of a policy or of one of the provisions of a Bill giving effect to a policy, can rarely be entirely foreseen. But they stand the best chance of being foreseen when a proposed piece of legislation is before the House as a Bill long enough to give those who object to it a chance to voice their criticism and persuade the Opposition. Delay is, of course, not justified if it is to be used by a small minority to hold the rest of the country to ransom in obtaining special privileges.

Amendment.

Amendments have been defined as subsidiary Motions which seek to modify a Question proposed from the Chair. They are subject to most of the rules applicable to Motions and to other special rules. Notice of an amendment is not required but may be given. If it is given it protects the mover in the event of closure. Mr. Speaker, on closure being agreed to, announces that he has notice of certain amendments and proceeds to put them to the House. A Member who
gives notice of an amendment to a Bill may ask the Clerk or Clerk Assistant to arrange that his amendment be printed as a separate Supplementary Order Paper and circulated in advance. He may obtain spare copies to be made available when the Bill comes before the House. A Member cannot without the unanimous consent of the House materially alter an amendment of which he has given notice and which is before the House. While there is no Standing Order or Speaker's ruling that compels a Member to intimate, at any particular part of his speech, his intention to move an amendment, it is usually done, as a matter of courtesy at the commencement of the speech. It is not competent for the mover of a Motion to move an amendment to it in the course of his reply to the debate; but an amendment at that stage may be included in the Motion by the unanimous consent of the House. British rules which require Notice in the case of certain amendments (e.g. on going into Committee of Supply, proposing new clauses to a Bill) do not apply in New Zealand. A Member who is in possession of the House at any time after the Question has been proposed is entitled to move an amendment. One Chairman of Committees, pointing out that this was a departure from British practice, attempted to restrict Members accordingly. A debate ensued.

52 S.R. 7/3
53 S.R. 7/1
54 S.R. 7/5
Mr. Speaker's ruling was demanded, and the New Zealand practice was preferred. The House decision was wise. There is no virtue in slavish imitation of Commons restrictive practices. The small New Zealand House can allow its Members greater liberty. And as Bentham remarked apropos of Notices of Motions "the rule ought not to extend to the exclusion of amendments arising at the moment, for new ideas may spring out of the debate itself."\(^56\)

With the above exception, regarding Notice, the rules relating to amendments are subject to the same governing principles as those relating to Motions generally. They must secure clarity as to what is being discussed and what has been decided. They must ensure that the time of the House is not wasted by frivolity or obstruction and that the majority is not prevented from arriving at its preferred decision. An amendment to any Motion must be put into writing, signed by the proposer and delivered to the Clerk at the Table; though the Speaker may relax this rule in cases of simple amendments or amendments of established form.\(^57\) When an amendment handed to the Speaker differs from that actually moved and an objection is raised to its acceptance in the altered form, the amendment must be ruled out of order.\(^58\) An amendment, other than in Committee, must be seconded, or it is not to be entertained by the House or entered in

\(^{56}\) op. cit., II, 354.
\(^{57}\) S.O. 118
\(^{58}\) S.R. 7/4.
the Journals. An amendment proposed must be disposed of before another amendment to the original Question may be moved.

A proposed amendment may only be withdrawn by leave of the House and not in the absence of the mover without his consent unless circumstances preclude his being consulted. An amendment to a proposed amendment may be proposed 'whenever it comes to a Question whether the House shall agree to such a proposed amendment.'

There are three main types of amendment: to omit words, to omit and insert words, and to insert words.

1. The Question proposed on amendments to omit words is 'That the words proposed to be omitted stand part of the Question'. To affirm this Question is to show that the House prefers the original Question to the amendment. Affirmation also prevents any other amendment being proposed to these words, unless to add to them, for the House has ordered that they stand part of the Question. It does not mean that the original question has been passed. To negative this question is to direct that the original Question be proposed without the words named in the amendment. Affirmation of the Question, that is, rejection of the amendment, could theoretically under present rules shut out an amendment offering some preferred

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60 S.O. 127
61 S.O. 128
62 S.O. 191
63 S.O. 129
64 S.O. 122
65 S.O. 126
form of the words in Question.\textsuperscript{66} This would be the kind of occasion, however, on which the pleasure of the House would be ascertained by Mr. Speaker and the rule waived to allow another amendment to be put forward.

2. Amendments to omit words and insert or add others necessitate two Questions. The first, 'That the words proposed to be omitted stand part of the Question', if affirmed, defeats the amendment. If it is negatived, Mr. Speaker then proposes the second Question, 'That the words of the amendment be inserted or added instead thereof.' If this is carried the Question as amended is proposed. If it is negatived, an amendment proposing a new form of words may be moved. If no acceptable words can be found the original Question may be put with words omitted or, if the original Question has been rendered unintelligible and is not withdrawn, the Speaker\textsuperscript{67} could call upon the next Motion or Order.

3. An amendment to insert or add words is proposed as a Question that such words be inserted or added and is resolved affirmatively or negatively as the case may be.\textsuperscript{68}

It may be noted that amendments may have a dilatory or supercessionary effect, or they may in effect defeat the original Motion.

\textsuperscript{66} Properly offered as an amendment to the amendment.

\textsuperscript{67} See May, \textit{op. cit.}, 420

\textsuperscript{68} S.O. 124
An amendment to omit all words after 'that' and substitute an alternative proposition, relevant to the subject of the original Question, may be made. A temporising or non-committal amendment of this kind, if passed in one or both of its two Questions, is dilatory in the sense that though it supersedes the original Question on that sitting day, it does not defeat it, so that the Question may be raised again on a subsequent day. Similarly an amendment of this kind, or of a kind which merely adds words, if it imposes a condition, permits the original Question to be proposed again as soon as the condition is met. An amendment to omit certain words and add hostile words even if only the omission is agreed to and not the hostile words prevents the original Question being proposed again in the same session as it is regarded as defeating that Question.

There are restrictions on amendments to certain recognised procedural forms, designed to avoid wasting the time of the House by obstructionist tactics or to avoid surprise. On the Second Reading of a Bill an amendment to add words to the main Question is not in order. The only amendments possible to the Question 'That this Bill be now read a second time' are amendments proposing to leave out the word 'now' and substitute 'this day six months' or some other specified time, or a reasoned amendment strictly relevant to the

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69 see May, op. cit., 532
70 see May, op. cit., 410-11 & Hall, op. cit., 12, p. 11.
71 S.R. 9/3
Bill. A reasoned amendment is one which records reasons for not agreeing with a Bill. These may include preference for an alternative.

To the Motion that the House do now adjourn to some specified date no amendment is in order except one which substitutes another date.

No amendment is permissible to formal, dilatory or closure Motions, or to a Motion for the withdrawal of strangers. No amendment to the Motion for an Address in Reply except one to add words is in order.

The restrictions on these formal Motions prevent attempts to use them in order to discuss some specific subject in an amendment, surprising the House and delaying the discussion of scheduled business.

Contents of Amendments

Amendments must be relevant to the main Question. The relevancy rule both in amendments and in the course of debate is intended to limit the scope of discussion. As May points out, the effect of moving an amendment is still further to limit the field of

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72 S.O. 216 & 217
73 see e.g. N.Z.P.D., 301, (19 Nov. 1953) 2354
74 see e.g. S.O. 181, 197, 283
75 S.O. 394
76 S.O. 17
77 S.O. 119
78 op. cit., p.421
debate which would otherwise be open on a Question. Even when an amendment presents a wholly different though relevant proposition from the main Question, its effect is to concentrate debate on the original Question and the one alternative, and exclude the other alternatives which might have been raised and discussed.

Amendments are to be intelligible and if passed must produce an intelligible amended Question, consistent with itself.79

No amendment may be proposed in any part of a Question after a later part has been amended, or has been proposed to be amended, unless a proposed amendment has been, by leave of the House, withdrawn.80 An amendment having been moved and then proposed by the Chair for discussion can be withdrawn by leave of the House if another Member indicates that he has an amendment to an earlier part of the Question which he wishes to move. The amendment can be made after withdrawal for the Question would be left in precisely the same condition as if the withdrawn amendment had never been proposed. The new amendment could not however go back beyond the last words on which the House has already expressed its decision.

An amendment may not be proposed to delete words that the House has resolved stand part of the Question or to words inserted or added.81

These rules, as can be seen, make it possible for one Member, by moving an amendment to a Question, to 'shut out' other amendments.

79 see May, op. cit. p. 422
80 S.O. 125, see N.Z.P.D., 204, (1924), p. 359
81 S.O. 126
A proposed amendment may by leave of the House be withdrawn but a
Member's major protection is his own alertness in rising to a point
of order if he has an amendment prior in place to one being moved.82

This 'shut out' effect is hard to defend except as an aid to
the despatch of business. It limits obstructive ingenuity to one
opportunity. It also refuses the implications for the rules of an
inherent voting paradox. Any one amendment can affect any previous-
ly passed other amendment or clause, whether prior in place in a
Question or after it. It could affect it so that, given the chan-
ce, the House would reject the previously passed amendment and eith-
er leave the original words of the Question at that point intact or
re-amend them. Rules which would give the House that chance, given
several amendments passed, all affecting each other, would result in
a nightmare of repeated reconsiderations.

In Committee in the House of Commons, on the Report stage of
a Bill, and on Motions relating to the business of the House, some
saving of Motions is effected by the Chair according preference to
amendments. Thus in Committee, precedence is given to an amendment
to leave out words in order to insert others over one which merely
seeks to leave out words, since the ordering that the words stand p-
art would prevent their being altered. If an amendment is to leave
out words, to some of which subsequent amendments are to be offered,
the Chairman proposes that only the words not affected by subsequent
amendments be left out. The advantage is that if the Question is

82 S.R. 7/2
affirmed that the words proposed to be omitted stand part, only tho­se words mentioned in the Question are affected and amendments can be moved to any other words, including those mentioned in the full amendment. If the Question is negatived on the other hand (i.e. the amendment is passed) the House conveniently assumes the whole amend­ment to have been passed, including the words not actually proposed in the Question. Thus the first stage of the relevant subsequent amendments is obviated.

In New Zealand except in Committee, the 'saving' process is n­ot applicable. Recognition does not depend on having given notice of amendment. On the one occasion when the Chairman is required to deal with a number of Notices of amendment, that is, when the closu­re is carried, an amendment before the House, and any amendments wh­ich have been placed on the Supplementary Order Paper are brought to a decision without debate, the Speaker reading them in the order in which they were received. In Committee, amendments have precedence over others at the same place, other than those of the Member in Ch­arge of the Bill, if they have been handed in to the Clerk and pla­ced on a Supplementary Order Paper. Those handed in first have hig­hest precedence.83

While a rule relating to saving of amendments would be of lit­tle importance in ordinary debates when party discipline determines the fate of amendments, it would be relevant in free debates and New Zealand rules could well be altered to imitate British practice in the House of Commons.

83 S.O. 226
Amendments to Amendments.

An amendment to a proposed amendment stands in the same relationship to the original amendment as the original amendment itself does to a Motion, and the rules applicable to amendments apply mutatis mutandis to amendments to amendments. The general rule is that amendments to amendments may be proposed when it comes to the Question for the proposed amendment. Where the original amendment is for adding, or inserting or leaving out words, an amendment to such an amendment may at once be proposed without reference to the Question itself which will be dealt with when amendments have been disposed of. In the case where the original amendment is to leave out words, the only possible amendment is to leave out some of the words which it proposes to leave out and so restore them to the original Question. The Speaker proposes: 'That the words proposed to be omitted from the original amendment stand part.' If this is carried, the amendment to the amendment is thereby negatived and the Question for the original amendment is proposed again. If it is negatived, the amendment to the amendment is carried and the Question is then proposed that the words be left out of the original Question by the amended amendment stand part.

Where an original amendment is to leave out words in order to insert others, no amendment can be proposed to the words proposed to be substituted until the House has resolved that the necessary words be left out of the original Motion and the

\[84\] S.O. 192

\[85\] see, for example, \textit{Journals}, (August 6, 1946) p. 80
Question for inserting the new words has been proposed for discussion. In practice, notice of an amendment to an amendment can be given before the House has so resolved, thus avoiding the shutting out of an acceptable amendment to an amendment.

Conclusions

In general, the 'sense' of Cabinet taken by the Prime Minister and the informal agreements of Caucus translated into disciplined party voting in Parliament avoid the 'paradox of voting' (intransitivity arising when several people vote on alternatives, even though individual preferences are transitively ordered).

However, New Zealand rules, following British, do not guarantee that an intransitivity will always be revealed or that the will of the House will always prevail. If an amended Motion is defeated the original Motion is not required to be put again. Nor would an original amendment be put if it had been amended and its amended form defeated. The reason is that the House has expressed its preference for the amendment over the original and then rejected the pref-

86 see May, op. cit., p. 425; and see, for example, Journals (May 1, 1956) pp. 434.


88 see May, op. cit., pp. 419-420.
erred form. But this neglects the possibility of an intransitivity in social preferences or of deliberate manipulation. To illustrate in terms of deliberate manipulation: A group (A) which wanted to defeat a Motion – say to extend licensing hours from 6 p.m. to 10 p.m. – could propose an amendment, changing the time to 9 p.m. dividing a \( \frac{2}{3} \) majority (B & C), which is generally in favour of an extension, by attracting the support of B in opposition to C who will have nothing but 10 p.m. closing. If, when the amended Motion were put, A voted against it with C, the extension of hours would have been defeated – unless the original Motion were put again.

However, it is a generally accepted principle that the rules are justified to the extent that they make the will of the House prevail and should never be allowed to thwart it. Thus, because free debates are not every day occurrences and amendments, and amendments to amendments are, in such circumstances, something of a rarity, very free interpretation of the rules is usually permitted. For example, the fact that an amendment is passed deleting words from a clause and substituting others will not, in practice, rule out an amendment to delete some of the words which the House has just agreed should be inserted, even though the deletion should have been proposed as an amendment to the amendment. 89

This discretion in application of the rules, normally exercised by the Chairman in Committee, does not remove the possibility of mistakes but it is impossible to conceive of rules which would elim-

89 see, for example, Journals, (27 Oct., 1960) pp. 397-398
inate entirely the possibility of an intransitivity in social preferences going undetected, which would not be self-defeating, confusing Members by their complexity. The size of the problem can be appreciated if it be remembered that every time an amendment is proposed to a Bill it could affect attitudes to clauses and amended clauses already passed. The fact that the House votes on the Bill as a whole, as amended, only limits the degree to which the House can make mistakes, as does the applied principle that the rules are subservient to the will of the House.

There are nevertheless some improvements which might be made. The saving of amendments by selection, as in the House of Commons, might be affected by the Chairman when closure is passed in Committee and he has to read amendments of which notice has been given. Also there would be no harm, when an amended Motion were rejected, in putting the original Motion again. Then, some confusion, which in free debates and votes necessitates the Chairman's explanation before each division, might be avoided by proposing directly that certain words be deleted rather than that words proposed to be omitted stand part. And where an amendment is to delete words in order to insert others this might be proposed as one Question, itself subject to amendment. Such an amendment, defeated, could be regarded as leaving the same section of the original Motion open to further suggested amendments, or, if this has the result, though I
see no reason why it should, of producing obstruction, rejection could be regarded as rejection of the deletion, ruling out further amendments to the same words.

90 Under existing rules an amendment could be proposed to every word, singly, of a Motion before the House, but this tactic is not used.
In the previous chapter it was seen that the rules relating to initiation of debate or to changes in the emphasis of debate preserve the rational character of debate by avoiding mere obstruction, confusion about the subject before the House, and by avoiding surprise and consequent lack of preparation. Rules governing the conduct and termination of debates are also designed to maintain rationality.

Parliament is an arena of political conflict...and it is necessary that the procedure not only permits the conflict to be raised but also...blunts its edge so as to permit resolution. ¹

Rules and conventions of debate are intended to ensure that deliberation is calm and rational, not blinded by emotion and the introduction of personalities and offensive expressions. Since order depends for its enforcement on the Speaker and Chairman of Committees, Members are required to seat themselves when he rises and to hear him without interruption. All movement in the House must be carried out with due regard to the Chair. When passing between the Chair and a Member who is speaking, care must be taken not to obstruct Mr. Speaker's view of the Member and no Member may pass between the Chair and the Table. Members moving to or from their seats or across the floor of the House are required to bow to the Chair. They stand in their places when Mr. Speaker enters the Chamber to open the

¹ Young, op. cit., p.35
sitting and when he leaves at the conclusion of a sitting.

It is not possible to maintain anything like absolutely the ideal of a House listening in attentive silence to the arguments of a Member. Members indulge in conversation. If they wish to converse with someone and the seat next to him is vacant, they will stand in the gangways leaning over the Members' seats. When newspaper editions are received they are distributed by messengers and the Member on his feet is soon speaking, with an accompaniment of rustling, to a solid wall of newspapers. At other times a Speaker will have to contend with interjections. Loud conversation and persistent interjection, or interjection while walking about, will always be stopped by Mr. Speaker though there is no objection to courteous interjections delivered from a seat, and with the tacit consent of the House reasonable questions are allowed.

On any point of order the Speaker's decision, called a 'ruling', is final. The most important rulings of Speakers since 1867 are collected in a small book, Speakers' Rulings, and are regarded as authoritative interpretations of Standing Orders. The only way in which the Speaker or one of his rulings may be challenged is by a substantive Motion of which notice must be given.

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2 S.R. 46/3
3 S.R. 46/2
4 S.R. 104/1
In Committee of the Whole the ruling of the Chairman may be challenged by moving that the Committee do report progress in order to obtain the ruling of Mr. Speaker. Mr. Speaker may also resume the Chair without Question put in the event of sudden disorder arising in Committee. Chairman's rulings have also been questioned, some time after the event, in the course of business in the House, to obtain a ruling from Mr. Speaker. Speakers will not, however, review any ruling given on relevancy or tedious repetition or on whether a matter raised in Committee of Supply is policy (which may not be discussed), or administration.

Addressing the House (Right to Speaker).

Members may speak only to any Question before the House, except when they themselves are proposing a Question or amendment, when they are raising a point of order, a matter of privilege or, by indulgence of the House, are making a personal explanation or, in the case of a Minister, making a Ministerial statement. A Member wishing to speak rises, uncovered. When two or more Members rise at the same time, the Member called upon by Mr. Speaker is entitled to speak.

6 see N.Z.P.D., 304, (Sept. 7, 1954), 1595.
7 S.O. 159 - 160
8 S.O. 154 & 158
Following British practice Mr. Speaker should call the one he first observed to rise. However, it is a recognised rule that when a Government Member and a Minister rise, the Minister is to be called. As most Motions come from the Government side the practice is that, in the ensuing debate, the Leader of the Opposition is entitled to be called first, then a Government Member, then an Opposition Member and so on. However, notwithstanding the practice to give alternate calls, the Speaker may call on any Member who has risen, and where a Government party has a substantial majority he may call two Government Members in turn rather than exhaust the numbers of the Opposition. In some cases the Whips may agree on a list of speakers which Mr. Speaker may follow, if the Members are in their places.

A Member making a maiden speech is customarily allowed priority by other Speakers. Precedence is also granted on the resumption of an interrupted debate to a Member who had not concluded his speech at the time of interruption, or who moved the adjournment of the debate. If a Motion for the adjournment is negatived the Member who moved it may speak later on in the debate.

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9 see May, op.cit., p.446
10 S.R. 45/2
11 S.R. 45/4
12 S.O. 182
Limitations on the Right to Speak.

On any Motion open to debate a Member is allowed to speak once and once only, unless in explanation or reply, or in Committee of the Whole House. If a Member who has spoken to a Question does rise to explain some part of his speech which has been misquoted or misunderstood he must not interrupt another Member addressing the Chair when he does so, nor must he introduce any new or debatable matter and no debate can take place upon the explanation. The right to speak again in reply is restricted to the mover of a substantial Motion and must be confined to matters raised during the debate. In all cases the reply closes the debate.

A Member who has spoken to a Question may however speak again to any other new Question which may arise, for example to an amendment, or to a Motion for the adjournment of debate. A Member who has spoken to any amendment which the Speaker has ruled involves the consideration and decision of the Main Question cannot speak subsequently to the Main Question either as originally proposed or as amended.

14 S.O. 161
15 S.O. 162
16 S.O. 163
17 S.O. 186
18 S.O. 190
Nothing prevents a Member who has spoken to an amendment not involving the Main Question from speaking to the Main Question. Except in Committee, no Member who has moved, seconded, or spoken to an amendment, may move or second a further amendment to the same Question. A Member who has spoken to the Main Question or to any amendment which involves the consideration and decision of the Main Question, may not move or second an amendment (except in Committee). Thus a small minority of Members cannot hold up proceedings by many slightly different amendments.

Place of Speaking.

A Member desiring to speak is required to rise in his place uncovered. Seats are allotted to individuals in New Zealand as they are not in the House of Commons in England and ordinarily Members speak from their own seats. On occasions, Members speak from someone else's seat but, during an important debate on Party lines, Members are expected to rise from their own side of the House so as not to confuse Mr. Speaker.

19 S.0. 192
20 S.0. 193
21 S.0. 154
Manner of Speaking.

Members are to address themselves to Mr. Speaker and not to each other. This aids the impersonal nature of the debate, preventing recrimination between Members. In a novel called "Adrift in Soho", Colin Wilson suggests that these formalities of speech in the House of Commons are a manifestation of the universal human conspiracy 'to take one another seriously' - a piece of cant which he views with distaste. But in Parliament, if nowhere else, cant has its place. The felt obligation to maintain the appearance of rational discussion with the interest of the community the apparently accepted value reference is some safeguard of that interest against local and sectional pressures. It is an impossible ideal but it has operational value.

Speeches should be in English. A Member representing the Maori race in the House and able to speak English is expected to do so. A Member who cannot speak English should inform the Speaker and he will arrange for an interpreter. In such cases the time limit for the Member's speech will not be extended without leave of the House.

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22 S.O. 154
23 S.R. 65/5 & 66/1
24 S.R. 60/4
Quite frequently today, without challenge from Mr. Speaker, Maori and even pakeha (European) Members begin their speeches with some words in Maori expressive of some trite sentiment of greeting or goodwill and then translate it. The words must be considered as addressed more to the listening radio audience than to the Chair. Such an introduction could be used for the sly expression of language not becoming to the dignity of Parliament.

A Member may not read his speech, but may refresh his memory by reference to notes. On occasions when a very technical Bill is before the House, or a statement on foreign affairs is being made in which words have to be very carefully chosen, reading is permitted. Any extension of the practice to other Bills, for example, a Minister reading a departmental explanation as a Second Reading speech has been frowned upon. "The principal inconvenience of written discourses consists in their want of connexion—they have no relation to one another." Reading could have a disastrous effect on the free style of debating characteristic of British legislative assemblies. Until June 1962 when the limits on speeches were reduced, a tendency to speak to the limit of the time allocated for speeches in different circumstances, especially for

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25 S.O. 156

26 S.R. 53/6

27 J. Bentham, *op. cit.*, II, p. 362
example in the Financial Statement debate where one hour was permitted, had reduced the effectiveness of the House as a forum for discussion. The House endured rather than debated. Members' interjections on such occasions were obviously more of an attempt to relieve their boredom and the frustration of inactivity than to challenge a point made by the speaking Member. The very childishness, often the complete inanity, of the interjection revealed this. Reading and even the reference to copious notes necessitated by these feats of verbal endurance, took still more of the life and free spirit from debates. The House is still possibly too indulgent towards speakers who use copious notes, drawing attention to them only when the Member concerned is making a caustic speech or himself draws attention to them by fumbling with, or dropping them. Enforcement of the rule depends on other Members. Attention must be drawn to its violation at the time it occurs. It has been ruled that a Member may not allege afterwards that another Member read his speech. The House must accept the assurance of a Member that he is not reading his speech. 28

Contents of Speeches.

Contents of speeches are regulated in the interests of

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S.R. 54/2
efficiency in the conduct of the business of the House. The almost inseparable qualities of relevancy and decorum, from this point of view, are prime requisites.

Relevancy is judged both in relation to the subject and the procedural status of the Question under consideration. The relevancy of any argument to the subject of a Question is a difficult matter to determine and an ingenious Member may be able to justify to Mr. Speaker the inclusion of almost any material. However, Mr. Speaker may call on a Member who seems to be irrelevant to show the relevance of his remarks, by asking him to direct himself to the Question, or suggesting that he is wandering from the point. He may quickly intervene again if the Member merely promises to show their relevancy later, or if, in supposedly showing their relevancy he continues his interrupted remarks. It is usual to allow a Member to reply to statements made by a preceding speaker even though that speaker was not called to order for going outside the debate, or, if the preceding speaker was called to order, to reply to the extent that he had been allowed to speak. 29 A matter cannot be made relevant by suggesting that it ought to be included in the Bill being considered. 30

29 S.R. 59/3
30 S.R. 59/4
Procedural status of business imposes limits on what is relevant in debate in the following ways: 1) on a Motion setting up a Committee or referring matters to a Committee no consideration of the merits of the matters referred to the Committee is in order, though an argument for a change in its terms of reference would be; 2) a Motion for the suspension of Standing Orders does not permit a discussion of the merits of the business which will be submitted to the House in consequence, but only argument for the departure or against the departure from normal practice; 3) on an ordinary Motion for the adjournment, which in New Zealand must be moved by a Minister, if it is moved to cover a brief interval between the termination of a speech and the termination of a sitting, any grievance involving the administration and not requiring legislation could be brought forward, though it is rarely used for this purpose. Exchanges between the Leader of the Opposition and the Prime Minister relating to the business of the House usually occur at such times. When the adjournment is moved to discuss some particular matter, the ordinary rules of relevancy apply. Where the Motion is that the House 'at its rising do adjourn until such a time on such a day', then, following British practice, debate would have to be strictly relevant to that Motion, argued in

31 S.O. 46
terms of the contents of the Order Paper and the time before the next meeting.\textsuperscript{32} The Motion for the House to adjourn for a lengthy period at the end of a session is usually moved at the beginning of the last day so that there will be no question of its being interrupted by the arrival of the appointed time to end a sitting. It is not in practice, debated. The Motion for the adjournment at 10 p.m. on Tuesday and Thursday may be used to discuss any matters.\textsuperscript{33} 4) When an amendment is moved, the debate must be confined to the amendment, unless it be of such a nature as to involve the consideration and decision of the Main Question, in which case both the Main Question and the amendment are open for discussion.\textsuperscript{34} 5) When two or more Bills dealing with matters bound together by a common principle are before the House, it is usual to permit discussion to range over both Bills though each one is passed separately. 6) The reply, by the mover of a Motion, which closes a debate, must be confined to matters raised during the debate. New matters must not be introduced.\textsuperscript{35}

\textsuperscript{32} May, op.cit., 453

\textsuperscript{33} S.O. (13 June, 1962), 39(a)

\textsuperscript{34} S.O. 189

\textsuperscript{35} S.O. 163, S.R. 38/3
The right to make a speech in reply is accorded to the mover of a substantive Motion so that he may clear up misapprehensions and answer criticism. If new material were introduced it would obviously not be a reply and, since it closes debate it would be a speech which no other Member would have a chance to criticise. A heavy responsibility is thus placed on Mr. Speaker and on occasions the Opposition complains that the rule has not been applied strictly enough. Noticeably today, a reply may exceed the time limit of speeches in the debate.

7) A Motion for withdrawal of Bill or Order is confined to the Motion. The Bill may not be discussed.

Quotations.

A Member may read a quotation he is using in his speech provided it is not the report of any speech made in Parliament during the same session or outside reference to debates or proceedings in the House during the same session, or criticism of the Government by persons outside the House, or outside comment on any matter before the House. He may repeat such material from memory or make similar comments during the course of his speech but the principle is that 'Members must deliver their own opinions on the subject of the debate.' Quotations must be interspersed with some of the Member's own remarks. They should not form the whole

36 S.O. 168 & S.R. 51/1
37 S.R. 52/2
38 S.R. 50/7
of the speech. Where tables, statistics and other information other than comment have been prepared by outside organisations such matters may be referred to in debate with the indulgence of the House. The rule against quoting speeches made in the House during the same session applies also to the quoting of the Hansard proof of another Member's speech but a Member may quote his own notes of such a speech. A Member may quote a speech made by himself outside the House relevant to a proceeding before the House and comments on Members' speeches made outside the House may be read, but not comments on speeches made in the House. Those comments, however, must not refer to any proceedings of the House. Letters from outsiders commenting on proceedings of the House have no superior status over other written material in this respect. A Select Committee may in its wisdom take the irregular course of receiving a letter in evidence but it does not follow that such a

39 S.R. 54/1
40 S.R. 52/5
41 S.R. 52/1
42 S.R. 53/5
43 S.R. 53/1
44 S.R. 53/2
letter may be quoted in the House. Any quotation which is not excluded by these rules must be free from unparliamentary language, improper reflections on Members or any other matter which would be irregular in a Member's speech. The point of these rules is that they insist that the House be not open to influence but proceed on the basis of reasoned argument and on the Member's own views. The Press and organised groups undoubtedly do exert influence at every point in the system: on party, on departments (themselves interest groups), on Ministers, on Members and on each other. Their influence is in many ways beneficial. To some extent they are a bulwark in defence of system values, checking any tendencies to subvert them in the two oligarchies which are the main parties.

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45 S.R. 53/3
46 S.R. 52/7
47 S.R. 51/2
48 S.R. 51/3
49 The balance sheet of advantages and disadvantages for the pluralistic society has been examined frequently and is out of place here. One of the best discussions is still in the two essays published in 1908 and 1909 by W. Trotter, which became Instincts of the Herd in Peace and War, (London: Ernest Benn, 1916).
Nevertheless, under the British system, aggregation of interests takes place at the Party Government level, the disciplined party in Parliament thus being the basis of assignable responsibility. In Parliament the parliamentary parties are forced to justify their views, however formed, to the community at large, in terms of the community interest. The rules limiting quotation help preserve this ethos of Parliamentary discussion.

When a Minister quotes from a document relating to public affairs, the document should, unless stated to be of a confidential nature or such as should more properly be obtained by an Address, if required by any Member, be laid upon the Table. 50 "From what has been laid down in definitions over the years by various Speakers that means a "public document" or an official document." 51

An official document is a document connected with the Government of the country or a document which has passed between officers of the Government and Minister or between one officer and another. 52 An official document includes a document written by an official of the Government or by one Official Head of a Department to the official Head of another Department. They must be of an official nature and written by a Government official in the course of his official business. 53

50 S.O. 169


52 S.R. 49/6

53 S.R. 50/1
It has been ruled as unnecessary, if only one portion of an official document is quoted from, that the whole document should be laid upon the Table, but only the portion quoted. However, this ruling would make it possible to mislead by quoting out of context. It would open the way to evasion of the purpose of the Standing Order. It has not been incorporated into the compiled Speaker's Rulings.

The time to challenge a Minister to lay a document upon the Table is when he produces the document and begins to quote from it, not at the conclusion of his speech. When an objection is made immediately it gives the Speaker an opportunity to ask the Minister whether he is quoting from a public document. At the end of a speech it is 'almost impossible for the Speaker to remember the various documents from which a Minister has quoted and, in that case, of course, the Speaker must accept the statement of a Minister that the documents he produces then are the documents from which he quoted. Confidential documents, or documents of a

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54 N.Z.P.D., 295, (Oct., 3, 1951), 91
55 S.R. 50/2
private nature (though they may have originated from or passed between Officials) cannot be required to be laid upon the Table and 'the Speaker must accept the assurance of a Minister that a document from which he is quoting is not a public document.' Thus, 'Neither the House nor a Select Committee can order the official opinions of the Law Officers of the Crown to be produced or laid on the Table,' for they are confidential.

On occasions, dispute has arisen over the interpretation of this Standing Order relating to quotations from public documents. Notes, representing a summary of a document or file can be used by a Minister without necessitating the production of the document. However, if lengthy extracts amounting to a copy of the document were read it would be ruled that the document be produced. If part of a file were used the whole file would not be required to be laid upon the Table, but only that portion from which the quotation came. However, the previously mentioned ruling that only the portion quoted need be laid upon the Table

57 S.R. 50/4
58 S.R. 50/5
59 S.R. 50/3
might make a dangerous inroad on Members' rights under the Standing Order if it were ever used as a precedent.

**Rules as to Content of Speeches.**

No allusions may be made during debate to debates of the same session on some Question other than that which is before the House, except by the indulgence of the House for personal explanation. The personal explanation will not be allowed to go further than what is absolutely necessary for the purpose of the explanation. Debates at different stages of the same Bill are treated as one continuous debate and any part of that debate can be referred to during the progress of the Bill. The subject of a past debate is not prevented by this rule from being raised again. It is the debate itself which may not be directly referred to. Similarly, a Member may refer to a division taken in the House, or quote a resolution passed by the House or a Ministerial statement can be referred to, or the state of the law.

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60 The ruling seems to have resulted from Mr. Speaker Oram's faulty recollection of his own previous ruling on production of documents, cf. N.Z.P.D. 296, (Oct., 3, 1951), 90 and ibid., 291, (Sept., 12, 1950), 2295 - 2298.

61 S.O. 166

62 S.R. 49/5

63 S.R. 49/4

64 S.R. 49/1
as amended by legislation of the present session as these are not past debates. However, 'A Member may not reflect upon any vote of the House except for the purpose of moving or speaking to a Motion that such vote be rescinded.'

No Member may use unbecoming words against the House or any Member of it, against any Member of the Judiciary, or against any statute unless for the purpose of moving for its repeal or in speaking to any such Motion. This order is intended to protect the House, the law, its makers and those who enforce it, from irresponsible criticism likely to bring law into disrepute. The prohibition on disrespectful reference to statutes, however, is difficult to enforce and of dubious merit.

The name of the King or of the Governor-General may not be used disrespectfully or for the purpose of influencing the debate. Criticism may be offered only on a properly worded substantive Motion and opprobrious reflections must not be made in debate on sovereigns and rulers of countries with which Her Majesty is at

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65 S.R. 49/3
66 S.O. 167
67 S.O. 174
68 S.O. 175
peace. Reference may not be made to a matter on which a judicial decision is pending. The general principle involved in a case affected by a Bill before the House may be discussed, but not the particular case. 'Nothing said in debate should prejudice, however slightly, the decision of any Court.' The House is not debarred from discussing a matter that is before a Royal Commission without judicial powers. Its proceedings may be discussed when they are published before the report is tabled, but Members should avoid embarrassing the Commission by any statements they make. Except in a substantive Motion, reflections may not be made upon Members of the Judiciary (including the Arbitration Court). Judgments may be read and criticised, but

69 S.R. 41/3
70 S.O. 176
71 S.R. 43/2
72 S.R. 43/1
73 S.R. 43/3
74 S.O. 174
criticism must not extend to the judge. This means that Members may not say in the House that a sentence is too light or too heavy, or that the judgment is contrary to the evidence, or wrong in either law or fact. They may, however, taking the judgment as having been properly arrived at according to law, criticise its results as indicating that the law itself requires revision.

The provisions are applied not only to Judges of the Supreme Court but to members of the Magistracy. Proceedings of either Select Committees or Committees of the Whole House are not to be referred to until they have been reported to the House.

A Member is not, however, debarred from discussing a matter relevant to a question before the House merely because it is also the subject of a petition before a Committee or a report referred to a Committee, but the petition or report must not itself be referred to.

Anticipation.

Members may not anticipate the discussion of a subject which is on the Order Paper. In determining whether a discussion is out

75 S.R. 42/5
76 N.Z.P.D. 294, (13 July, 1951), 329
77 S.O. 172
78 S.R. 54/3, 5 & 6.
of order on these grounds Mr. Speaker considers the probability of the matter anticipated being brought before the House within a reasonable time. 79

"Animosities and personali­ties in political assemblies produce dispositions most opposed to the search after truth." 80 Members are not to refer to each other by name. 81 All imputations of improper motives, or unbecoming references to a Member's private affairs and all personal reflections, are deemed highly disor­derly. 82 Any charge which a Member wishes to make against a Minister as to the use of his position to advance his own material welfare must become the subject of a substantive Motion. 83 Within the scope of these prohibitions would be any suggestion that a Member is working for interests different from the interest of the country, a charge of deliberate misrepresentation or a charge of making a false statement knowingly. 85 A Member who considers that his honour has been impugned is always allowed the fullest latitude

79 S.O. 170
80 J. Bentham, op. cit., II, 303
81 S.O. 171
82 S.O. 177
83 S.R. 55/5
84 S.R. 55/1
85 S.R. 55/2 & 39/6
Mr. Speaker or the Chairman is required to intervene when any offensive or disorderly words are used by any Member whether addressing the Chair or not. If an explanation offered is considered by Mr. Speaker unsatisfactory, the Member will be asked to withdraw the offensive words and must do so unreservedly. The decision thus rests with the Chair. The House has ordered that a list of words considered offensive and unparliamentary lie upon the Table but Mr. Speaker would not be bound by it since the meaning and strength of words changes.

Enforcing Order.

The House will interfere to prevent the prosecution of any quarrel between Members arising out of debates or proceedings of the House or any Committee thereof. The same rules for order and procedure in debate apply, in general, in Committee as in the House, but disorder in a Committee may only be censured by the House,

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86 S.R. 55/3
87 S.O. 173
88 S.R. 39/1 & 40/3
90 S.O. 178
on receiving a report. For a minor breach of Order, such as use of an offensive expression, Mr. Speaker may order a withdrawal or retraction of the remark and an apology, warning the Member of the consequences of refusing to comply with his ruling, but the Speaker has further powers.

If a Member of the House persists in irrelevance or tedious repetition, Mr. Speaker may, after drawing this to the attention of the House, direct him to discontinue his speech. The Chairman of Committees has the same power in Committee. The power is not used, though it sanctions interruptions by the Chair to bring speakers back to the point. Mr. Speaker or the Chairman can deal with Members who are grossly disorderly by ordering them to withdraw from the Chamber for the remainder of the day's sitting and call on the Serjeant-at-Arms if necessary to enforce his order. If the Speaker decides this is not sufficient he can name the Member or Members concerned. On a Motion being made (usually by the Leader of the House) that the Member be suspended from the service of the House, Mr. Speaker may put the Question, no amendment, adjournment or debate being allowed. In Committee, 

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91 S.O. 201
the Chairman interrupts proceedings after naming the Member and reports to the House, Mr. Speaker putting the Question for suspension on Motion. 92 Suspension, which does not exempt a Member from service on any Committee on a Private Bill, is for 24 hours on the first occasion, seven days on the second occasion in the same session and twenty-eight days on the third. If Members so suspended forcefully resist the Serjeant-at-Arms in carrying out the Speaker's direction they may be suspended for the remainder of the session. 93 It is also open to the House to dispense with these procedures and proceed in accordance with ancient usage of the House of Commons in which there are precedents for placing a Member in the custody of the Serjeant-at-Arms or in prison and even for expulsion from the House. 94 The most drastic of the Speaker's powers perhaps is that in the case of grave disorder he may adjourn the House without Question put or suspend any sitting for a time he names. 95

Curtailment of Debate.

The responsibility of the Government for a wide range of

92 S.O. 198
93 S.O. 199
94 see May, op. cit., pp. 465-6
95 S.O. 203
activity in New Zealand and the proper performance of Parliament's own critical function have, in spite of the small size of the House, necessitated the adoption of rules to prevent obstruction and to secure the swift passage of urgent business.

Time limits on speeches were first imposed in 1895. Before 1962 the time allowed was very generous—60 minutes for each Member on the Budget and 30 minutes on the other major debates. Because Members seemed to feel it incumbent on them to speak to the maximum of their time limit, the rule was changed in the 1962 Revision of Standing Orders by reducing Budget speeches to 30 minutes and other major debates to 15 or 20 minutes. Paradoxically the small size of the House is partly responsible for the circumstances necessitating this limitation. The non-participant in debate is more conspicuous in a small House and the tendency in New Zealand, unlike that in Britain in the House of Commons, where no time limits have been found necessary, is for every Member to


97 But they have been discussed. See Hansard Society, Parliamentary Reform, 1933 - 60, (London : Cassell, 1961), pp.73 -5.
speak on every important occasion and to make his speech at least as weighty as every other Member's. The reduction in time limits has already improved the quality of debate and reduced tedious repetition. It remains possible to move an extension of time for a speaker who is making an important contribution to a debate.

Standing Orders give Government business precedence with a few exceptions at all sittings of the House. An Urgency Rule for a specific item of Government business dates from 1929.\(^\text{98}\) Urgency may be moved by a Minister without Notice and without debate except for a brief explanatory statement by the mover. If Urgency is granted the Bill or other matter may be discussed immediately and dealt with completely at that sitting. A Bill can thus be taken through all its remaining stages, the sitting going on until they are completed irrespective of normal hours for the close of business. Used in conjunction with the closure rule this enables a very rapid despatch of business and it has consequently not been found necessary to introduce the kangaroo or guillotine closure as in the British House of Commons.

Closure was first introduced into Standing Orders at the end of March, 1931.\(^\text{99}\) The protracted opposition of the Labour

\(^{98}\) S.O. (1929) 309

\(^{99}\) see N.Z.P.D., 222 (March 28, 1931), p.668
Party to the measures taken by the Government in the face of the depression was the main reason for its introduction. The Labour Party strenuously opposed the new Standing Order threatening to use it against the then Government party when Labour attained office. This threat they made good in 1935.

The new order was based on similar orders in Britain and in the other Dominions. As incorporated into present Standing Orders it provides that the Motion for closure may be put by any Member without Notice after a Question has been proposed from the Chair, either in the House or Committee of the Whole House. The Motion, in the form 'That the question be now put', may not be moved while another Member is addressing the Chair and may be refused if it appears to the Chair to be an abuse of the rules of the House or an infringement of the rights of the minority. If accepted, the Motion is put forthwith and decided without amendment or debate. Closure can only be accepted by the Speaker or, in Committee, the Chairman. It has been ruled that in Committee

100 see e.g., N.Z.P.D., 227, (March 23, 1931), pp. 490 - 4.

101 This requirement is not in force in Commons where there is not a time limit on speeches.

102 S. O. 197

103 S.R. 33/6
the Chairman of Committees is the sole judge as to whether closure is accepted and it must be left entirely in his hands for he has listened to the debate and is therefore the best judge. In the unavoidable, announced, absence of Mr. Speaker, the Acting Speaker, following British practice, would have the same powers as regards closure. 104

The discretion of Mr. Speaker or the Chairman in accepting the closure Motion is confined to occasions when it is made in abuse of the rules of the House or infringes the rights of the minority. As May points out, 'A closure Motion may therefore be sanctioned by the Chair, immediately upon, or within a few minutes after, the proposal of a Question to the House.' 105 A number of rulings in New Zealand establish that, in important debates or on the recognised major debating stage of a Bill, an early closure would be out of order. Thus, closure was not sanctioned by the Chair on the Second Reading of a Bill that had only been discussed for a little over three hours. 106 The Second Reading debate on a Private Members Bill of no great importance has been the subject of an accepted Motion for closure after almost two whole sittings before the

104 May, op. cit., 478
105 May, op. cit., 478 - 479
106 S.R. 34/1
Where the House has rejected the Motion for the closure just prior to the interruption of the debate by the arrival of the time for adjournment, the Speaker will not sanction the putting of the question again shortly after the resumption of the debate on the following sitting day.

A Member cannot speak to a Question and then move the closure at the end of his speech. This ruling prevents a Member from making a deliberately controversial speech and then moving to close debate before giving the Opposition a chance to reply. It is not always followed by Mr. Speaker. Other criteria recognised as relevant on occasions have been the importance of the subject matter, Opposition Members not rising to speak, increasing repetition of argument, and the fact that protesting Members have allowed colleagues who have spoken to the Main Question to speak to an amendment before they have themselves spoken. The last-named criterion, however, would have to be used with circumspection as allowing precedence on an amendment to a colleague who had spoken to the Main Question could not always be taken as an indication that a Member had nothing to add to the debate himself and was merely attempting to delay legislation.
May notes a possible use of the Motion after a short debate which would not be an abuse of the rules. "When a private Members Bill or Motion has been debated during the sitting or half sitting which the Standing Orders allot for such proceedings, it is a reasonable view that the Member in charge is entitled to obtain the decision of the House on his proposal and, accordingly, in such a case, the Speaker would only withhold his assent to a Motion for the closure if the subject proposed by the private Member was manifestly of too far-reaching or controversial a character to be adequately debated in the timel provided by the Standing Order."\(^{112}\)

When the closure Motion has been carried the Question before the House is put immediately. If the House had been discussing an amendment to an original Question, there would still be the original Question to be decided. It is therefore provided that any further Motion requisite to bring to a decision a Question already proposed from the Chair may be made at once. Where notices of other amendments have been handed in and have appeared on a Supplementary Order Paper or have been handed in to the Table prior to the time when the closure Motion is adopted they too are to be put forthwith and decided without further amendment or debate and then the original Question is put.\(^{113}\) Section (3) of the Standing Order on closure

\(^{112}\text{op.cit., p.476}\)

\(^{113}\text{S.O. 197}\)
requires that 'An affirmative vote of not less than twenty Members shall be necessary to carry any Motion under this Standing Order.' This means that not less than twenty Members must note in the majority in support of the Motion.  

Closure upon the words of a clause with the discretion of the Chair by moving the Question 'That (certain words) stand part' (or be added) to a clause, or, 'That a clause stand part' of a Bill, is not practiced in New Zealand. In England the procedure appears to have been designed for use in Committee, but is infrequently used. It shuts out amendments to omit words and is probably too drastic for New Zealand purposes.

The 'Guillotine' a special Order allocating a limited amount of time to the stages of Bills and occasionally to other kinds of business, the most extreme form of curtailing debate used in the British House of Commons, is not employed in New Zealand. The ordinary closure and the use of Urgency coupled with the time limit on speeches are sufficient for New Zealand requirements.

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114 see May, op.cit., p.478 for the British rule on which this is based.

115 see May, op.cit., p.479
Divisions.

Most Questions are decided on voices but the decision of Mr. Speaker or the Chairman of Committees as to the result of a voice vote may be challenged by one of the minority, and a division called for. It is to be noted however that a Member may not give his voice one way and then try to force a division by saying the opposite side had it. This rule, when the precedents are examined, appears to have developed out of regard for what was considered decorum. Its relevance under modern conditions arises when there is a free debate and vote and, on such occasions it should be competent for a Member to insist on a record of the vote on an issue. This is a legitimate function of the division and there is no reason why only a Member of the minority should be allowed to exercise it. Under the present rule a Member who imagines he is in the majority and wishes to obtain a record of the Opposition to a measure must give his voice against it in order to challenge the anticipated Speaker's opinion that "the Ayes have it". He must then go into the lobbies against the measure, for vote must follow voice. On one occasion this resulted in the defeat of a Bill on Second Reading by one vote.

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116 S.O. 112
117 For which see S.R. 62/2 and 62/3
However, the mover of a Motion or amendment may vote against it.  

Standing Orders require that when a division is called for, the Clerk shall ring the division bells and turn a three-minute sand-glass, kept on the Table for that purpose. The bells ring for three minutes throughout the building giving Members time to reach the Chamber before its doors are closed. When the House has just carried the closure Motion the Speaker may order the doors closed after one minute if there is a division on the consequential Motion. (It is assumed that since consequent Motions are to be decided without amendment or debate Members would still be on hand.)

When the doors are closed and locked, as soon after the lapse of three minutes as Mr. Speaker thinks proper, the Question is put again. After voices have been given and Mr. Speaker has again announced his decision and this is again challenged, Mr. Speaker directs the 'Ayes' to pass to the right and the 'Noes' to the left and appoints two Tellers for each side. The Members move into the lobbies through the side doors marked 'Aye' and 'No'.

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119 S.R. 62/5

120 S.O. 132
No Member appointed as Teller may decline to act in that capacity unless excused by Mr. Speaker. The amplification of this rule is to be found in May.

'A Member is bound to act as a Teller for what Party with whom he has declared himself, when appointed by the Speaker; and his refusal would be reported to the House, though a Member, by seconding a Motion, does not pledge himself to act as Teller. A Member cannot act as Teller on a Question for his own suspension.'

In New Zealand practice, 'the Clerk ascertains, during the ringing of the bells, who will act as Tellers. The two Whips of each Party normally act as Tellers on any Party Questions. On a non-Party matter, the mover of the Motion or Member in charge of the Bill usually gets his second Teller and the opponents usually agree on Tellers. The Clerk notifies the names to the Speaker.'

The two chief Tellers receive a copy of the Division list, marked by the Clerk during the bell-ringing with the date and the Question to be decided. In each lobby, the chief Teller, checked by the other Teller, calls the names of the Members in alphabetical order, putting a line through the names of the Members whose vote he records. Both Tellers count the votes for their side and sign the lists, delivering them to the Clerk, who

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121 S.Q. 135
122 op.cit., p.429
after checking them hands them to Mr. Speaker, who declares the results to the House. The procedure is the same in Committee of the Whole. The lobby system is time consuming in contrast with the button-pressing procedure used in other legislative assemblies. However, it relieves tension, unless divisions are being forced in the small hours of the morning and the checking of division lists presents less of a problem in New Zealand with only eighty Members of Parliament than it does in England.

On Motions for the adjournment of debate, or for the Chairman to report progress, Mr. Speaker (or the Chairman) on his announcement of the voices result being challenged, may call upon the challengers to rise in their places. If there are any less than five, in a House of twenty or more, he may forthwith declare the decision of the House or Committee, though the Members challenging have the right to have their names recorded.

Every Member present with the locked doors is required to vote. A Member inadvertently locked out and consequently not present in the House when a division is taken cannot have his

124 S.O. 144
125 S.O. 133
126name recorded in the division lists. In the British House of Commons a Member does not have to vote. In New Zealand a Member who remained within the Chamber would be required by Mr. Speaker to declare how he voted, and the appropriate Tellers called to initial the emendation of the division list.

A Member who is likely to be away from the House may arrange a 'pair' with another Member for a specified period. In the event of a division occurring neither would vote. A signed record of the agreement is handed to one of the Clerks at the Table, usually by one of the Whips, and the pair may be recorded in 'Hansard', provided the names are submitted to the Clerk of the House within three days from the date of the division in question. This enables Members to make it clear how they would have voted had they been present. If any dispute or difficulty arises over a pair, the matter may be referred to Mr. Speaker whose decision is final. The kind of difficulty that may arise is when one Member of a pair is caught in the Chamber inadvertently after doors have been locked. In such a case a Member should vote as his pair would have voted. If he

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126 S.R. 63/1
127 S.R. 63/4
128 S.O. 142
129 S.O. 142
inadvertently does not do so, he is bound by the vote actually given whatever his intention may have been and there is no provision for altering a vote. In such circumstances indulgence of the House is usually accorded to allow the Member to explain.  

Ordinarily when a Member requires a pair because of sickness or public business overseas, there is no difficulty about arranging a pair. When, however, controversial legislation is before the House and a Government has a narrow majority, a pair may be refused by the Opposition. Members will be brought to the House from their sickbeds to maintain a majority in such circumstances.

A Member having a pecuniary interest in any question upon which there is a division is not to vote, though he may take part in the debate.  

If the Member is one of a limited class affected and a question of public policy is involved he is not debarred from voting. The vote of a Member may not be challenged except on a question of privileges raised immediately after the vote is taken and the vote of a Member determined to be so inter-

130  S.R. 63/4 & 5

131  S.R. 63/6
ested is to be disallowed. Only where a Member's interests are very directly affected by a Bill is the rule applied. The only instance recorded by Hay of a Public Bill being regarded as of direct pecuniary interest to Members was when a grant-in-aid was proposed to a railway survey being undertaken by a company in which two Members were directors and one a shareholder. In New Zealand a Member who admitted pecuniary interest has been told he should not vote as his vote could be challenged. It has been ruled that if a Member is acting professionally for a petitioner and is going to receive a fee for services rendered with the House he is not entitled to vote on any Question connected with that petition.

Members are not considered to have a disqualifying interest in a Payment of Members Bill. Honorarium does not attach to the individual but to the office. Thus a Minister can vote on a Ministers' Salaries and Allowances Bill. No rule disqualifies a Member from voting on grounds of personal interests other than pecuniary.

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132 S.O. 145 133 op. cit., p.440
134 N.Z.P.D., 63, (Aug.,17,1888),145 135 S.R. 64/1
136 S.R. 64/2 & 3
In the case of an equality of votes, Mr. Speaker (or in Committee, the Chairman) gives a casting vote and any reasons stated by him are entered in the Journals.\footnote{137} Present practice is to vote if possible in such a way as not to make the decision of the House final.\footnote{138} It was quite clearly understood, however, by the Labour Government of 1957-60 with its majority of two, that the Speaker's vote would have prevented their defeat if necessary.

When confusion or error arises during a division the usual practice is for the Chair to interrupt the division in progress, put the Question again and proceed to a second division.\footnote{139} If there is an error in the numbers reported, the House, "unless the same can be otherwise corrected", proceeds to a second division.\footnote{140} Where numbers have been inaccurately reported and the mistake is discovered before the end of the sitting, the Tellers, if they are in agreement, come to the Table and report

\footnote{137}{S.O. 141} \footnote{138}{S.R. 103/3 & 4} \footnote{139}{Hall, \textit{op.cit.}, 12, p.36} \footnote{140}{S.O. 139}
the new numbers and the Speaker announces them and the numbers are corrected on the division lists. If Mr. Speaker is informed after the sitting he orders the Journals to be corrected.

Error may arise because a Member has not been counted although he was in the Chamber for the division. If the House is satisfied that he did vote, the Member states how he voted and the division list is corrected.\textsuperscript{141}

If the name of the Member who did not vote appears in a division list and the Hansard containing the division has been printed off, the list is corrected in the Journals. The editor of Hansard has to insert an erratum slip in the appropriate volume.\textsuperscript{142}

A Member who goes into the wrong lobby inadvertently is bound by his vote regardless of intention.\textsuperscript{143} One way by which a Member could avoid the consequences of entering the wrong lobby would be by voting, if there is time, in the other lobby as well. A personal explanation would be required when this

\textsuperscript{141} \textit{S.R. 63/2}

\textsuperscript{142} \textit{S.R. 63/3}

\textsuperscript{143} \textit{S.R. 63/4}
double vote was discovered and the Member could state his real intentions.

These rules, relating to the initiation, conduct and termination of debate are applicable to all debates in which the House engages. They are supplemented by other rules when the House considers proposed legislation.
Stages of Debate on Legislation. Ch. 9

The object of the rules which apply specifically to the process of legislation is to provide adequate opportunity for criticism without reducing the effectiveness of Government by thwarting its demands for new powers. The proper role of Parliament, according to popular conception, is law-making. The critical student of the political scene in Britain or New Zealand where a disciplined two-party system is in operation tends, rather early in his studies, to dismiss the popular conception as completely false. Rather, he concludes, Parliament is a rubber-stamp for legislation emanating from the executive, drawn up in Government departments. With only a little more generosity Parliament is dismissed as a "talking-shop". John Stuart Mill would deliberately have made it just that, as would have George Bernard Shaw. Bagehot made legislation the last of the functions of Parliament in his analysis. Cautiously, Roland Young suggests that "Important phases of Parliamentary life would be left out if one restricted its functions within such narrow limits."¹ In fact, any argument over the question whether Parliament legislates can only be sustained by avoiding a definition of 'legislates'. If the corresponding noun, 'legislation' connotes the entire process of opinion forming, pressure for change, executive and Parliamentary response, drafting of a Bill, debate in Parliament, amendment, passing the Bill in Parliament, Royal signature and proclamation, then obviously Parliament does not legislate, though it has a part in the process. If 'legislation' is defined in more formal, legalistic terms it may be said that only Parliam-

¹op. cit., p. 14.
ent legislates. It is the second kind of definition which is relevant to this section: legislation considered as the process by which a Bill, introduced in Parliament is debated, amended and passed, becoming an Act, part of the law of the land.  

In fact, almost all Bills which Parliament considers and passes are introduced by the Government. By well established constitutional convention in England, embodied in Standing Orders of the House of Commons, and by Constitutional Act and Standing Order in New Zealand, it is the rule that legislation involving a charge on the public must be recommended by the Crown. Governments can be held 'responsible' or 'accountable' if they, and not any Private Member, sponsor legislat-

2Only Public Bills and Local Bills are considered here: that is Bills which have a general application and Bills affecting local authorities. Private Bills, affecting the interests of a named person or persons are subject to different procedures. They are initiated, after public notice, by a petition presented to the House by a Member. The cost of any such Bill, including a fee of £50 payable to the General Assembly Library, has to be met by the promoter. Like all other Bills, Private Bills are given three Readings, but after the Second Reading they go to an ad hoc Committee on the Bill nominated by a Committee of Selection set up at the beginning of the session. The Committee on the Bill may hear Counsel and take evidence. It attempts to ensure that the rights of other individuals are not infringed by the proposed legislation. The Committee reports to the House and if the Report is agreed upon, the Bill is set down for Third Reading.
Very few opportunities, therefore, are available for Private Members to promote legislation either in Britain or New Zealand. Nor is it especially desirable that the opportunities be increased, though some worthwhile legislation does occasionally come from Private Members. Government responsibility is maintained by the control which the House, itself controlled by the Government, retains, over all matters put before it.

All Public Bills in New Zealand are given three 'Readings' and are discussed clause by clause in Committee of the Whole House, after the Second Reading. Some Bills are referred to a Select Committee after a pro forma Second Reading but such Committees have power only to report their opinions to the House though they may instruct their Chairman to make a Motion in the House on a matter on which they want action taken. Thus only the House itself may take any decision which brings legislation forward from one stage to another. A Select Committee can neither amend a Bill (though it can recommend amendments) nor prevent its passage by failing to report it. A day is required to be fixed by which time its Report is to be presented.

This pattern of control is in marked contrast with American practice and to a lesser extent with practice in the British House of Commons. American procedure and conventions in the House of Representatives disperse legislative power widely. Bills go after First Reading, before any decision has been taken by the House, to Committees, who have almost, therefore, carte blanche to amend or pigeon-hole them. The Committees themselves are subject to the interests and whims of Chairmen who decide their agenda. The priority of Bills which do get
through the Committee stage is very much in the hands of the Rules Committee of the House, and the debate is in the hands of the Speaker whose power of recognition is an important political weapon in a House in which party lines are not drawn strongly on issues. British House of Commons procedure, using Standing Committees to consider Bills already approved in principle by the whole House in the Second Reading, does give Government more control than the American system but it is not a wholly satisfactory form of control. The rules allow Members to request that they be added to the more or less politically balanced and interest-balanced nucleus selected by the Committee of Selection, when there are Bills in which they are interested. The result is that the Committees tend to be, on any Bill, somewhat specialised and interest-representative. The atmosphere is one in which members of the Government party may be prepared to amend a Bill sponsored by the Government, or allow amendments to be made. The Government therefore is sometimes in the position of either having to round up Members who are absent or enlisting the aid of Members from other Committees in order to retain a clause. While the Government can reverse the decisions of a Committee on the Report stage and can enforce a more rigid discipline on its own members on a Committee, it prefers to avoid these extremes. These may be very minor deficiencies of British procedure but they serve as a foil for the relative efficiency of that of New Zealand.

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The New Zealand system gives the Government control, through its control of the House, so that it is effective and can be held ultimately responsible. It provides for a day-to-day accountability through Parliament acting as a kind of court in which the Government and its proposals and actions are subjected to scrutiny and cross-examination. It is a court in which witnesses are called, evidence heard, and counsels for the defense and prosecution state their case for the public judgement. It is a process which as far as possible, ensures that the Government goes forward with open eyes so that, at elections, it can only attempt to justify its actions to the electorate, not try to evade responsibility by finding excuses for them in ignorance and unforeseen circumstances.

Introduction and First Reading of Bills.

Public Bills are introduced in two ways. The most frequently used method is open only to the Government. At any time the House may be required to hear a Message from the Governor-General. When Mr. Speaker receives such a Message from the hands of a Minister, the business before the House is suspended while the Message is read out. The Government uses this procedure to bring a Bill before the House. The Message transmits the draft of a Bill to the House and recommends the House to make provision accordingly. Messages are referred to a Committee of the Whole House which agrees on a Resolution that provision be made in accordance with the recommendation contained in His Exce-

4S.O. 382-4
llency's Message. This stage is required in the case of Bills involving public money\(^5\) and though not required in the case of other Bills it is the practice on all Bills introduced in this way. By complying with the rules for money Bills wherever the slightest doubt is possible as to whether the Crown is incurring any financial liability, the Government can ensure that its measures are not held up in the House on a procedural technicality.\(^6\)

The Resolution of the Committee is reported to the House and the Question is proposed that the Resolution be agreed to. The Bill is then read a first time.

Debate can take place in Committee of the Whole when it considers the Message. Though in most cases the Bill contained in the Message is not available for distribution to Members, it has become the practice for Ministers to make a brief statement about its length and general purposes. Out of this statement there develops a sometimes quite lengthy exchange across the House in which the Opposition attempts to extract more information from the Minister and presents arguments against provisions they think may be in the Bill, sometimes only to be told they are not.

\(^5\)S.O. 390

\(^6\)Very strict interpretation of the Rules by former Speaker Statham led to this practice according to Mr. Dollimore the present Clerk. (Interview).
The debate is, however, not quite futile. It brings the legislation at an early stage to the attention of a wider public than that which has been consulted in the drawing up of the Bill. It focusses attention perforce on the main principles. Because it takes place in Committee and Members can speak more than once they can put questions to Ministers, obtain a reply, and go on to criticize the reply. This cross-examination sometimes goes beyond the mere uncovering of details of a Bill which will soon be open to the scrutiny of all Members. It can become a searching enquiry into the motives and reasoning of the Minister and the Government. And unlike other Committees of the Whole, it is reported in Hansard. This last fact should make debate in the House on the Question that the Resolution be agreed to almost unnecessary, and in most cases, restraint is shown at this stage. When the Opposition decides to use obstruction and delay tactics, however, the debate on the Resolution can go on for some time. The First Reading of the Bill which is proposed immediately after the Resolution is agreed to is to be decided without amendment or debate, as is the Question which immediately follows: 'That this Bill be printed.' Divisions may be called for on these Questions. The First Reading is a reading in name only. It does not involve a recital of the various clauses of the Bill.

7S.O. 210
There is no doubt that the introduction of Bills by Governor-General's message is a time-saving procedure of great convenience to the Government and, except in the case of the financial provisions of Bills, does not prevent the Private Member and the Opposition as a whole from performing their roles. Its advantage over English procedure is that it does not require notice and it does enable public attention to be focussed on the Bill at an early stage by means of the proceedings in Committee.

In the 1960 session only one general Public Bill, a Private Member's 8 was not introduced by Message either directly or as part of the Statutes Amendment Bill. The Statutes Amendment Bill deals with a miscellany of non-controversial subjects. It usually goes to the Lands Committee in order to conform with S.O. 212, and then after a pro forma Second Reading to the Select Committee on Statutes Revision and any other Committee which is specially concerned with part of the Bill. It is debated on the Motion for committal and the Committee of the Whole is instructed to divide it into separate Bills which are reported and given Third Readings.

The second method of introducing Bills under New Zealand rules is

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by giving Notice of Motion under that class of business⁹ (i.e. Class 4) so securing a place on the Order Paper under Class 8, Leave to introduce Bills.

Private Members Public Bills and Local Bills are the only Bills normally introduced in this way. Notice is given on one day and appears on the Order Paper the following day. If it is not reached on that day it is placed below new Motions for Leave on subsequent days. When the class 'Leave to Introduce Bills' is called, the Member in charge of the Bill, or someone he has authorised to act on his behalf, moves that Leave be given to bring in the Bill. The Motion does not

⁹The order in which the various classes of business shall be taken in the House is laid down in Standing Order 64, subject to alteration by leave or order of the House. It reads:
After Prayers have been read by Mr. Speaker the House shall proceed each day with ordinary and other business in the following order:— 1. Private Business, 2. Presentation of Public Petitions, 3. Presentation of Papers, 4. Giving Notices of Motion, 5. Unopposed Motions for Returns, 6. Motions for Leave of Absence, 7. Questions for Oral Answer, 8. Leave to introduce Bills, 9. Reports of Select Committees, and resumption of Debates on Reports on Bills by Select Committees interrupted by the time having come for the House to proceed to the Orders of the Day or for the Suspension of a Sitting immediately prior thereto, 10. Consideration of Papers, 11. Orders of the Day and Notices of Motion, in the order in which they are set down on the Order Paper.
need a seconder. Debate can take place on the Motion but each speaker is limited to ten minutes.\textsuperscript{10} The debate is similar to that which takes place on the Governor-General's Message in Committee, in that the full Bill may not actually be available to the House. Leave having been given and a Member or Members having been ordered to prepare and bring it in, the Bill is assumed to have been brought to the Table. Mr. Speaker at once puts the Questions for the First Reading and for the printing which are to be decided without amendment or debate.\textsuperscript{11} The Bill will often be in print though not circulated before the order is given. A Private Member's Bill will be in print before its introduction if the manuscript was handed to the Clerk in time.

This second method of introducing Bills, by Leave, can be used with great effect by an Opposition to indicate the approach it would take, if it became the Government, to the problems of the country. It was used by the Labour Opposition during the depression of the 1930's to publicise the ways in which a Labour Government would alleviate distress if it were elected, in contrast to the policy of the then Government. While theoretically the measures which could be introduced in this way were limited by the constitutional requirement, now repeated in Standing Orders, that financial recommendations must come from the Crown, considerable leniency is shown, and was shown in the 1930's, in allowing measures which did contain financial provisions to

\textsuperscript{10}S.O. 205 (13 June 1962)
\textsuperscript{11}S.O. 204, 210, 211.
be given some discussion. Such a Bill may, by leave of the House, be
given a Second Reading, but it is then dropped from the Order Paper.\textsuperscript{12}

The procedure was also used by the National Party Opposition during
the nineteen-forties to introduce several Bills for the abolition
of the Legislative Council, advertising its own policy and placing the
Labour Party, which had a majority on the Council, in embarrassing opp-
osition to a popular measure.\textsuperscript{13}

\textbf{Second Reading}

The next stage on all Bills, except those which, under Standing
Orders, are to be referred to a Select Committee\textsuperscript{14} is the Second Rea-
ding debate. There is, again, no actual reading of the Bill, but
this is the occasion for a general debate on its principles unless
the House decides first to refer the Bill to a Select Committee. This
debate is the main debate on the Bill as a whole, though a Member is
entitled to concentrate his criticism on some particular clause.\textsuperscript{15}

However, though a Member may indicate his intention to move amendments
to the Bill in Committee\textsuperscript{16}, the Bill cannot itself be amended during
this debate since the Question before the House is 'That this Bill be
now read a second time.' Amendments must propose an alteration to
this Question. They must be strictly relevant to the Bill.\textsuperscript{17} The

\textsuperscript{12} S.R. 11/1, 11/3.
\textsuperscript{13} see N.Z.P.D., 227 (Aug.5 1947), 125
\textsuperscript{14} S.O. 212
\textsuperscript{15} S.R. 15/5
\textsuperscript{16} S.R. 15/2
\textsuperscript{17} S.O. 217
most usual form of amendment indicating opposition is, in accordance with Standing Orders, to leave out 'now' and add 'this day six months' or some other specified time. Amendments can also be offered to refer the Bill to a Select Committee or to impose conditions which must be fulfilled before a Second Reading will be given or declaring some principle (possibly adverse) not contained in the Bill but relevant to it. Standing Orders require that a Bill, having been read a second time is to be committed to a Committee of the Whole House or referred to a Select Committee.

A Bill which is complicated, or contains many clauses, or which in some of its aspects is being offered by the Government as a preliminary draft, or on which it is desired to call evidence from interested parties, may be given a pro forma Second Reading and then referred to a Select Committee. A Motion for a pro forma Second Reading requires not less than two clear sitting days notice and must be notified on the Order Paper. In practice, in most cases in which this procedure is used, the Bill is introduced by Governor-General's Message and immediately after the First Reading is given a Second Reading, pro forma and referred, without notice being given, by Leave of the House. Debate on the principles of the Bill referred to a Select Committee in this way takes place later on a formal Motion, required by Standing

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18 S.O. 216
20 S.O. 218
21 S.O. 219
Orders\textsuperscript{22} for committal of the Bill to the Committee of the Whole. This is equivalent to a Second Reading debate.

The Committee Stage.

Committees of the Whole House and Select Committees are important instruments of the House of Representatives. The Committee stage on Bills is as significant as the Second Reading debate though rarely as dramatic and not as well publicized. K.C. Wheare has observed that, 'Of the many phrases by which British government may be described shortly and with illumination ... it seems justifiable to say that by no means the least accurate and significant is "government by committee"'

Committees facilitate the work of representative assemblies in a number of ways. First, they enable some part of the work of the assembly to be divided among its members, reducing the amount of business for which the whole assembly is required. They may be instructed to inquire, seek evidence and expert testimony, negotiate, deliberate, and advise and report. Some responsibility for making decisions and for exercising administrative functions may be delegated to them. Second, Committees which are smaller than the whole assembly have advantages in deliberating. Under any one set of rules, deliberation is likely to be more informal and free in a small body than it is in a large. Adding to this greater freedom is the secrecy of the small Committee. Members of the public will accept their exclusion from the

\textsuperscript{22}\textsc{s.o.} 220

proceedings of small bodies, particularly if those bodies do not have the power to make binding decisions, but not their exclusion from the main body. Third, the Committee system can be used to bring a more informal procedure into operation, even in a Committee of the whole assembly. Members may be permitted to speak more than once and ask questions of each other across the floor. The change to Committee in the British House of Commons and in the New Zealand House of Representatives is symbolised by the disappearance of Mr. Speaker in wig and robes and the appearance of the Chairman in ordinary dress.

**Committees of the Whole House in New Zealand.**

All Bills after they have had a Second Reading are required to be committed to a Committee of the Whole House. Other matters may also be committed to the Whole House if Committee procedure is best suited for their discussion. When, for example, it is desirable to have Mr. Speaker take charge of a matter before the House, such as a draft revision of Standing Orders, the Committee procedure relieves him of the responsibility of the Chair and permits him to speak from the floor like any other Member.

**Appointment of Committee of the Whole.**

A Committee of the Whole is appointed on a Motion that a certain matter be considered in Committee of the Whole House at a specified time. However, the order for the Committee stage of a Bill on completion of Second Reading does not require a Motion. The Bill is recorded in the Journals as having been ordered to be committed next sitting.

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24 S.O. 218, 220.
day and appears on the Order Paper for committal then, and until the Committee stage is passed. On the Order of the Day for going into Committee or resuming Committee discussion of a Bill, Mr. Speaker leaves the Chair without putting any Question and the Chairman of Committees takes his place.\textsuperscript{25} If the Government wishes to take the Committee stage immediately or shortly after Second Reading it may seek the leave of the House or move, without notice, that the Committee stage be taken forthwith or presently.\textsuperscript{26} If urgency has been taken on a Bill the House resolves itself into Committee after Second Reading without Question put. As has been noted though, a Bill which has been given a \textit{pro forma} Second Reading requires a formal motion for committal on the first occasion of going into Committee of the Whole and this is open to be debated as though it were a Motion for the Second Reading.

The Motion for the Committee of Supply and the Committee of Ways and Means, which are Committees of the Whole House, required to be set up under Standing Orders at the beginning of each session, is made as soon as the Address in Reply has been agreed upon. These two Committees consider the annual financial proposals of the Government. No debate is allowed on the Motion to appoint them.

\textbf{Order of Reference}

Like other Committees of the House, the Committee of the Whole is an agent of the House and can only operate according to the Instructi-

\textsuperscript{25}\textit{S.O.} 220

ons it has been given by the House. It cannot take decisions outside its order of reference as determined in the instruction given by the House. Its order of reference can only be extended by a further instruction. In practice, the general instruction to Committees of the Whole is wide enough and has been liberally enough interpreted to make it unnecessary to move for special instructions.

When a Bill is before the Committee of the Whole the Committee may make any amendments relevant to the subject matter of the Bill. Within this limit of relevancy they may extend the scope of the Bill, even, if it is auxiliary legislation, amending the main Act. However, if the amendments do so far alter the Bill as to make a change of its Title necessary the Committee is instructed to amend the Title and report this 'specially to the House'. A Committee may also, where this is desirable, divide a Bill into two or more Bills or consolidate a number of Bills into one Bill. Instructions are inadmissible if they are irrelevant, foreign, contradictory to, subversive of, or alternative to the decision of the House taken on the Introduction and Second Reading of the Bill.

An instruction seeking to give the Committee of the Whole power

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27 S.O. 310
28 S.O. 311 see also N.Z.P.D. 227 (March 23, 1931) 433-488.
to set up a sub-committee to report back to the Committee of the Whole on a Bill has been ruled out of order. An instruction to the Committee of the Whole on a Bill to consider various things is not mandatory. It merely gives the Committee power if they think fit to consider and bring into the Bill the matters referred to in the instruction.

Consideration of a Bill in Committee of the Whole.

The order of business to be observed on a Bill in Committee is laid down in Standing Orders. The full Title and the preamble of the Bill stand postponed without Question put until the clauses and schedules have been considered in turn. The clauses as printed are considered, then postponed clauses, then new clauses, then schedules and new schedules, then the preamble if any, and any necessary amendment to the Title.

The Chairman begins by calling 'Clause 1, Short Title. The Question is that this clause stand part of the Bill.' This is the opportunity for a wide-ranging debate covering any part of the Bill. It has been ruled that the rejection of the Short Title of a Bill by a Committee of the Whole House is tantamount to a rejection of the Bill itself, and the Chairman of Committees should proc-

30 SR. 37/1
31 SR. 223
32 SR. 21/1
eed no further with it. In such a case it would not be necessary to report progress and the Bill would disappear from the Order Paper. The same effect is obtained by carrying a Motion 'That the Chairman do now leave the Chair'. The Bill could, however, be revived by the House and the Committee would resume its deliberations at the point at which they were interrupted.

Clause 1 having been passed, the Committee goes on to consider the other clauses and the schedules to the Bill seriatim. Discussion must be strictly relevant to each clause or schedule. Finally the preamble and the amendment to the Title, if that is necessary, are considered. If the Bill is recommitted the same order is followed. If there is considerable opposition to certain provisions of a Bill, discussion can be postponed by directing the Chairman, on Motion, to report progress and ask leave to sit again. If there is no other business he does so and the House directs when that particular Bill shall be reconsidered in Committee. If there is other business the Chairman deals with that before he reports progress on the Bill in question. This motion to report progress is also used for delaying purposes on Clause 1 of Bills.

There is no provision for a pro forma committal of a Bill in New Zealand as there is in the British House of Commons. It has been found possible to save time by such procedure in Britain when

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33 S.R. 22/1
the Member in charge of a Bill wishes to introduce a large number of
amendments to improve the measure. The Member moves committal pro
forma and in Committee the proposed amendments are not separately
considered. The Chairman reports the Bill to the House, as amended,
and it is reprinted and recommitted for a future day. In New Zea-
land such amendments would be introduced at the appropriate stages in
Committee.

Report of a Bill.

When a Bill referred to a Committee of the Whole House has been
dealt with there, the Chairman reports to the House. A copy of a
Bill which has passed through Committee is signed by the Chairman,
and he gives it to Mr. Speaker when the Bill is reported. When busi-
ness has not been completed on a Bill in Committee by the time the
hour arrives for the interruption of business, the Chairman reports
progress and asks leave to sit again, for a Committee has no power
to adjourn its own sittings and fix an hour to sit again. This
practice is also followed by Committee of Supply and Committee of
Ways and Means even though these Committees have continuous exist-
ence.

Standing Orders require that 'a future day' be appointed for

34 May, op. cit., p. 565
35 S.O. 234
36 see S.O. 280 & 282
considering the Report and moving its adoption, except in the case of Imprest Supply and Appropriation Bills, when the Report may be ordered to be received and considered forthwith. The original Standing Order requiring consideration on 'a future day' was designed to bring about another stage on Bills, when the Legislative Council was abolished. The principle was being recognised that some delay between the various stages of a Bill was desirable and might prevent some ill-conceived provision becoming part of a Bill.

In the House of Commons at this stage, if a Bill has been amended by Committee of the Whole, or is being reported from a Standing Committee, with or without amendments, the reading of the resolution by the Clerk places it before the House and a more formal repetition of the Committee stage follows, though the order of business is different. Amendments may be moved including those rejected in Committee or those which would restore the original text of a Bill amended in Committee. Such amendments must be seconded and new clauses require notice. An unamended Bill from Committee of the Whole escapes the Report stage. It may be ordered to be read a third time forthwith or a future day appointed for the Third Reading. The assumption is that if a Bill has not been amended by a Committee of the Whole House, the House does not wish to amend it.

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37 S.O. 235A (13 June, 1962)
38 S.O. 306
39 see N.Z.P.D., 304, (19 August, 1954) p. 1289
40 see May, op. cit., pp. 568-9
41 see Jennings, op. cit., p. 280
There has been some confusion as to what is relevant in the debate which can take place on the Report stage under New Zealand Standing Orders, though it is now established that Members must confine themselves to what transpired in the Committee stage. Debate on Reports tends to be used mainly when the Opposition wants to delay a measure on which urgency has been taken. It should, however, be regarded as an important instrument of the House in its deliberative and leadership role for it affords Members the opportunity to mention again, or move again, and argue for, amendments which failed in Committee, so drawing attention to them and ensuring that they will be recorded in Hansard. The provision that consideration be on a future day, if observed, would very much add to the value of this stage, since it would give Members time to investigate some of the questions raised in Committee during the discussion of clauses and schedules and proposed amendments thereto. It would also enable amendments made to a Bill in Committee to be printed so that they could be seen in relation to the Bill as a whole. While the Bill may be seen printed as amended at Third Reading, (unless urgency or Leave is taken for a Third Reading forthwith) it would have to be recommitted at that stage if it were considered necessary to amend it.

In fact, the Report on a Bill from Committee of the Whole is normally considered immediately after it has been delivered to the House. For example, on not one public Bill during the 1960 session was the 'future day' requirement operative. Bills were considered immediately on Report, either by leave, in the case of relatively
non-controversial Bills, or because urgency had been taken on the Bill.\textsuperscript{42}

Third Reading.

A Bill is to be set down 'on a future day' for a Third Reading once the Report of the Committee of the Whole is adopted. In practice there is concession to the principle of automatic delay at this stage. Roughly half the Bills in the 1960 session were given Third Reading on a day other than the day on which the Report was adopted. There were 117 public Bills other than Imprest Supply Bills and Local Bills in the 1960 session. 62 were given a Third Reading on the same day as they were reported, 20 were given a Third Reading on the following day, 18 were read after a delay of from 2-5 days, and 17 after a delay of more than 5 days. Of the 62 Bills given a Third Reading on the day they were reported, 48 were part of the Statutes Amendments Bill, the routine 'wash up' Bill to which reference has already been made.\textsuperscript{43} This Bill had been given a \textit{pro forma} Second Reading after it had been considered in the Lands Committee, and it was then referred to the Statutes Revision Committee. This Committee reported on the 19th of October and the committal motion which serves for a Second Reading debate under this procedure was moved on the 21st October. In Committee, the Attorney-General, who was in charge of the Bill, moved amendments and new clauses, and the

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\textsuperscript{42} see Journals of the House of Representatives (1960) pp. 429-442.
\textsuperscript{43} ibid., pp. 429-440.
\end{flushright}
Bill was divided, as amended, into its 43 separate Bills which were then reported and immediately given a mass Third Reading. Leave was taken to avoid the delay both on the consideration of Report and Third Reading. These steps were taken on 21 October and the Bills received Royal assent on the 25 October, three days before the end of the session. A day between Report and Third Reading could easily have been allowed. The Bill, though routine, was very wide in scope, and the fact that Leave was granted is an indication of the rather careless attitude Members take at times towards those parts of their responsibilities which do not attract publicity. The Bill had of course been considered by two Select Committees, but the House as a whole had the Bill before it for one day only.

Of the other Bills read immediately after Report, 8 were Bills on which urgency had been taken. One of these was the Appropriation Bill, the others were controversial Bills most of which had already been the subject of lengthy debate. However, one of the 8, the Reserve Bank of New Zealand Amendment Bill, was introduced by Message on 21 October, and was not given its Second Reading until the 26 October, two days before the end of the session, and only one day before the last working day of the session.

Jeremy Bentham insisted that:

An interval of three months would not in general be too great between the presentation of a Bill to the assembly, and its passing into a law. If it had been possible to do without a given law during the course of past ages, it is possible to do without it at least three months longer. Thus could the necessary time be allowed to the parties interested to present them to the legislators. But ... an inflexible rule is not required -
latitude must be left for unforeseen cases.\textsuperscript{44}

A reform which would avoid the hurrying through of legislation at the end of each session would be to allow a Bill not fully processed in one session to be taken up in the subsequent session at the stage which had been reached on it. This is done at present with Bills read a second time \textit{pro forma} and sent to a Select Committee when the Committee's order of reference empowers it to sit during recess and some specified number of days thereafter. In such cases the Bill is not reintroduced in the next session when the Select Committee has reported. Instead the Motion for Com\text{\textit{mit}}al to Committee of the Whole follows and the equivalent of the Second Reading debate takes place. If the practice were extended to permit Bills to be carried over from one session to another at any stage, it would be necessary to erect safeguards against hasty legislation in the form of old, uncompleted Bills raked out for the purpose, and against the use of this procedure to enable Government to hold the Third Reading of an uncompleted Bill over as a threat against any section of the community; and to prevent one Government embarrassing another by its uncompleted legislation. It would be sufficient safeguard to limit the currency of an uncompleted Bill to one session after the session in which it started and to confine the procedure to one Parliament.

\textsuperscript{44}op. cit., II, 353
Debate on Third Reading.

The Motion which is before the House on Third Reading is 'That the Bill be now read a third time.' Under New Zealand rules the only possible amendment to this Motion is one to omit the words 'now' and add 'this day three months' or some other specified time, or the Bill may be ordered to be recommitted. In the British House of Commons verbal amendments may be moved, but this is unnecessary in New Zealand for such amendments need only be drawn to the attention of the Chairman of Committees who has authority to make them.

This is the opportunity for a debate on the Bill as a Whole in its final form. It is thus similar to a Second Reading debate except that it must be confined more strictly to the contents of the Bill. On Second Reading of a Bill 'other methods of attaining its proposed object may be considered, and even the inclusion of cognate objects recommended.' Such a discussion is out of order on Third Reading.

On most Bills the Third Reading is a formal stage, not subject to lengthy debate. On a slightly contentious Bill it is the custom to use the Third Reading to traverse what was said in Committee, though a Member may not go through the Bill clause by clause but

\[\text{Kay, op. cit., p. 527}\]
must keep to the general principles of the Bill.\(^{49}\) The Third Reading may however be the occasion for a lengthy, relatively exciting debate similar to that on Second Reading. Members and Speakers have experienced considerable difficulty over the past few years, (in which debate on Report has become more common) in distinguishing between Second Reading, Report, and Third Reading debates. The Second Reading debate is clear enough, but Speakers have tried to ensure that the Report stage and Third Reading stage are not repetitions of the Second Reading. It is fairly easy to insist that discussion on Report be confined to what transpired in Committee and it might be easier to avoid this developing into a discussion of general principles if it were required that all remarks on Report be related to a named clause. However, since discussion on Report is still the exception rather than the rule, and the Third Reading debate is used to draw attention, in the absence of such discussion on Report, to what transpired in Committee, it is the Third Reading debate which is left in most doubt. If reference to what was said in Committee were allowed at this stage only if there had been no discussion on Report, this would settle one aspect of the problem. However, to prevent the debate on the general principles of the Bill as amended from developing into a near Second Reading debate would be an impossible task. All that can be done is to insist that alternative proposals are out of order at this stage, and, if this is a Bill which

\(^{49}\)S.R. 25/2
has been given a fairly lengthy discussion on Report, anything which
was allowed at that stage, including discussion of amendments which
failed in Committee, could be ruled out of order.

Passing and Title

After the Third Reading no further Questions are put. The Bill
is considered passed.50

Royal Assent

When a Bill, other than an Appropriation Bill, has been passed,
the Clerk directs that three prints be prepared to send to the Gove­
ernor-General for his assent. An Appropriation Bill is presented by
Mr. Speaker in the name of the House.51 There is further provision
for Government amendment at this stage by Governor-General's Messag­
e.52 Such amendments, when they have been agreed to by the House a-
re incorporated in a new fair print of the Bill and presented for
Royal Assent. If they are rejected by the House, the original Bill
is presented again. The Royal Assent is signified by Message to the
House and fair prints are then deposited with the Registrar of the
Supreme Court, the Private Secretary of the Governor-General, and
the Record Office in Parliament House. Copies of the Bill are
available to the general public from the Government Printer. It be­
comes law immediately, or whenever specified in the Bill itself.

50S.o. 242A (13 June, 1962)
51S.o. 244
52S.o. 245
Use of Select Committees

A Public Bill may be referred to a Select Committee either immediately after the Second Reading or on the Question for committal. The provision for a pro forma Second Reading enables the House to send a Bill to Select Committee before its principles have been discussed. Local Bills and Bills which in any way affect Crown lands are automatically sent after First Reading to the Local Bills Committee and Lands and Agriculture Committee respectively. Select Committees are used, however, for other purposes than consideration of Bills and it will be convenient to expand the following discussion to consider them.

The advantages of small Committees have already been discussed briefly. Under the British system, the responsibility of the Government requires that they be responsible to the House as a whole, not making binding decisions except in the exercise of administrative functions where their decisions may be binding on individuals. The need for this subordinate status to maintain responsibility lies not in the composition of the Committees, for that is an approximate reflection of party strength in the House and strict party discipline might be maintained on the Committees. It lies rather in the conditions which are necessary to maximise the advantages of Committee discussion. The informality of their procedure, the freedom and frankness of the exchanges which take place, the exclusion of the

53 S.O. 212, (13 June, 1962), S.O. 257
public, the spirit of enquiry and impartiality—these would suffer or be lost if Committees were given full responsibility to carry a Bill or other matter through one of its stages for this would force a more rigid party discipline or result in a derogation from the principle of Government responsibility. Parliament requires its own source of information if its criticisms are to be effective and the Select Committee system is probably better in this respect than the Standing Committee system used in the House of Commons. Like the Congressional committee system it provides expertise and interest representation. The Statutory Instruments, Public Accounts, Estimates and Nationalised Industries Committees of the House of Commons are comparable.

The setting up of Committees of Members specialising in subjects corresponding to Departments of State has been recommended by a number of British writers. 54

The principle counter-argument has been that foreign experience of the successful working of these Committees is not relevant in Great Britain, since their legislatures are founded on the doctrine of the separation of powers between the legislature and the executive. 55

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54 See the discussion of recommendations to this effect by Acland, Amery, Campion, Grippa, Fellowes, Grimond, Hollis, Jennings, Satter, Young, Wheare, Greaves, Brogan in Hansard Society, Parliamentary Reform 1933-1960 (London: Cassell, 1961) pp. 43-47.

55 Ibid., p. 47.
The fears that such a system would make Government the creature of the Committees and undermine the principle of ministerial responsibility do not appear to be justified by New Zealand experience. The critics tend to overlook the fact that the two-party system transforms the specialised Committee into an institution capable of taking its place in British Parliamentary life. Beyond this, it is difficult to generalise about Select Committees in the New Zealand House of Representatives except in relation to the process by which they are set up and the various rules governing their proceedings.

Some Committees are appointed regularly each year, some are ad hoc. There were 21 regularly appointed Committees in 1961. Four of them – Bills, Lands, Local Bills and Standing Orders on Private Bills were set up as required by Standing Orders. Most are set up in practice each year to consider matters referred to them under a class of business. Of the 21, 10 dealt with Public domestic Bills, one with Local Bills, one with Private Bills, five with House matters, two with petitions, one with Estimates, one with External Affairs. There were two ad hoc Committees examining Standing Orders and Delegated Legislation. There were two ad hoc Committees in the previous Parliament set up to consider the structure of Local Government and reform of the Licencing Laws.

The Committees are appointed by the House at the beginning of each session, on Motion. Notice has to be given unless it is desired to set up a special Committee during the course of a Bill. S.O. 316 lays down that 'No Select Committee shall consist of less than five or more than ten Members, without leave from the House,
There are ten members on most Committees. The Bills Committee is required to consist of five members and the Private Bills Committee and the Committee on Privilege also have five members. In 1961 Maori Affairs numbered twelve by Leave in order both to preserve the Government majority and include all four Maori Members (who were in the Labour Opposition). External Affairs, by Leave, usually numbers twelve. Five member Committees are divided three to two in favour of the Government, Committees of ten are divided six to four and Committees of twelve, seven to five. In relation to the turnover of membership of the House between Parliaments there is a significant continuity of membership of the various specialist Committees. Ministers and ex-Ministers will normally be on the Committee corresponding to their portfolio or their most recent portfolio. Membership also reflects the interests of Members. Between 1955 and 1961, for example, the Agricultural and Pastoral Committee did not include any Members from the four main centres though in the case of Labour there were Members from smaller urban electorates, largely because so few Labour Members are from rural constituencies. The total number of Members on the Committee during the period was twenty one, five of whom were appointed for the first time in 1961 when there were sixteen new Members in the House and a new Government. Other Committees like Education and Labour Bills show the same continuity of membership and representation of interest, allowing for changes in the overall membership of the House.
Terms of reference of the Committees vary slightly to indicate areas of legislative interest corresponding to the various ministries. However, some notable areas have not been provided with appropriate Select Committees. These include Housing, Transport, Works, Internal Affairs and Postal Communications. Changes in 1962 in the recommendation of the Algie Committee reduced the number of Committees to 16. The scope of Committee work was not extended. A typical order of reference is that of the former Agricultural and Pastoral Committee which was 'to consider all matters pertaining to agricultural and pastoral industries and stock which may be referred to it.' In the case of the current Committees on Lands and Agriculture, Local Bills and Standing Orders on Private Bills, referring some of the matters which they are set up to consider is not permissive but required. Committees, unless the House directs otherwise, are not permitted to sit while the House is in session nor on any day on which the House is not sitting. In effect this rule limits the times when Committees can meet to Tuesday, Wednesday and Thursday mornings. An innovation in the 1960 Parliament was the occasional adjournment of the House for two or three days, and the requisite direction to permit some Select Committees to clear part of the backlog of work they had.

In the 1960 session 13 Bills, including the Statutes Amendment Bill which was subsequently broken up into a large number of Bills, were referred to the Statutes Revision Committee after a pro forma

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56 N.Z.P.D. 330 (6th July 1962), 709
Second Reading. Three Bills went to the Public Health Committee, one to Education, one to Labour and one to Maori Affairs, after a pro forma Second Reading. Two Bills were sent to the Lands Committee immediately after Introduction as required by Standing Orders. There were 17 Local Bills, including a Local Legislation Bill which dealt with a miscellany of small matters affecting various local authorities. All of these were referred to the Local Bills Committee and four to the Lands Committee, as required by Standing Orders. Two Bills were referred to the Agricultural and Pastoral Committee, one after a pro forma Second Reading and one, the Stock Amendment Bill, as a result of Opposition requests.

As the example shows, the Statutes Revision Committee and the Local Bills Committee handle the greatest volume of legislation and after them, the Lands (now Lands and Agriculture) Committee.

Of the 68 Public Bills dealt with in 1960 (other than Imprest Supply Bills, Local Bills and Bills which were part of the Statutes Amendment Bill), only 22 went to Select Committee, 13 of them to the Statutes Revision Committee. Several Bills for which there were appropriate Committees did not go to Committee. These included highly controversial Bills like the New Zealand Army Amendment Bill and Police Offences Amendment Bill and several Bills dealing with Agricultural matters.

The Committees, however, do not deal only with legislation. Of 27 petitions presented to Parliament in the 1960 session, 15 were dealt with by the two Petitions Committees, 3 by Lands, 3 by Local Bill, 2 by Public Health, 1 by the Agricultural and Pastoral Commit-
Meetings of Select Committee are not open to the public except by a decision of the House. When the public is admitted it is to hear the evidence presented to the Committee. Deliberations are in private. It is thus difficult to evaluate the work of the Committees. There is no doubt that when they are engaged on a fact finding mission into a matter on which there is no hard and fast party attitude they do very useful work indeed, providing not only a report but a group of informed men on both sides of the House who give the benefit of their experience on the Committee to all their colleagues.

However, as the progress of one Bill alone shows, whether the matter is a party matter or not, the report of a Select Committee may well be ignored if an opposed point of view has influential support in the House. It had been an election promise of the leader of the Labour party, Mr. Nash, that legislation would be introduced for the registration of chiropractors, so, in the 1960 session the Chiropractors Bill, which had been introduced in 1959 and referred to the Public Health Committee was reported by the Committee. They recommended unanimously that the Bill be not allowed to proceed. The Committee, of which the Minister of Health was a member, had heard a huge volume of evidence from various schools of chiropractors, from their patients for and against, and from the B.M.A., Physiotherapists, the Registered Nurses Association, the Dean of the Otago Medical School, the Department of Health, and the New Zealand Branches of the Royal Australian College of Physicians and the Royal Australian College of Surgeons. Apart from that presented by the
chiropractors and some of their patients, all the evidence was against the Bill. The evidence of the Director of Clinical Services in the Department of Health contained gruesome instances of diseases which a chiropractor was not trained to diagnose and which he might easily mistake for some other complaint with possibly fatal results. The Committee therefore recommended further enquiry.57

Nothing more was heard of the Bill until the last working day of the session when urgency was taken for it and it was pushed through all its stages. It had been amended in minor details only, to meet the fears of the various schools of chiropractic of each other, and to delete a phrase descriptive of the chiropractors mythology. This phrase read 'for the purpose of removing interference to the free transmission and expression of nerve energy'.58 The amendments conceded nothing to the expert opposition in principle to the Bill which had led to the Committee recommendation. As the Hon. J.R. Hanan pointed out during the debate, 'the Department of Health would have nothing to do with the Bill. That is why the Department of Justice is to administer it.'59

Apart from illustrating Parliament's readiness to ignore a report from its own Select Committees, the course of this Bill is a very interesting example of the way in which Ministerial responsibility

57 N.Z.P.D., 322, (15 July, 1960), 610
58 N.Z.P.D., 325, (October 1960), 3359-3360
occasionally disappears in New Zealand politics. The National party maintains that all its Parliamentary members are free to vote as they like on all Bills. In fact, it is understood that election pledges demand the support of all members. A matter not part of policy will, however, be given a free vote, even when the party is in office. The Chiropractor's Bill illustrates the possible result of this voting ethic. The Bill was drafted by the legal representative of the chiropractors, Sir Wilfred Sim, a former President of the National party. It was handed, under the Labour Government of 1957-60, to the Department of Health. That Department refused to accept any responsibility for it, or in connection with it, and the Minister, Mr. Mason, therefore took charge of it under another of his portfolios, that of Justice. In 1961, the principal opponent of the Bill in the House, Mr. J.R. Hanan, was Minister of Justice and found himself in the position of having to introduce a 'tidy up' Chiropractors Bill, dealing with some minor difficulties raised by the original Bill. In committing the amending Bill he referred back to his original attitude toward the Bill and reaffirmed it, and registered the objections of the Department of Justice to having to administer it when it was so obviously the business of the Department of Health. He blamed 'Parliament' for the situation.60 The Minister of Health, Mr. Shelton, indicated that he too was opposed to the

60 N.Z.P.P., 329, (29 Nov. 1961), 3904; information about the early history of the Bill was provided by a senior officer of the Health Department.
Bill and had in fact moved in the Select Committee on the amending Bill that the Bill be postponed and the operation of the Act be deferred for one year to enable a Royal Commission to be set up to investigate the principles and practice of chiropractic. The Committee had rejected his motion.

It is not possible to ascertain very accurately from an examination of amendments made to Bills in Select Committee how important the Committees are in producing changes in Government proposed legislation. Many of the amendments which are made will have been made by the Minister. The amendments offered by the Minister may or may not have some connection with the proceedings of the Committee and the evidence it has heard. There are occasions when it is possible to say with some certainty that the Committee proceedings have secured changes of a politically significant nature and, on evidence from a number of personal interviews, it would appear that Committees do make minor changes in a spirit of non-partisanship. On most of the occasions when significant changes are made and accepted the Government appears to be using the Select Committee as an information-gathering device and a sounding board for public opinion.

The Local Bills Committee is in a different category from all other Committees on Bills. It plays a really important role in local

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61 K.Z.P.D., 329, (17 Nov. 1961), 3620

62 see e.g., S. Smith, 'The Police Offences Bill, 1951', Political Science, 4, (Sept. 1952) pp. 21-31
government legislation providing the Government with an opportunity to avoid a political tussle with a local authority of a different party complexion. Local Bills are brought in by the Member for the area and are referred, as required by Standing Orders, to the Local Bills Committee. In 1960 there were 16 such Bills - a representative figure for most sessions. The Committee holds hearings on the Bills which are frequently the subject of quite fierce local controversy. As a result of the evidence of parties opposed to the Bill quite substantial changes may be made by the Committee. Reports on the proposed Bills are also submitted on request, by the Departments, including Treasury. The Reports of the Committee normally determine the final form of Local Bills. Amendments made by the Lands or Local Bills Committees on Bills they consider pursuant to Standing Orders are deemed to have been read into the Bill when it is read a second time.63

In consideration of petitions some of which ask for or oppose legislation, the Select Committees, including the two Petitions Committees which handle most of the work, operate on a clearly non-partisan basis. Debates on Reports on which members of the Committee from both sides of the House normally speak, and observation on those occasions when the Committees are open to the public for the hearing of evidence and questioning of witnesses, affords a demonstration of this non-partisan spirit. Only when a petition is presented

63S.R. 16/3
for obvious party purposes is this not the case. Thus, a petition, organised during the 1960 Parliament by the Labour party, against New Zealand's joining the International Monetary Fund and World Bank produced none of the usual qualities of Committee consideration on petitions.

The two Petitions Committees are set up with 'power to report (their) ... opinions and observations ... to the House'. In practice they report either 'no recommendation' or they recommend 'consideration', 'favourable consideration' or 'most favourable consideration'. The actual Motion is that the Report do lie upon the table. A further Motion is necessary to have the Report referred to the Government for 'most favourable consideration' or one of the other forms, though the House considers the two Motions together.

Reports accepted by the House are sent by the Clerk of the House to the Departments concerned, by whom they are minuted and passed on to the Minister. The Minister hands the Report to the Cabinet sub-committee on petitions which generally gives most attention to those which come from the House with a positive recommendation. Action may follow, but it is no guarantee of success if the petition bears a recommendation for 'most favourable consideration'. The petition of H.M. Mackay is an outstanding example. Mr. Mackay's petition in 1936 had been recommended for most favourable considera-

64 see Journals of the House of Rep. (1960) p. 428
tion. He had petitioned again in 1955 when no action was taken and was petitioning on the same subject in 1960, having made continual representations on the subject in the intervening years. During the debate, one Member, who had been on the Committee in 1936 said roundly, 'I am sick and tired of Governments making no attempt to implement the recommendations of petitions Committees.'

Ad hoc Committees, New Zealand has discovered, are cheaper than Royal Commissions if it is desired to postpone decision or work up support for a decision before it is taken. They can also be used to produce a House opinion on a difficult subject, for example, its own Standing Orders, or on a subject on which the Government has been advised and convinced and on which the House must be convinced. They are not an escape from Ministerial responsibility but they can make the conditions in which Ministerial responsibility has to be exercised much easier. In particular the traditional impartiality of the civil service and the impartial atmosphere of the Select Committees themselves, taken in combination, mean that evidence and argument from Government departments will have their maximum impact on individual Members when they come directly from civil servants before Select Committees, rather than indirectly through Ministers in the House. In party caucus and in the House itself the members of the Select Committees provide relatively expert support for the legislation they have studied in Committee.

Conclusion

The system value 'responsibility' has been frequently referred to in this chapter. In the context of Select Committees it operates as a factor limiting their role in the legislative process. Since Governmental responsibility maintained by strict party discipline, would rob Committee procedure of most of its advantages - particularly the frankness and impartiality it can permit - it is better to give the Committees a subordinate status. Even with subordinate status, however, Committee reports cannot be completely ignored even though they may not be accepted by the Government. A compromise between Committee independence and Government responsibility is therefore constantly being worked out. Some of the Committees, like the Statutes Revision Committee and the Local Bills Committee are both useful and have a great deal of independence because in most cases the matters referred to them do not involve the issues which divide the parties; regulation of the economy and welfare. Some of the matters may be controversial but the divisions of opinion are within the parties and within the ranks of the supporters of the parties in the constituencies and are not therefore likely to bulk large at election time. Government can afford to support the reports of these Committees. Labour conditions, Agriculture, Commerce and Social Security are, on the other hand always at the forefront of the political debate. On these subjects party lines are drawn more strongly, not necessarily because of pressure from leaders, but because party attitudes and party loyalty are involved. The Committees set up to deal with them may be by-passed, partly because there are strong
pressure groups readily accessible for consultation by the Minister and not requiring to be drawn out by Select Committee procedure, and partly because it is recognised that the procedure could serve no useful purpose, the matter being too obviously party political. There will be occasions, however, when very partisan Bills are sent to Committee for publicity purposes to demonstrate the support enjoyed by the Bill from reputable outside bodies, or when so many organisations wish to make representations on a Bill that the Select Committee procedure is the politically least offensive and physically most comfortable way out for the Minister (since he can and does absent himself from the proceedings from time to time).67

Ad hoc Committees, like Royal Commissions and Committees of Enquiry, are usually set up to enable the Government to avoid taking action where action is generally acknowledged to be required, or to pave the way to action for which the public has to be prepared. Thus a promise to set up what became the Constitutional Reform Committee of 1952 to investigate proposals for a new upper chamber cushioned the shock of the abolition of the Legislative Council in 1950. It was a sop to National party supporters who wanted some form of Upper House, and it allowed the issue to fall into the background. The Licencing (Recess 1959-60) Committee paved the way for the minor licencing reform introduced in 1960 and those of 1961.

It may be concluded that Select Committees have not been used to derogate seriously from the principle of ministerial responsibility and they perform a variety of useful functions on different occasions, assisting Government in the formulation of legislation and providing expertise in the whole House for its criticism, in informing the public and preparing it for legislation, and in general, 'oiling the wheels' of the system.

In general the rules governing the introduction and progress of legislation, and the use of Select Committees, allow ample opportunity for the Government to secure the passage of its proposed legislation while preserving the right of the Opposition to criticise and demand explanation. In one respect, however, present practice might be improved without alteration of the rules. Though, in England there have been suggestions that the Report Stage be restricted, its moderate use might be encouraged in New Zealand to provide a more satisfactory opportunity for traversing what transpires in Committee than is presently provided by the Third Reading debate. The advantage of the Report stage for this purpose is that it would permit amendments and new clauses to be moved as a preliminary to discussion of the Report as a whole. Debate on Report could be encouraged by observing the provision that it be set down for a future day. Except when a number of changes were made on Report, the Third Reading could follow, by leave or order, immediately, and the time

68 see Hansard Society, Parliamentary Reform 1933-60, (London : Cassell, 1961) pp. 69-70
devoted to it would probably be quite small.

A further improvement, which would involve alteration of the rules would be to permit a Bill, at any stage, to carry over from one session to the next without having to go through all its stages again.

In its deliberative role, discussed in the last five chapters, Parliament requires the Government to justify its demands for powers. In its control, or checking role, it investigates, demands explanations of, and criticises the use made of these powers. The procedures relevant to this control function must now be examined.
In some respects the word 'control' is a misleading word to use in describing the rather loose, supervisory check which Parliament is able to exercise over Government and the bureaucracy in the British Parliamentary system. However, if the apparatus of elections and Parliament is to have any meaning, it must be impossible for a permanent bureaucracy to govern as it will without any reference to the elected assembly. This chapter and the next deal with the processes by which the bureaucracy is held to account through Ministers in Parliament.

The ascendancy of the legislature over the bureaucracy is maintained in two ways in New Zealand. First, Parliament will not (has declared in a statute that it will not,) allow anyone but a Member of Parliament to head a Government department. Thus, a select group of Parliamentarians are in at least nominal control of the bureaucracy. Second, Parliament demands an account from the Parliamentary executive. It does so by means of probes rather than an overall supervision. Roland Young has made this point effectively. He says,

One may distinguish in the parliamentary system two major systems of control, that of the Ministers in the Government over their respective departments and that of Parliament over the Ministers, and it would not be too wide of the mark to say that the principal concern of those who participate in the second system is to make certain that the first system of control is continually effective. The considerable power given to the Ministers rests on the premise that they effectively control the bureaucracy.1

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Another American writer has seen an apparent paradox in 'Americans who seek to increase legislative control over the executive arguing for the system that in Britain has given the executive control over the legislature.'\(^{2}\) What writers in this vein tend to overlook is that Parliament's practical subordinancy is self-imposed, this fact acquiring its greatest significance after elections when a change in the relative strength of the disciplined parties can lead to a change in the executive. Many aspects of British Parliamentary life depend on this possibility, not least the tolerance shown to the Opposition and the patience, official or real, with which the executive submits to the hostile scrutiny of its day to day activities in Parliament. If Oppositions are alternative Governments, Governments must always remember that they are alternative Oppositions. Thus it is less misleading, if comparisons are to be made, to talk of legislature and executive being more independent of, more often at variance with, each other in the United States than in Britain, than to talk of one being more under the control of the other in one of the two countries.

In most cases, political Anglo-philes commenting on the American constitution have been thinking much more of the British system value 'responsibility' than of legislative control over the executive for its own sake.\(^{3}\) However, the 'Kefauver plan' which would

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\(^{3}\) This is true, for example of the American Political Science Review Symposium *Towards a more responsible two-party system* (1950) & H. Hazlett, *A New Constitution Now* (N.Y.: Whittlesey House, 1942)
introduce rules permitting Cabinet members to be questioned in person on the floor of the House or Senate in a period similar to the Question hour in British Parliaments, is something of an exception. It would, according to one of its advocates, improve relations between executive and congress 'by giving each an opportunity to speak to the other officially and frequently' so reducing the 'misunderstanding (which) arises from the lack of communication'. The implications of such a plan for the general character of American government are by no means clear. An analysis of the British Question period certainly does not suggest that its main value is in providing information for legislators and thereby reducing misunderstanding between executive and legislature.

Questions

An analysis of New Zealand and British Question procedure does, however, suggest the purposes such a period is capable of fulfilling though it does not suggest which of these would become paramount in the United States. The absence of disciplined parties, Presidential responsibility, the differences between the sanctions capable of being employed by the United States and British legislatures, would probably produce a very different type of Question period.

In Britain and New Zealand, Question time is primarily important as a device to increase the administrative and political account-

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ability of Ministers. In the British House of Commons it developed in a very different way from Question time in the New Zealand House of Representatives. The difference in the size of the two Parliaments would not appear to be the explanation for one would expect that the small House could afford to pay rather more attention to the rights of the Private Member than the large, but, if anything, New Zealand procedure on Questions, until 1962, was more restrictive than the British. Recent changes in New Zealand Standing Orders have corrected this situation but since some aspects of the former New Zealand procedure have been suggested as possible reforms in the British House of Commons, an account of the older procedure in New Zealand is worthwhile.

British Practice

House of Commons procedure on Questions meets the needs of a large number of Members by cutting out all the unessentials. Notices of Questions therefore are not given orally and even the Question itself is not read out. Notices are handed to the Clerks who see that they conform to the rules and who arrange to have them printed on the Notice Paper. Members write a star against Questions which they wish to be answered orally. This enables a distinction to be drawn between Questions of purely local interest and those with which the whole House is concerned. The practice does not restrict a Member

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for the choice is his. The Notice Paper shows the day on which the question will be asked. On that day the Member rises in his place when called and states the number of the question and the Minister to whom it is addressed. The Minister having answered, the questioner and then other Members are given the opportunity to ask supplementary questions. In practice, the need to phrase arguments and remarks in the form of a question does not inhibit Members unduly though it does prevent the remarks from developing into a speech. There are approximately three supplementaries to every two main questions.

Question time begins shortly after prayers in the afternoon and lasts for not less than 45 minutes. Coming at this time it attracts maximum newspaper publicity and a full House. Questions get more space per page of Hansard than any other class of business.

**Differences Between British and New Zealand practice**

(a) The first difference between British and the old New Zealand practice, was the oral notice of question in New Zealand. The notice, read in full was the first intimation the House had of the content of the proposed question. There had been no previous decision by Mr. Speaker as to the admissibility of the question and the question rarely received an immediate reply. Some Members took advantage of this situation to read questions containing innuendo, argument, propaganda, which they knew full well made the question inadmissible but which they knew would be damaging to the Government merely by having been uttered. Questions which were admissible were often even more damaging since they attracted publicity while the
written reply often did not. Indeed, the delayed reply, in written form, did not often come to the attention of the public at all. A Minister who, for this reason, attempted to secure the leave of the House for an immediate reply might find the questioner and his Honourable Friends refusing him the opportunity.  

(b) The procedure by which Ministerial replies were discussed in the New Zealand Parliament, though at first sight it may appear to have given Members more freedom than the British procedure, was ineffectual by comparison. Considerable interest attaches to it, however, because of its similarity to Lord Eustace Percy's proposals for reform before the House of Commons Select Committee on Procedure 1931.7

Standing Orders required that written replies to Questions be given each Wednesday afternoon, appearing on a Supplementary Order Paper headed 'Questions and Replies'. They were also to be printed in Hansard on that day.8 If the Supplementary Paper was not made available, as sometimes happened, Mr. Speaker passed on to the next business. When Replies were available any Member could move the adjournment of the House to discuss them. In the House of Commons

6 See e.g. N.Z.P.D., 323, (Aug. 16, 1960) 1493
7 Discussed in Chester and Bowring, op. cit., p. 283
8 S.O. 79
supplementary questioning can become fierce cross-examination placing the Minister in a position where he must either give a satisfactory reply or, obviously and embarrassingly, hedge. More often it is less dramatically useful but all who are familiar with it testify to its general efficacy. 'It is', according to one special study of the problem, '... Question time rather than Questions that has attracted attention and praise ... Question time, however, is little or nothing without the right to ask supplementaries.' The New Zealand debate on a Motion for the Adjournment on Wednesday afternoon to discuss written replies was not an adequate alternative. True, it had some advantages over Question time in the House of Commons. There is no doubt that some of the matters which are the subjects of Questions and Replies can be better followed up in a short debate and such matters are often the subjects of the debate on the evening Motion for the Adjournment at the end of public business in the House of Commons in England. The New Zealand debate on Replies occurred in the afternoon on Wednesdays, a much better time from the point of view of newspaper publicity. When the main purpose of a Question had been to state an argument critical of Government policy or a particular action it could give rise to a very good debate on Wednesdays. On other occasions, however, when a Minister had made a vague, evasive reply to a Question, the debate was not as efficient a device for drawing him out or exposing the evasion as is

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9 Chester and Bowring, op. cit., p. 270
the barrage of supplementary Questions directed at a British Minister in similar circumstances. In New Zealand, Members were quite likely not to have a chance to speak more than once during the debate and they had five minutes. Understandably they made speeches, as did the Ministers if they availed themselves of their right to a ten-minute reply. Important points and questions lost their impact in speeches from questioners, and Ministers, in rambling replies, successfully ignored them. In any case, because the debate covered a range of Questions, (sometimes a very wide range because several Wednesdays had been missed, claimed for Government business) not every Minister whose replies were criticised felt obliged to defend himself. Ministers indeed were frequently outside the Chamber when a reply of theirs was being discussed. Precedence given to Government business towards the end of a session usually resulted in some Questions and their Replies not being discussed in one afternoon. Another disadvantage was that Discussion of written Replies ranked tenth in the order of business. Other business, particularly a large number of Committee reports, could cut down the time available.

Importance of Questions and Discussion of Questions

The practice of asking Questions is recent in origin in the British House of Commons, not being substantially developed until after 1832. Coupled with a subsequent adjournment Motion it became one of the most formidable weapons in the hands of the Private Member. The Irish Members used it to ensure the debating of Irish grievances and even when, after 1882, procedure was altered to permit only an 'urgency' Motion for the adjournment at this stage, the
time taken up by Questions was so great that further alterations have had to be made. Question time is now effectively limited to between 45 and 55 minutes on Monday, Tuesday, Wednesday and Thursday. Both in Britain and New Zealand, the ostensible purpose of the Parliamentary Question is to obtain information and press for action. Pressure for action is directed either towards the implementing of some constructive suggestion contained in the Question or correcting an undesirable state of affairs of one kind or another.

An examination of Questions in both countries shows that a minority of those asked seeks information. Then information is the object the motive may be to obtain material for a speech, or for a constituent, or it may be solely to embarrass the Government. As Jennings points out 'Sometimes ... the Member desires less to possess information than to impart it'. 10 In New Zealand, as in Britain, the Question which begins 'Is the Minister aware that ...?' is not uncommon. In New Zealand, a very large number of Questions refer a Minister to newspaper reports, usually reports critical of the Government or alleging some administrative injustice. They ask whether the Minister 'has seen the report' or 'whether his attention has been directed' to it. They ask whether the reports are accurate, 11 or they assume the accuracy of the Report and ask what action is being

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10 Parliament, p. 102
11 see e.g. N.Z.P.D., 321, (Addendum : 1959) 2732 (Aderman)
taken, or they make the Question hypothetical, dependent upon the accuracy of the report. In Britain such Questions would not be accepted. The rule that extracts from newspapers or quotations from speeches are inadmissible as proof of the facts contained in a Question is adhered to strictly. Replies to such Questions in New Zealand suggest that the same practice should be followed here, for such reports are often denied, or are shown to give a false impression. Members are occasionally reminded of their responsibility to see that such reports are quoted accurately and are not distorted by being lifted from their context.

The importance of Question time to the Private Member should be sufficient guarantee against its being abused. Questions have the great advantage of being a Private Member's opportunity, yet of consuming only a short time for each issue. They remove in many cases the necessity for a debate. Most forms of Parliamentary procedure have been brought under the control of the leadership; Questions remain the most personal of all the activities of the House. Question time is capable of becoming the most important market place of the Private Member's ideas as well as being the strongest pressure he can place on a Minister for the redress of a grievance of a constituent or constituents. Question time attracts attention because telling points are made, rapidly and concisely and the Government is being cornered. Only a Minister stands between the irate cit-

\[\text{N.Z.P.D.}, 295, (5\text{th Oct. 1951}), 156\]
izen and the bureaucracy. The Question is ubiquitous. It 'compels the departments to be circumspect in all their actions; it prevents those petty injustices which are so commonly associated with bureaucracies. It compels the administrator to pay attention to the individual grievance.'

A Minister, priming one of his own supporters with a Question, can use his written reply to make a statement of explanation or repudiation of a matter which has attracted public interest, or curiosity, avoiding a long debate on the subject, or he can draw public attention to an achievement bringing credit on himself and the Government. It is even a weapon which a back-bencher of the Government party will use to bring pressure on Government. It would be difficult to overemphasise the significance of Question time in assisting Parliament in its role of watchdog over the Government and administration. With legislative leadership coming from one section of the House, in the form of Government Bills which are rarely modified in any important respect as a result of debate in the full House, Parliament's role as watchdog and ventilator of grievances is as important as any other of its roles. Eric Taylor has said of Questions that

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15 See e.g. "Lobby Letter", The Dominion, (Wellington: 19/11/53). P. 4
'They are one of the most effective methods of control of the executive ever invented.' And Laski, 'The power to ventilate grievance means the power to compel attention to grievance. A Government that is compelled to explain itself under cross-examination will do its best to avoid the grounds of complaint.'

In England, there is beside Question time, the opportunity also to raise matters which do not require legislation on the adjournment of the House at the completion of public business. At least half an hour at the end of each day is available for this purpose. The absence of this procedure under the old rules in the New Zealand Parliament magnified the importance of Question time itself. From this point of view, the use made of the Question in New Zealand and the procedural limitations associated with it could only be deplored.

Comments of one Member confirm this criticism:

Probably no privilege of the House has been more flagrantly abused in recent years than the privilege of asking Questions. The purpose of Questions and Answers in the House is to give to any Member the right to seek information on any matter of public interest. Question time has degenerated into a mere propaganda time. It has been no uncommon spectacle to see batches of Questions already typewritten and prepared handed to Members as they arrive in the House. Questions are so framed as to create suspicion, or to publicise rumour. The last thing the Member wants is information on the Question. He takes the opportunity of utilising the fact that the House is on the air to create an impression rather than to elicit information. If it be an ordinary Question, he knows in any case that while his Question goes over the air, the Minister's reply does not,

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17. Laski, H., op. cit., p. 149
and whereas almost invariably the Question appears in the newspapers, the Answer seldom does.

In my opinion, the whole procedure concerning Questions and Answers requires drastic overhaul in our Parliament. There is a lot to be said for the British system of asking a Question of which notice has been given, the Minister replying immediately to the Question, and Members having the right to ask supplementary Questions arising out of the Ministerial answer. This method would appear to be much more satisfactory than our system in New Zealand, particularly as it has worked out in practice in recent years.\(^{18}\)

These were some of the considerations which led to a change in Question procedure in New Zealand in June 1962, to bring it closer to British practice. A special Select Committee under the chairmanship of Mr. Speaker, having taken evidence and made comparisons between British and New Zealand methods in this field, recommended the changes. In doing so it urged that adoption of British procedure would increase the accountability of Ministers to Parliament, enable the admissibility of Questions to be checked before notice of them appears on the Order Paper and, with the introduction of limited supplementary Questions, would ensure a much more effective means of seeking information or pressuring for ministerial action in relation to public matters for which Ministers are administratively responsible.\(^{19}\)

Revised Standing Orders embody the recommendations of the Committee. Notices of Questions are no longer given orally but handed in writing to the Clerk for inclusion on the Order Paper. Questions for written reply are printed with their replies in Hansard. Replies


\(^{19}\) A.J.H.R. (1962) I.17. p. 8
must be furnished not later than the third sitting day following the inclusion of the Question on the Order Paper. They are not read in the House. Questions for oral answer must be distinguished by an asterisk. Questions are taken after Motions for Leave of absence - that is, seventh in the order of business. After half an hour no further Questions will be taken. Questions for oral answer appear on the list in the order in which they are handed in and, when called, they are read by the Member concerned to the House. After the Minister's reply, supplementary questions may be asked by any Member. Questions not reached by the end of Question time are retained on the Order Paper for the next sitting day and are called on before the Questions already set down for that day.  

The Wednesday discussion of Replies to Questions is abolished but the opportunity it provided to follow up replies in a short debate has been replaced by a debated Motion for the adjournment on Tuesdays and Thursdays at 10 p.m. The Motion is moved by a Minister but the new procedure does not apply when the Address in Reply debate or Financial debate is in progress, when Urgency has been taken or where a Motion for the adjournment to discuss a specific topic has been moved. Members are limited to five minute speeches in the debate.

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20 S.O. (13 June, 1963) 74 (A-I.)
Rules relating to the content of Questions are few and are not unduly restrictive. They are designed to maintain the efficacy of questions rather than to limit them. They must be related to matters for which the Minister or other Member to whom they are addressed is responsible. They must not contain unnecessary factual material, argument imputation, irony or offensive words, nor seek opinions, legal opinions or major policy statements, and they may not refer to matters before the House in the current session or before a Committee or Court or other tribunal. These rules are not applied strictly but are sometimes used against a Member who goes too far in abusing them. Questions do ask for opinions, legal opinions, contain argument, imputation and irony.

A Minister, as in England, may refuse to answer a Question on the grounds of public interest and Ministers do occasionally, though not always without protest, refuse to answer a Question on the grounds that it is not a proper Question, though Standing Orders make such judgements the responsibility of Mr. Speaker.

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21 S.O. 72 & 73
22 S.O. 78
23 N.Z.P.D. 321 (1959 : Addendum)
24 ibid., 2713-4 (Freer)
25 ibid., 2723 (Sim)
26 ibid., 2725 (Johnstone)
27 see May, op. cit., p. 357
28 S.R. 91/1
Urgent Questions

A Member who wishes to ask a Question without Notice on the ground of urgency in the public interest may hand a copy of his proposed Question to the Speaker and to the Minister concerned. If the Speaker accepts it as urgent he states its nature to the House after Questions for Oral answer have been taken and the Member forthwith asks it. The Minister may answer it or ask that it be placed on the Order Paper with other Notices of Question for Oral answer. In practice, a Minister may also ask a Member privately to delay putting his urgent question to give him time to obtain an adequate answer. Ministers demand, in any case, that an urgent Question reach them at least one and a half hours before the House meets for the sitting in which the reply is to be made.

Moderate but not striking success can be claimed for the new procedure for oral answers. The Chester and Bowring study\textsuperscript{30} makes it quite clear that the devastating barrage of supplementaries is a relatively rare occurrence in the House of Commons so that given the short period in which the same weapon has been available to the New Zealand M.P. this only moderate success is not surprising. The number of Questions asked per sitting day has not appreciably been affected: an average of almost seven per Question day in the 3 months after the new procedure started (June 14 to Sept 7, 1962) may be compared with an average of just over 8 in the previous three months (August 31-Dec. 1, 1961). Only 13 of the Questions required written answers in this period under the new procedure. Three extensions of

\textsuperscript{30} \textit{op. cit.}, p. 286
Question time were moved and there were occasional deferments of questions until next sitting day but the clearing of all questions on the Order Paper was generally rapid. By contrast, 133 of the questions and written replies in the previous period of three months were printed as an addendum to Hansard and never discussed, while the remaining 334 were discussed on five Wednesday afternoons in batches of 68, 57, 76, 65 and 68 at a time. Under the new system the number of supplementaries asked ends to equal, approximately, the number of questions in any question period, some questions attracting several supplementaries, others none at all. Mr. Speaker has been somewhat hesitant to limit the number of supplementaries, attempting in practice to secure a limit of three on any question without actually ruling that only three supplementaries will be allowed. This is probably the best policy. As Chester and Bowring point out\textsuperscript{31} the real value of question time is the supplementary. Questions are not just a way of getting information, they have developed into a method of cross-examination of Ministers and as such may require several supplementaries. In the House of Commons there are, on average, three supplementaries for every two main questions, but when the line of questioning is promising, more are allowed.

While supplementaries have been used to make some quite telling debating points the Opposition has not, as yet, really harassed a

\textsuperscript{31}op. cit., p. 282
Minister or caused much embarrassment to the Government. Perhaps the most telling Question and supplementary came when the new procedure first went into operation. An Opposition Member, Edwards, asked the Minister of Education:

Whether it is his considered policy that the pureness of Aryan blood is more important than academic qualifications in a secondary school teacher? (Note - Department of Education Circular Memorandum T62/28 states, "Before considering an appointment boards should be satisfied that the applicant is wholly of European stock.")

Hon W.B. TENNENT (Minister of Education) - Sir, the answer to the question is "No". However, the sentence quoted is open to misunderstanding and a further circular has been sent out to boards stating that the Department of Labour has assured the Department of Education that the entry of teachers of non-European origin is not in fact prohibited and that such cases may be considered by the Department of Labour individually, on their merits.

Mr. Edwards - Is my original question any less correct in that the Department of Education Circular Memorandum T62/37 now states that, for applicants wholly of European stock, boards may proceed in such cases to consider appointments without question, whereas for other people - in other words for people of coloured blood - cases may only be considered on their individual merits: in other words people of coloured blood with a Ph. D. degree have to be questioned whereas people of European stock with a B.A. degree come in without questioning?

Hon. W.B. TENNENT - The answer is that there is no change whatever in the policy which was followed by the Labour Government in its term and which has been followed since. In fact, if I may read the circular which was sent out, and say first of all that this arose through the fact that -

Mr. SPEAKER - Order! The Minister must just answer the question.

Right Hon. Walter Nash - Can the Minister produce any statement issued by a previous Labour Government which contains any such instructions?
Hon. W.B. TENNENT - As far as I know there has been no circular sent out, but we have been following exactly the same policy as was in operation under the Labour Government. This circular was set out because a number of post-primary schools were recruiting teachers on their own accord from the United States. 32

From the point of view of the Government Member the new procedure offers many advantages. The 'feed' Question, though used in the past was not a particularly effective means of drawing attention to some Government achievement or of arranging a Ministerial statement. Written replies attracted little press notice and, if favourable to the Government, were not likely to be singled out by the Opposition in Wednesday debates. The Opposition were unlikely to allow Leave for immediate answers to such questions from Government supporters. Now, Ministers' Answers are heard over the air and attract press notice. Because there is no great pressure on Question time Government Members are not depriving the Opposition of opportunities by making frequent use of it. The proportion of Questions asked by Government Members increased from approximately 1 in 4 in the three months before the new procedure operated, to 1 in 3 in the first two months of its operation, and then, in the subsequent four months to 2 in 3! There was no marked increase in the proportion of obvious 'feed' Questions but in general, Questions from Government Members are not hostile and give the Government more opportunity for self-congratulation. 33 The very political 'feed' Question can be a two-

32 N.Z.P.D. 330, (14 June, 1963), 128
33 see e.g. N.Z.P.D., 330 (14 June, 1962), 134 (Question 18)
edged sword which the Opposition can take up to attack the Government.

There appear to be two other reasons why the number of Government Questions has increased. First, the Labour Opposition has shown little energy or ingenuity in making use of Question time or of the other two new procedures which have accompanied it, the evening Motion for the adjournment and the Members notice of Motion on Wednesday afternoons. Second, two or three Government Members of energy and ability have become persistent questioners because they realise that Question time gains wide publicity for them, their constituents, and for Government policy. The Question shows the Government backbencher in a favourable light even when he is drawing attention to some administrative failing or a weakness in the law. He appears to be challenging his own Government on behalf of his constituents. He can do this because the Government reply will also be broadcast and in most cases will mitigate the unfavourable effect the Question might have had alone. 34

In the House of Commons the pressure on Question time has resulted in the development of the rota system. Questions addressed to the same Minister are grouped together and on each of the four Question days different departments are at the head of the list and in the next most favourable places. Prime Minister's Questions are under a special heading: 'not later than 3.15 p.m.' Six important departments: Foreign Office, Treasury, Colonial Office, Board of Trade,

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34 See e.g. N.Z.P.D., 330 (14 June 1962), 132, Question 13; and N.Z.P. D., 332, (21 Nov. 1962), 2778, Question 4; and ibid., 2781, Question 12.
Ministry of Labour, and Ministry of Agriculture, Fisheries and Food, are among the first six, twice a week. The effect is to provide, still, only limited opportunities to question Ministers other than the 6 who appear twice, but the opportunities are less haphazard. Members are limited to two starred questions a day. One of the undesirable effects of these limitations is that determined questioners put down questions well in advance for days when the Minister concerned heads the list. Their questions are not always the topical ones.

As yet the need for a rota system has not made itself felt in the New Zealand House of Representatives. The list of questions has not been excessive and Ministers of whom questions are to be asked have usually been present in the House with confidence that those questions would be reached. Occasionally Ministers have been away and this has given rise to some discussion of the procedure to be followed in such circumstances. Questioners have suggested that they be allowed to defer their questions until the next sitting day on which the Ministers were present. Mr. Speaker has not permitted this. He has, however, suggested the possibility of deferment by arrangement before question time when it is known that a Minister is to be away, and has pointed out that, alternatively, the question might be reframed for another day so as to avoid repetition of wording.

36 N.Z.P.D., 331, (1 August, 1962), 1133-4
As yet it has not been found necessary to limit the number of
Questions that may be asked on a particular day by any one Member.
In 1962 seven Members of the House, four on the Government side37 and
three in Opposition38 asked most of the Questions but Ministers' rep­
lies have been kept, with a few exceptions, concise, and the need for
limitation on questioners has not arisen. Should it arise in the fu­
ture, a modified form of British procedure might be used. A Member's
first two Questions could be given priority over another Member's.
Third Questions and Questions not reached could be given a written
Answer unless the Member concerned asked to have his Question deferr­
ed. Such deferred Questions should be given procedence over other
starred Questions handed in on the day on which notice of deferment
was given, but be placed below Questions handed in earlier. This
would prevent the Order Paper becoming clogged with deferred Questio­
ns, shutting out Questions of topical interest.

The impact of the new procedure on departments does not appear,
as yet, to be materially different from the impact of the old Questi­
on procedure. No uniform method of dealing with Questions has been
required except that, as soon as Questions handed in have been clear­
ed by Mr. Speaker, the Ministers' Private Secretaries in Parliament
buildings telephone them to the departments,39 in practice, in most

37 Backbenchers Muldoon, Gordon, Grieve and Jalker

38 Backbenchers Kirk, Faulkner, and Blanchfield

39 This and the following information was obtained in interviews with
the various Departmental officers with responsibility for prepara­
ation of Questions.
departments, to the Administration Officer's section. Thereafter, local rules for urgent attention to Questions apply. In one department for example, the drafting of the Reply has been the job of the Administration officer in the first session of the operation of the new procedure. The Reply is returned directly to the Minister's Office. In another the Question is routed by the Administration office to the functional officer concerned and the Reply is signed by the Permanent Head before going to the Minister. In another an Advisory officer who deals also with minor legal matters has the task of collating the information and drafting a reply to be placed on the desk of the Administration Officer. He approves and, in some cases, modifies it, and it goes for signature to the Director. In yet another case, the Minister's Private Secretary telephones Questions directly to the Head of that one of the four main sections of the department which is concerned with the subject matter of the Question.

The impact of questions on departmental policy is difficult to state with any precision. The preventive impact of Questions had been attested by a Senior Civil Servant but the direct effect of individual Questions on policy appears to be small. The Question by Mr.

40 Tourist and Publicity Department
41 Department of Internal Affairs
42 Education Department
43 Customs Department
Edwards to which reference has already been made did not result in the new instruction being withdrawn. The amendment to the circular was considered to have met the objections voiced in the Press which appeared shortly after it was first sent out to school boards. Though Mr. Edwards was not satisfied with the amended circular he made no attempt to follow the matter up because he left the country for some time. Many Questions which are not requests for information or for elucidation of policy or amplifications of Ministerial statements but do demand a course of action are either pork-barrel demands which draw replies indicating existing target dates for a Works project, or are hostile questions demanding a change of policy, which produce replies defending existing policies. However, a minority of Questions though they may be of special interest in the constituency of the questioner do raise more general principles. Even Questions of this kind rarely have to direct impact on policy. Thus, an urgent Question relating to the use of foreign timbers on a hotel which was being built by the Tourist Hotel Board produced the answer that consideration was already being given to the use of local 'rimu' rather than the cedar weatherboarding called for in the architect's specifications. Since the Question was in the Minister's hands for some days before it was asked on the 13th December, 1962, there was some reason to suppose that the Question had produced the reconsideration. In fact, it was already being considered by the architects.45

45 Information supplied to the author by the Administration officer, Tourist Department, in an interview.
A Question asked on July 11, 1962, by Mr. Freer, an Auckland Member (the Wine-making district) about the possibility of allowing New Zealand wine producers to market their own brandy, elicited the reply that the Minister would consider applications which were accompanied by details of quality and costing. Mr. Freer later asked whether there had been any applications and was told that some had been received but a request for costing details had not so far been met by the applicants. The Questions he asked, thus, had the effect of producing a statement of policy which has given producers a basis on which to plan for development. However, a private enquiry to the Minister would almost certainly have been met with the same answer, and applications with the same consideration.

That Questions could have a direct impact on policy is, nevertheless, clear. Chester and Bowring give a number of examples from British practice. Departmental delays have been overcome, successful campaigns have been waged, by persistent questioning, to change Government policy and, in a notable instance, a Board under the Ministry of Fuel and Power was successfully prosecuted on the basis of information elicited by questioning. The cases in which a Question does have direct impact are difficult to establish because normally a Ministerial reply will not be framed in a way which admits a failing in the department. Thus many Questions which invite a Minister to cons-

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46 N.Z.P.D. 330, (11 July 1962) 805
47 N.Z.P.D. 333, (30 Nov. 1962), 3000
48 op. cit., pp. 203-4, 213.
ider some possibility or a way of doing something or which draw attention to a grievance, elicit the reply that the matter is already being considered, or the Department intends to do just that, or that the grievance has already been met. Instances in which the Question is directly and obviously successful in New Zealand are therefore isolated and tend to be on relatively minor points. What need not be doubted is that Questions calculated to affect policy will, in a not particularly obvious or ascertainable way, affect policy from time to time by bringing a matter to the attention of senior officers in the department.

Questions in New Zealand are a method of last resort in pressing for action. An approach to the Minister or a letter to the department is the best advised method. Questions tend to put departments and Ministers on the defensive and can be employed when this personal approach fails.

The value of Question time than as a check on the administration is mainly preventive. Its other principal attributes are its utility in publicising grievances, in eliciting short statements of policy from a Minister on which he may be cross-examined, and in affording opportunities to the backbencher to take the initiative. Its adaptability to American conditions is very uncertain as is the effect this procedure might have on Presidential stature, the President's relationship with his cabinet officers, and his relationship with Congress. Through the Press conference, and through Congressional hearings

some of the virtues of Question time are obtained already in a way which has not profoundly affected the distribution of power between the branches. The virtue of Question time is the day to day accountability it achieves and hence, its preventive quality. Congressional hearings are probably better suited to the probe in depth where there are grounds for suspicion of the administration. Because they are independent of Governments they are potentially superior in this respect to the British or New Zealand Select Committee hearing.

Two changes in procedure consequent upon the change in Question time are the introduction of the evening Motion for the adjournment with debate on certain days and the Wednesday discussion of Private Members' Motions. The first of these is analogous to the British House of Commons Motion for the adjournment at the end of public business each day. In its report the Algie Committee draws attention to the opportunity this affords to the Private Member to raise special matters and to deal with unsatisfactory replies to Questions. The New Zealand procedure is intended to fulfil a similar purpose. In Britain, competition for the privilege of selecting the matter for the adjournment is keen. Members give written notice of their adjournment Motions and there is a ballot each fortnight for eight Members, one for each of the two Mondays, Tuesdays, Wednesdays and Fridays. Unlucky Members must formally renew their requests. Lucky Members must wait a fortnight before submitting a new Motion. On Thursdays Mr. Speaker selects Member and Motion. The normal pattern is for the

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50 op. cit., p. 18
Member to speak for 15 minutes and for the Minister to speak for 15 minutes in reply. A majority of the issues raised are concerned with constituencies or persons. The procedure has been highly praised by experienced Members51 but it must be acknowledged that it is listened to by a tired and often rather small House.

The new Standing Order52 adopted by the New Zealand House of Representatives provides that, unless otherwise ordered, business is to be interrupted at 10 p.m. on Tuesdays and Thursdays and a Minister is to move the adjournment. The Question is open to debate in which any matter may be raised. The procedure does not operate automatically during the Address-in-Reply debate, the Financial debate, when urgency has been taken or when a substantive Motion for the adjournment has been moved. If the time for the termination of a sitting has been extended to a fixed hour after 10.30 then business is interrupted 30 minutes prior to that fixed hour. The Leader of the House has discretion to move the Motion on any sitting day, whether or not the specified limitations obtain.

Since speeches are limited to five minutes the choice facing the Opposition is to allow each of their speakers complete freedom to raise any issue and take it as far as he can in that time or to have all speakers concentrate on some subject as the British procedure

51 see Herbert Morrison's remarks, quoted Chester & Bowring, op. cit., p. 206
52 S.O. (13 June, 1962) 39A
allows the Member who has the floor to do. Not surprisingly the latter course has been preferred. In contrast with British practice most of the matters raised are general political rather than local or personal. There were 21 such debates during the 1962 session - a substantial opportunity for the Opposition. The Prime Minister indicated on the first occasion that in the previous week he had twice offered to move the adjournment but had been refused.53 The discretion given him to waive the exceptions to the new rule during the Address-in-Reply and Budget debates was used on several occasions.

A study of the subjects and the content of these debates raises some interesting questions about the relationship between procedures and the efficiency of Parliament in different aspects of its role. If relevancy, pithiness, and absence of repetition are standards by which discussion in the House may be judged then it is better in Committee on a Bill or on the Estimates than on Second Reading of a Bill, the Address-in-Reply, or the Budget.54 In general, the House appears in a better light in a discussion of means rather than ends, on details of policy rather than on broad principles.

Debate on principles is not avoided. There are many general debates but they are conducted in a language rich with undefined, scarcely definable words and phrases like 'working people of this country', 'freedom', 'controls', 'democratic right', 'free enterprise'.

53 N.Z.P.D., 330, (19 June, 1962), 259
54 These standards, however, are subject to qualification when the House is considered in its representative role.
The quality of Parliamentary debate on principles is explained, to a considerable extent by the absence of any fundamental difference in outlook between the parties. The British system itself does tend to bring opposing parties closer together in order to obtain majorities. The relative homogeneity of New Zealand society works in the same direction. The business of obtaining electoral majorities places something of a premium on avoiding antagonising any group directly by a policy. The shape of legislation placed before the House is determined, therefore, not so much by party principles as by negotiation with various interested bodies outside the House and by estimation of public opinion. It is an amalgamation of interests. The mark of the successful Member is his ability to convince the political extremists who may be a significant part of the constituency organisation to which he belongs that the Parliamentary party is paying more than lip service to party principles by the measures it introduces when in office and by the stand it takes when in Opposition. In the House, in England and New Zealand, both parties habitually evade really probing discussion of important topics. In spite of this the similarity between the parties is not itself a priori undesirable or unhealthy.

55 see e.g. N.Z.P.D., 332, (11 Oct. 1962) 2041; and cf. ibid., (16 May, 1962), 510, 'I am informed ... that when this group of importers approached the Minister separately they were told in effect ... to go away and form an association ... I am wondering whether the Minister wanted a pressure group to yield to, as he has yielded in other fields before.'

56 Utley has suggested that ideological differences constitute a positive barrier to effective opposition. See his 'The Function of Parliamentary Opposition' The Listener (U.K.) (Sept. 13, 1951). XLVI, 403-405
There are, however, side effects which tend to reduce the extent to which responsibility is achieved by the system. One of these, in New Zealand, is the considerable use made of the devise for shedding party responsibility by declaring a subject a matter of conscience 'above party politics'. Liquor licencing, religion and religious education, capital punishment, are subjects in this category for one or both the parties. Considered as educator of public opinion the House performs well on such subjects however, and they add to its prestige. Another, having its effect on debate, is that, since, when in office, the parties pursue very similar policies to their predecessors, Oppositions cannot afford to attack or even question with any real verve a policy which the Government can demonstrate was initiated by the Opposition, even when it appears faulty. It is quite customary for the Government to make use of the predicament in which the Opposition finds itself, taunting it to declare its alternative policy. The Opposition returns in kind with criticism of the Government for merely following its (the Opposition's) policies. Another tendency in these conditions is to make mountains out of molehills of disagreement.57

Against these tendencies procedural rules may provide something of a buttress, forcing the Opposition, reluctantly, to oppose, by giving them opportunities which they cannot afford to seem to ignore, or which limit the possibilities of being hoist with their own petard.

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57 see e.g. N.Z.P.D., 332, (11 Oct. 1962) p. 2041
From this point of view question time is very well designed, though as the reply to the Edwards question quoted above shows, it does not afford perfect protection. The debate on the Motion for the adjournment on the other hand is an opportunity fraught with these perils. They were not always avoided in the 1962 session. Personal grievances were not raised and there were only three subjects of mainly local interest. As has already been noticed the effect of the 5 minute rule on speeches is to make it necessary for the Opposition to find a rather general subject to which a number of speakers can make a contribution. The subjects were:-

Roading expenditure58 (arising out of a Question asked by a Government Member - although the subject was chosen by the Opposition.)

West Coast Development Projects59 (arising out of a Minister's speech in the area alleging that a former Labour minister was wrong to call Government promises for the area 'political trickery').

Common Market Negotiations60 (attempting to get Government to comment on British cabinet changes as they affected the Common Market and wisecracking about the possibility of the New Zealand Government following suit).

59 ibid., 330, (26 June, 1962) 444
60 ibid., 331, (26 July, 1962), 1080
Various\textsuperscript{61} The Minister moving the adjournment, on the ground that Labour's choices of subject were 'puerile', kept the floor and introduced the subject of Air Services and allegations of use of influence for personal advantage made against him as Minister of Civil Aviation. The Opposition ignored his remarks except to deplore his use of the adjournment for them and proceeded to discuss the allocations of "Kiwi" Lottery Profits.

Aircraft Accidents\textsuperscript{62} (arising out of a Question).

Various\textsuperscript{63} the opening speaker for the Opposition dealt with increased Import Licences for Crockery, the second speaker for the Opposition turned from that to Increases in Prices with substantial quotation from a Wellington newspaper article. The final speaker for the Opposition dealt briefly with the former and at length with the latter.

Interest rates\textsuperscript{64} (arising out of a newspaper article. Also the subject of a Question).

Various\textsuperscript{65} Interest rates, price of recently sold naval vessel, (criticism of two Answers to Questions).

Oil Refinery Shares\textsuperscript{66} (unsatisfactory Answer to Question).

\textsuperscript{61}N.Z.P.D., (2 Aug. 1962), 1213
\textsuperscript{62}ibid., (9 Aug. 1962), 1358
\textsuperscript{63}ibid., (16 Aug. 1962), 1510
\textsuperscript{64}ibid., (4 Sept. 1962), 1843
\textsuperscript{65}ibid., 332, (16 Oct. 1962), 2103
\textsuperscript{66}ibid., (18 Oct. 1962), 2179
An attack on the Minister of Labour's Speech at the I.L.O. Conference.

Teacher Shortage (arising out of a Question).

National Party Policy and the Government record

Wage Levels (arising out of a Question); on this occasion the Minister of Finance attempted to change the subject and made a speech about the public accounts. The Opposition refused to discuss it.

Suburban Rail Fares Increase (follow up on Question on anticipated revenue.) Again attempts to change the subject were made.

Transport Legislation - reference to Select Committees chosen by Government mover - debated shortly, (the House had just been discussing the same point on Second Reading of Transport Bill). Opposition returned then to railway rates as on previous adjournment Motion.

Overseas Borrowing by Local Bodies (arising out of Question)

Cost of Living

Medical Practitioners' Fees

Addington Racecourse Fire

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68 ibid., (30 Oct. 1962), 2403
69 ibid., (1 Nov. 1962), 2420
70 ibid., (6 Nov. 1962), 2475
71 ibid., (8 Nov. 1962), 2553
72 ibid., (13 Nov. 1962), 2624
73 ibid., (20 Nov. 1962), 2772
74 ibid., 333 (22 Nov. 1962) 2881
75 ibid., (27 Nov. 1962), 2973
76 ibid., (4 Dec. 1962), 3097
Coal Mining Industry

Lottery Funds - Druga (Free list) - Electricity for Industry.

Apart from the three local matters, none of which was of purely local interest, the subjects chosen raised questions of practical expediency or were in the general political category. The better debates were on questions of expediency. The debate on aircraft accidents was a well-planned attack on the Government on principles of safety regulation raised by accidents of recent occurrence. It had been proceeded by a Question. The debate did, however, illustrate the perils of Opposition, since the Government attempted to show that there had been similar laxity under the previous Minister of Civil Aviation, the Opposition Member who opened the debate. The debates on suburban rail fares, on overseas borrowing by local bodies, on the price obtained for a recently sold naval vessel were also effective.

Debates on more general subjects were almost all poor. The worst was probably that on the subject which had been of most political importance in 1962, Common Market Negotiations.

Even though the new procedure has been in operation only a short time the deficiencies are fairly clear and just as clearly, from British example, the way to improve it is to increase the time limit on speeches to 15 minutes so as to make it an opportunity for the Private Member.

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77 N.R.P.D., 333 (6 Dec. 1962), 3227
78 ibid., (11 Dec. 1962), 3310
The Algie Committee recommended that if changes in Question procedure were made, the new Question period should be followed on Wednesday afternoons until 5.30 p.m. by discussion of Private Members' Motions other than Motions for returns. According to the Committee, this 'would enable the Private Member to discuss a wide variety of topics of current, local or national importance.' The Motions would be carried, defeated, amended, talked out, or withdrawn depending on the attitude of the Government towards them. Previous provision for Private Members' Motions was inadequate.

Though this recommendation did not involve any change in Standing Orders it has been implemented in practice. The substantive Motions considered during the 1962 main session were:

1. To urge amending Hire Purchase Regulations to make purchasers aware of the annual rate of interest during the currency of their agreement.
2. To deplore the termination of an agreement to build a Cotton Mill.
3. To call on the Government to re-establish New Zealand's prestige for overseas capital investment in the country.
4. To commend the Government on its overseas trade policy.
5. To approve airlines policy (withdrawn).
6. To deplore increases in State House rentals and other charges.
7. To call for restoration of Ministerial responsibility for broadcasting.

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79 A.J.H.R., (1962) I. 17, p. 18
80 N.Z.P.D., 330, (22 June 1962), 373-399
81 ibid., (27 June 1962), 453-473
82 ibid., (25 July 1962), 989-1010
8. Deploring non-gazetting of electoral districts (withdrawn)
9. To express alarm at Educational policy.\(^{83}\)
10. To deplore interference with public corporations by Ministers.\(^{84}\)
11. To request Government to encourage South Island industry by development of electric power.\(^{85}\)
12. To disapprove cessation of work on a Hydro-electricity project (withdrawn)
13. To deplore continuation of nuclear tests and call on Government to seek their general termination.\(^{86}\)

These Motions raise general matters similar to those on the evening Motion for the adjournment. They have a slightly different character because they are subject to a 20 minute time limit on speeches and because the terms of the Motions set limits to what may be discussed.

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\(^{83}\) N.Z.P.D., 331, (1 August 1962), 1133-1156
\(^{84}\) ibid., (8 August 1962), 1269-1290
\(^{85}\) ibid., 332, (17 October 1962), 2114-2133
\(^{86}\) ibid., (24 October 1962), 2299-2305
This chapter continues the examination of the Parliamentary procedures for 'controlling' or 'checking' the bureaucracy.

**Petitions.**

In Britain, the right to petition the Queen in Parliament had its principal value in early times in effecting redress of grievances for which there was no remedy at law. Petitions were concerned mainly with personal affairs such as wrongful imprisonment or disputes about land tenure. They sought judicial remedies. The modern form of petition which developed in the seventeenth century deals more with public rather than individual grievances and is likely to seek a change in the general law. It is not, in Britain, a very effective method of obtaining a remedy for some grievance. According to Jennings 'under the modern procedure the right of petitioning is of no use whatever.'¹ Some small advantage to an interested party may be gained in mollifying public opinion by formal presentation of a petition which enables a brief statement about the substance of the petition to be made in the House by the Member presenting it, but all petitions whether presented formally with a statement or informally without a statement are placed in a green bag behind the Speaker's Chair. They are not debated.

¹ *Parliament*, p.26

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(except when Mr. Speaker rules that they deal with some personal grievance calling for immediate remedy,) but referred to the Committee on Public Petitions. The Committee's reports appear at intervals during the session listing the petitions and indicating their subject. On some occasions the petition is printed in full. For all practical purposes, however, when the petition goes to the Committee it is 'decently interred'.

New Zealand practice is in some contrast with this. The power of the House of Commons to deal with petitions was assumed by the New Zealand Parliament in the Privilege Act of 1865. It is often used. There were, for example, 27 petitions presented in the 1960 session. The prayers, many of which were personal, were for relief, redress, compensation and for the initiation of public legislation. All petitions are accorded consideration in Select Committee and are twice brought to the attention of the whole House, on one of these two occasions being open to debate.

They may be presented only by a Member (though a Member may not present a petition for himself). The Member must peruse the petition to see that it is in the proper form, legibly written, ended with a Prayer for action, signed by at least one person and couched in decorous language. The Member's statement on presenting

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2 Jennings, Parliament, p.98.

3 S.O. 374
the petition is restricted to a summary of the prayer and brief indication of the parties concerned and the number of signatories. The petition is brought to the Table, no discussion being allowed. The Clerk of the House, after ensuring that it is in order, classifies it and passes it to the appropriate Committee.

Petitions are classified alphabetically according to the name of the first signatory. There are two Select Committees for Public Petitions who receive A-L and M-Z respectively. Petitions from Maoris normally go to the Maori Affairs Committee. If a petition is concerned with one of the subjects on which there are Select Committees it may be referred to the Committee concerned or a petition received in connection with a Bill or Notice of Motion will be referred to the Committee (if any) considering that Bill or Motion. The Committees will hear and sometimes invite evidence from interested parties and the petitioners are allowed to elaborate their argument and produce supporting documents. Evidence is not normally given under oath, though it occasionally is, at the request of one of the parties.

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4 S.O. 375 - 377

Some petitions contain a request for a public hearing. This procedure requires the consent of the House and, if given, admits the Press and members of the public to the Committee Rooms during the taking of evidence and questioning. The request is brought to the House by the Committee embodied in a special report recommending the public hearing. This procedure adds considerably to the value of petitions as a means of mobilising opinion.

When petitions have received their, sometimes quite lengthy, consideration in Committee the Chairman reports to the House with its recommendations at the time appointed for Reports of Select Committees. A somewhat lengthy debate often ensues with representatives of both sides of the House on the Committee making their position clear and other interested Members putting forward their points of view. The Motion before the House at this point is 'that the report do lie upon the Table.' Various additions to this Motion indicate the Committee's judgment on the case. There may be a recommendation to refer the report to the Government or to refer it to the Government for favourable, or most unfavourable consideration.

Petitions not dealt with in one session are held over until the next, when, on Motion, they are referred back to the Committees.

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6 See e.g., Journals (10 Aug., 1960), p. 146
A former Clerk of the House commenting on petitions procedure has said:

It is anomalous, perhaps, that time, very often a great deal of time, should be given to the consideration of a purely personal matter which often has been previously considered by a Court or other properly constituted tribunal, or has received examination in the light of discretionary powers given to an official to grant relief. The increasing demands on the time of Parliament (and of Select Committees) in respect of important matters of legislation and administration would suggest some change in the present practice.7

Recent legislation creating the office of Ombudsman may well reduce the number of petitions of a personal kind presented to Parliament and so lessen the time it spends in dealing with them. The House has already referred one petition of this kind to the Ombudsman. In any case, the time devoted to consideration of general problems of legislation and administration has probably been excessive and has been reduced since Hall wrote by the reduction of time limits on speeches in all debates in the changes of 1962.

7 T.D.H. Hall, op.cit.,9 (2), p.4

Petitions fulfil a useful purpose in New Zealand if only in affording a means for minorities, including minorities which have no large scale permanent organisation, to bring their case or views before Parliament and public and, in giving them and aggrieved individuals the satisfaction of having their case heard, even though the prayer of the petition be not granted. Reference has already been made to the tendency for the political parties to draw closer together under the existing system. In the circumstances some issues of interest only to certain minority groups might not be discussed at all were it not for petition procedure. Such issues as a written constitution for New Zealand, the chemical treatment of water supplies, the use of poisons in animal control, have been raised in this way. It can be argued that this affords a valuable safety valve in a system which generally sacrifices representation to responsibility. Of the more personal petitions, which are in the majority, examination of petitions in any year shows that many are of the kind that could not be satisfactorily treated by the Courts. Some of those appealing against treatment by a department may in future be drawn to the attention of the Ombudsman rather than Parliament itself but others, affecting whole communities, are outside his jurisdiction. Thus, petitions for the retention of Rawhiti Maternity Hospital, for the retention of a highway, for the prohibition of netting of fish in the Tauranga Harbour, were of this kind.  

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9 *Journals* (1960), pp. 421-423
Many petitions from Maoris affecting fishing, hunting, access and land claims and disputes, which are heard by the Maori Affairs Committee require Government action and whilst the Government could obtain recommendations to this effect from a specially created tribunal or from an Ombudsman the Parliamentary Select Committee has many advantages. Its informality is a help to hesitant petitioners and witnesses and such people are less in awe because they are conscious that they are dealing with their elected representatives. The recommendations of the Committees are made to Government with some vigour and in public. Thus, though petitions procedure is not indispensable and though some petitions do waste Parliamentary time, particularly through re-submission of petitions that have been considered and not recommended for any action in previous Parliaments, the procedure does constitute a valuable addition to the resources open to the private citizen to have his view or claim publicly heard.

10 see for example, Petition of C.H.Thompson, N.Z.P.D., 331, (31 August,1962), 1795 - 1804.

11 H.McDonald's petition, (op.cit.,) was being presented for the eighth time since 1953.
The direct effect of petitions in obtaining action is less satisfactory. After a Committee Report has been made and debated and ordered to lie upon the Table, it is sent by the Clerk of the House to the Government department concerned. Comments having been added by departmental officers, the file is sent up to the Minister, who hands it to a Cabinet sub-Committee on petitions. A most favourable recommendation from the Committee does not ensure that action will be taken on the plea of the petitioner nor does an unfavourable report rule out the possibility that the Cabinet sub-Committee will take a different view. There have been complaints in the House by Committee members that their recommendations are largely ignored by Government and there have been notable cases in which Petitions Committees in several Parliaments have recommended favourable consideration, without results. The Committees, evidently, play a secondary role in determining whether action will be taken. It is worth noting that Government departments, who may appear before a Committee to give evidence against a petition, are in a position to offer a rebuttal of the Committee's case before the Cabinet sub-Committee considers it. However, there is a

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12 see N.Z.P.D., 324, (31 Aug. 1960), 1950-57; see Mr.King's remarks on this ibid., 1957; and see Mr.Algie's remarks on weight being placed too heavily by Committees on department's view, ibid., (7 Sept.1960), 2108.
sufficient proportion of petitions which is acted upon to give at least partial satisfaction to the petitioner, to make the procedure valuable in this respect also.

**Returns, Parliamentary Papers and Control of Delegated Legislation.**

A way in which the Opposition can maintain its check on Government activity is by moving for and obtaining a Return, that is, a Government paper giving certain information such as, for example, unemployment figures in a particular area.

In New Zealand, the term Parliamentary Papers is generally understood to mean any account, paper, Return, statement or other document laid upon the Table 'at the time appointed by Standing Order 64 for "Presentation of Papers". Papers are presented by individuals or bodies outside Parliament by Order of the House, or by Statute or by command of the Governor-General. In Britain the term also includes those papers issued by the House itself connected with its own proceedings, such as the Blue Paper or Vote, the Order Book, Periodical Papers, Public Bills, etc.

Returns, papers or correspondence which a Private Member wishes to be laid on the Table or furnished to the House can only be obtained by a Motion to that effect carried in the House, after

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13 **S.O. 85**
due notice. Motions for Returns are placed with other Notices of Motion on the Order Paper. When Mr. Speaker calls for Unopposed Motions for Returns, one of the classes of business for which special provision is made in S.O. 64, a Minister, usually the Leader of the House, rises and indicates the numbers of the Notices on the Order Paper which will not be opposed, if any. The Member who proposed the unopposed Motion is then called upon and he rises and says 'I move accordingly'. Unless six Members stand up in their places to signify that it is opposed, Mr. Speaker then puts the Motion to the House. It does not require a seconder and there is no debate.\footnote{\footnotemark{14}}

The desirability of retaining the right to the unofficial objection to such Returns (i.e., by six Members) is that it represents some safeguard against the use of this particular procedure by a majority party to discredit a previous administration for party propaganda purposes. A Government could, of course, bring such a Motion forward with other Motions but it would then be subject to debate. There is no instance of this manoeuvre ever having been used.

Under today's disciplined system the success of a Motion for a Return against Government opposition is inconceivable. The only expedients to which recourse may be had are (1) where possible, a

\footnote{\footnotemark{14} S.O. 86, 87, 88}
Question eliciting an item of the Return (2) a question asking the Government's reason for opposing the Return. Such a question would not be regarded as anticipating an Order of the Day. It has the status of a question relating to the business of the House. The Motion for a Return, itself, is no longer a very important method of obtaining information because of the very large number of papers presented to the House for other reasons.

Presentation of papers is a separate class of business under S.O. 64. When it is called, Ministers rise and indicate the title of the paper they wish to lay upon the Table and the authority for doing so (Statute, Order of the House, or Command of His Excellency) or, where there is no prior authority, they move that the paper 'do lie upon the Table.' No debate is allowed in either case. In the case of important papers a Motion that they be printed will be moved by the Minister and the question is put without amendment or debate. After presentation the Clerk receives the papers, classifies them, arranges printing where necessary and has them returned to the Table of the House where they are available to Members for

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15 see S.R. 196/4

16 S.O. 85 (b)
perusal during the current session.

The bulk of papers now flow spontaneously from the departments. Some papers are presented in compliance with Statutes, others, Command Papers, cover all the more important documents which the Government and the departments wish to lay upon the Table on their own initiative. A Minister may move, without Notice, for a Return from his department and present it immediately the Motion is passed. A list of the papers required annually by Law or Order of the House is available to Members, pursuant to an Order of the House of August 18, 1893. The list is in Parliamentary Papers H.13, presented at the beginning of each Parliament. However, no duty is laid on anyone to see that Returns ordered or papers due are actually supplied.

The most important of the papers presented, whether pursuant to Act or by Order of the House, are the Public Accounts and Estimates, the reports and accounts of institutions like the Reserve Bank, the Bank of New Zealand, public corporations, local bodies and insurance companies, Orders-in-Council and regulations made under delegated powers and departmental Reports. Occasionally, Ministerial statements in the House are ordered to be laid on the Table and are then considered as papers.

Not all of these papers will be in print and the House will order the printing of the more important ones. Papers like
the Public Accounts and Estimates and Departmental Reports are printed, as far as possible, before Parliament meets (after having been allotted a subject identification letter and a serial number by the Clerk of the House) so as not to place too great a strain on the Government Printing Office during the session. Issue, or the disclosure of the contents of such papers before they have been presented to the House and its order to print has been given, is regarded as a breach of privilege.

When the order to print has been given, papers are on sale to the public and there is also a small, free, distribution of copies to each Member. Printed papers are bound at the end of each session under their identification letters as Appendices to the Journals of the House. There is an annual and cumulative index. The laying of papers on the Table by command, by leave, or by Act, is recorded in the Minutes, but a document quoted from by a Minister and laid on the Table without having required an order of the House to be so laid on, does not require a Minute to be made by the Clerk of the House. The document is in the custody of the Clerk and any Member may see it. 17

17 S.R. 51/4
When papers have been laid upon the Table they must be placed on the Order Paper for the next sitting day, and thereafter, under the heading 'Papers for Consideration', unless they are referred to a Committee or some other specific arrangement is provided for dealing with them. Papers removed from or not included in the List for such a reason are noted below the List for the next sitting day only after they have been acted upon. 18

When the time for 'Papers for Consideration' is reached, under S.O. 64, Mr. Speaker calls the number and title of each paper in order and debate can take place on a Motion by any Member that the paper be referred to the Government for consideration or some other relevant Motion. Speeches to the Motion are limited to 10 minutes. Amendments, for the purposes of debate, are deemed to involve consideration and decision of the Main Question. 19 If the debate is interrupted, the Motion is set down for further consideration after all other notices of Motion on the Order Paper, the effect being that it does not come up again unless the Government brings it forward. 1f,

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18  S.O. 85 (e)
19  S.O. 85 (f)
when a paper is called, no Motion is made, it is dropped from the List.

This class of business plays only a minor role in the present proceedings of the House. Almost invariably the Leader of the House asks leave for it to be postponed until after Orders of the Day, thus eliminating it altogether. In spite of the fact that Orders-in-Council, rules, and regulations made under delegated legislation are among the papers presented, leave is almost always given to postpone their consideration. It is notable that during the Fourth Session of the Thirty-second Parliament, the Opposition wanted to discuss the Report of the Controller and Auditor-General, having been refused a Motion for the adjournment to discuss it as a matter of urgent public importance, and subsequently they wanted to delay the passing of the Police Offences Amendment Act. Papers were not considered between the 13th of July when the Address-in-Reply finished and the 21st of July when the Budget debate began, nor between the 16th and 23rd August (between the end of the Budget debate and the beginning of Urgency for Government business). During those periods it would have been within the

\[20\] see Schedule of Accounts and Papers laid upon the Table during Session printed at the end of the *Journal* each year, e.g., (1960), pp. 444-453.
\[21\] *N.Z.P.D.*, 322, (30 June, 1960), 152-162
power of the Opposition to refuse leave to postpone
'Consideration of Papers' forcing the Government to move
for an Order of the House for this purpose. They did not do
so.

This brings out two disadvantages of the use of this
class of business from the point of view of the Opposition.
First, issues raised in papers which they wish to discuss may
have become 'stale' by the time consideration can be obtained.
Second, its use for purposes of delay is usually limited by the
desire to prolong rather than altogether prevent discussion
of some objectionable Bill. Thus between the 16th and 23rd
August the Opposition wanted to discuss the Police Offences
Amendment Act as well as delay it. Most matters which the
Opposition wishes to discuss, appearing in papers, particularly
in Departmental Reports, can be taken up during the debates
on the Estimates, or they can be made the subject of a Question
or a Private Member's Motion.

It is occasionally useful to the Government, when its
legislative programme is not fully prepared, to stage a discuss-
ion on papers but it seldom arouses much interest. Hall
comments:

The list of papers is now usually gone
through, not for the purpose of discussion
but, at the urgent request of the Govern-
ment Printer, for the releases of the lead
used in the list of titles. 22

22 Hall, op.cit.,9, p.42 and see e.g.,Journals,1960, 216/2
If there is a request for the retention of any item on the List for discussion later, it is retained; if not it is dropped.

There are other procedures, though, for consideration of papers. A Committee was set up in 1961 with power to sit during the Christmas recess to consider, under the Chairmanship of Mr. Speaker Algie, the desirability of introducing an effective form of Parliamentary control of delegated legislation, which forms a large part of the subject matter of papers laid before the House. Many Statutes which delegate powers to make legislation require that subsequent statutory confirmation of regulations be made but there remains a large body of regulations not required to be incorporated in a Bill. The Committee was required to review the schemes operating elsewhere in the Commonwealth and make recommendations.

The Committee's work was considerably assisted by the fact that a Select Committee of the House of Commons had examined the same Question and had reported in 1953. Though the Parliamentary Select Committee with power to examine delegated legislation and report to the parent House is the device which has been adopted in England and in Australia, the Algie Committee considered this neither necessary nor desirable in New

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23 see Journals 1961, (29, June.)
Zealand. It thought this work 'was already being satisfactorily performed by the new Drafting Staff and by an Advisory Officer on the staff of the Justice Department,' and 'no evidence of abuses had been adduced to justify the adoption of such a system...'.

Since 1961 it has been the practice in enabling acts to use the following standard form of enabling clauses:

The Governor-General may, from time to time, by Order in-Council, make regulations for all or any of the following purposes:

(a) (Paragraphs specifying purposes with as much particularity and precision as possible.)

etc.

All regulations at present are drafted in the Law Drafting Office which is staffed by qualified lawyers. Copies of regulations are sent to the Attorney-General for reference to an Officer of the Department of Justice (a lawyer), who scrutinises them and reports on any which would unnecessarily restrict the liberty of the subject.

The Algie Committee, nevertheless, did not suggest that Parliamentary scrutiny was unnecessary. It saw virtue in having the regulations available to the House for debate and for the

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publicity thereby given to them in the country. It recom-
mended, therefore, that in future all regulations be laid on
the Table of the House and that the Statutes Revision Committee
should be given the task of supervising such delegated legis-
lation as may be referred to it by Parliament. Its Chairman

should be given power to call it together
during recess to examine some particular piece
of delegated legislation if and when asked to
do so by an individual Member of the House.
The Chairman should be under an obligation do
so if and when called upon to act by a req-
uisition signed by at least five Members of
Parliament. 26

It recommended further that the Committee should be established
by Standing Order.

It did not mention, however, that the Statutory Instruments
Committee of the House of Commons has, by convention, an Oppo-
sition Chairman, or recommend that an Opposition Chairman be
chosen.

All recommendations of the Committee were adopted by the
House on 21 June 1962 after a very short debate. 27

26 A.J.H.R. (1962), I.18, p.11
The Committee can consider all Bills referred to it by the House and if any five Members rise in support of a Motion to refer a regulation to the Committee the Question is to be decided without amendment or debate. During recess or adjournment any five Members may request that the Chairman (or in his absence the Clerk of the House) summon the Committee to consider a regulation. During recess or adjournment the Chairman may himself decide to refer a regulation to the Committee and summon it for that purpose.

Any Government department may be required to submit a memorandum or depute a witness to explain a regulation. The Committee's concern is with personal rights and liberties as affected by regulation, the unusual or unexpected use of powers conferred by statute and lack of clarity. It may report to the House or Government. 28

Urgent Adjournment Motion.

An Adjournment of the House to Discuss a Definite Matter or Urgent Public Importance is another of the ways provided for an Opposition attack on the Government's exercise of its

28 S.O. (13 June, 1961), 85 (f) i; & (21 June, 1962), 348A and 348B.
responsibility. Though this type of Motion is not listed on the Order Paper and is not mentioned in S.O.64 (Order of Business) the time when such a Motion may be made is laid down in Standing Orders. It is to come after Questions for Oral Answer have been disposed of and before the next business, having been submitted to Mr. Speaker at least one hour before the meeting of the House, unless the Speaker allows some shorter period. If Mr. Speaker, having been handed a statement of the matter proposed to be discussed under the Motion for the adjournment, decides that it is of a kind contemplated by the Standing Order, he reads it to the House and asks Members who approve the proposed discussion to rise. If not less than five, including the mover rise, he calls on the mover to make the Motion.

In practice, Mr. Speaker decides whether the matter is apparently urgent. If he decides it is, the final decision as to whether the debate takes place depends on whether the support of five Members is obtainable. If he refuses, he ordinarily allows the mover a chance to justify his claim to urgency before disallowing the Motion. The mover is, in effect, speaking to

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29 S.O. (13 June, 1962) 81
a Point of Order and since some reference to substance
is usually necessary to justify the claimed urgency it is
difficult to avoid allowing the debate to take place which
the Speaker has just announced his intention to refuse.
Other Members rise to Points of Order, the danger being that
Mr. Speaker listens to the debate to decide whether the debate
will take place. \(^{30}\) In this sense, the procedure is rather more
effective than would appear from the infrequent number of times
such Motions are allowed.

Standing Orders require that such a Motion :-

1. Shall not be framed in general terms.
2. shall deal with a particular case or recent occurrence.
3. shall involve the administrative responsibility of the Government.
4. shall require the immediate attention of the House.

These limitations are similar to those which obtain in the House
of Commons on similar Motions. They are there amplified by a
number of Speaker's rulings. The New Zealand Speaker, unless
he decides that such rulings are not applicable in New Zealand
proceedings, takes them as a guide. British rulings have estab-
lished that such Motions may not be offered when the facts

\(^{30}\) see e.g., \textit{N.Z.P.D.}, 331, (24 Aug. 1963), 1660-1667
are in dispute, or when the circumstances are hypothetical and they must not import an argument. These rules amplify the requirement that the Motion be not phrased in general terms.

The requirement that the matter must be of recent occurrence requiring the immediate attention of the House is what establishes urgency. This requirement is amplified by the rule that it must be raised without delay. If it is not shown to have been raised at the earliest opportunity it fails in urgency. If the facts have only been recently revealed, that does not make the occurrence recent. If other opportunities to raise the matter, like the Address in Reply, the Estimates and the Financial Statement are available currently or in a short time, the Motion may be refused.\footnote{see e.g., \textit{N.Z.P.D.}, (30 June, 1960), 155 - 162}

The public importance of the matter is usually left to the House to decide. Very few Motions have been disallowed by Mr. Speaker on this ground.

In amplifying the requirement that the matter raised is one involving the administrative responsibility of the Government, British rulings in the House of Commons have disallowed Motions which involve no more than the ordinary administration of the law. This originally meant the administration of
justice (i.e., trial and punishment), but since 1920 it has been extended to include the exercise of administrative discretion under statutory authority.

Finally, British rulings require that the matter must conform to the general rules applicable to all Motions for the adjournment and the general rules of order. General rules of order would rule out the use of unbecoming or offensive expressions which would not be permitted in debate.

Motions for the adjournment must not anticipate an Order of the Day or notice on the Order Paper or a matter referred to but not reported from a Select Committee or a Question on the Paper. They should not raise a matter for which special procedures are provided, such as privileges, or a matter which can only be raised by a substantive Motion, such as criticism of Mr. Speaker. The rule relating to anticipation of matters before the House, especially when applied to Motions for the adjournment to discuss an urgent matter, is somewhat difficult to justify if it is applied absolutely. Obviously there is no point in bringing some matter before the House in a variety of different forms and there will be occasions when a matter has been raised by a Question, or when legislation is already on the Order Paper. This would be some evidence that the matter was not brought forward as a matter of urgency at the first opportunity and so could not be considered urgent. Urgency, however, is something which can develop and the emphasis should be on the proof of its existence.
rather than adherence to precedent. Commenting on the use of this procedure in the 1940's Hall wrote,

It seems clear from examination of the British rulings that the facilities given for discussing an urgent matter of public importance were designed in the main for the use of the unofficial Member whose rights were constantly being cut down as the pressure of Government business grew. (Thus, Members of the Government party use it). In New Zealand it has tended to become an instrument of control over business to be discussed, in the hands of an organised party, normally the official Opposition.32

In New Zealand, when Hall wrote, though Motions of this kind related to some definite matter, debates were allowed to roam fairly loosely. An incident was used to initiate a general debate on unemployment. A limitation of messages from the scene of an air crash by the department concerned was the occasion for a debate on the freedom of the Press. Continuing general problems of this kind would not be allowed to become the subject of discussion under the British procedure for urgent adjournment, though efforts are being made in the House of Commons to use this procedure more generously.33

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32 Hall, op.cit., 10, p.21

33 see H.V.Wiseman, 'Private Members'Opportunities and Standing Order No.9', Parliamentary Affairs, 12, (1958-59),377-391.
In recent years Speakers in New Zealand have interpreted the urgency requirement fairly strictly and relatively few attempts are made to use the procedure for general purposes.

Ombudsman.

What may prove a useful addition to the Parliamentary checks on the bureaucracy in New Zealand is the Ombudsman, a Parliamentary Officer whose position was created by Act in September 1962. The Office is of Scandinavian origin. There was a Justitieombudsman in Sweden as early as 1809 but interest in Britain and New Zealand has been aroused primarily by the account of this office given by Professor Stephen Hurwitz, the Danish Ombudsman. The role filled occasionally by special tribunals, set up in Britain often at considerable cost, would seem to justify the creation of an Ombudsman in Britain since such enquiries would be part of the normal duties of the office. The New Zealand legislation was drawn up with the

34 Parliamentary Commissioner (Ombudsman) Act, New Zealand Statutes, (1962), No.10.


36 see N.Z.P.D., 331, (26 July, 1962), 1075
Danish system as a guide.\textsuperscript{37} The Ombudsman, or Parliamentary Commissioner, is appointed by the Governor-General on the recommendation of Parliament in the first or second session of every Parliament. There is provision for re-appointment and this seems likely. The Ombudsman may investigate any decision, recommendation, action or omission by departments or public servants either on complaint or on his own initiative. Committees of the House may refer petitions to him for a report. Excluded from his jurisdiction is any matter within the jurisdiction of the Courts and administrative tribunals, or within the responsibility of Trustees or Legal Advisers of the Crown. As in the Danish legislation\textsuperscript{38} special provision is made for people in custody whether in prison or mental institution.

\textsuperscript{37} see \textit{N.Z.P.D.}, 330, (25 July, 1962), 1011

\textsuperscript{38} \textit{Act No.203 (11 June, 1954) Article 4, Directives for the Parliamentary Commissioner for Civil and Military Government Administration (22 March 1956) quoted Political Science, 12, (Sept, 1960), 139.}
Letters addressed to the Commissioner in such cases are to be forwarded unopened by the person in charge of the institution. Local Authorities are, at present, not part of the Ombudsman's jurisdiction but their eventual inclusion is envisaged. A significant departure from the Danish legislation and from Swedish and Norwegian, is the exclusion of complaints from members of the armed forces from his jurisdiction. Norway does not have a civil Ombudsman but does have a military commissioner who is chairman of a five-member committee to consider complaints from conscripts and officers about their conditions of service. The New Zealand Ombudsman, though he may receive complaints about the armed forces affecting private citizens, cannot consider complaints from conscript members of the forces. There does exist, however, other machinery for this purpose. Another departure from the Danish model is the exclusion of Ministers from the Ombudsman's jurisdiction. Explaining this in the House the Attorney-General said, "Ministerial responsibility to Parliament is a fundamental principle of our constitution and the Government

believes that to include Ministers directly would seriously impair this principle." 40 Indirectly, however, the Minister may be criticised. The Ombudsman is empowered to look into recommendations made to the Minister.

If the Minister follows the recommendation, any criticism by the Commissioner of the recommendation will in fact be a criticism of the Minister's decision. If the Minister does not follow the recommendation of his Officers and Advisers, then that fact will doubtless be stated by the Commissioner in his report. 41

Students of British Government may find themselves somewhat perplexed by this explanation and by the note of the devious route by means of which the Ombudsman may rebuke a Minister. Ministerial responsibility involves the Minister in Parliament in every decision of his department including those he takes himself against the advice of his senior officers. All critical reports by the Ombudsman will involve Ministerial responsibility. However, the Minister's responsibility is general and there are departmental decisions for which he will apologise but for which, Parliament recognises, he cannot personally be blamed. Such decisions will not lead to his resignation.

40 ibid., 1012

41 ibid., p.1012 - 3
Resignation will be demanded when a mistake of considerable magnitude has been made, such that the Minister ought to have been aware of what was going on, or when the Minister is personally guilty of some indiscretion or act of bad faith. Even so, no hard and fast generalisation can be made about when Ministerial responsibility will lead to resignation. The resignation of a Minister for some mistake involving his department has occasional political utility, relieving a strain on collective responsibility, which is an essential rule of the British system. It leads to the resignation of a Minister when Cabinet will not publicly accept responsibility for something affecting his department. Resignations are rare in New Zealand compared with England because Ministers are relatively indispensible and Prime Minister, Cabinet and Parliamentary Party are collectively more actively and publicly involved in all actions of Government than they are in England.

The individual complaints with which the Ombudsman is concerned would not ordinarily be of a kind in which the question of a Minister's resignation would be raised. If, however, it were possible directly to lay blame at the Minister's door, rather than at the door of the Minister and his department generally, these small matters would be relatively more embarrassing for the Government as a whole, attracting more attention than they really
warrant. This could increase the political mortality rate of Ministers without bringing any significant increase in Government responsibility to the electorate. The indirect criticism made possible by the Act is apparently intended, by leaving a Minister with some room for evasive manoeuvre, to avoid this result.

The investigatory powers of the Ombudsman are drawn widely. He must inform the Permanent Head of the department affected before making an investigation and all investigations are to be conducted in private, but he may hear any person he thinks fit on oath and may if necessary require the production of documents or papers from any department or organisation. Matters affecting security or Cabinet proceedings are exempted on the word of the Attorney-General but "injury to the public interest" does not constitute sufficient grounds for exemption. The Ombudsman has power, after notifying the departmental Head concerned, to inspect any Government premises unless the Attorney-General specifies that this would be prejudicial to New Zealand security. With the approval of the Prime Minister he may delegate these powers to his officers.

The sanctions the Ombudsman may employ are mainly political. Where the grievance appears to be substantial he may recommend that:

a. The matter be referred to the appropriate authority for consideration; or

b. The omission be rectified; or
c. The decision be cancelled or varied; or

d. Any practice on which the decision, recommendation, act or omission was based should be altered; or

e. Any law on which the decision, recommendation, act, or omission was based should be altered; or

f. Reasons should have been given for the decision; or

f. Any other steps be taken.

The recommendation is to be reported, with reasons, to the appropriate department and the Minister and the Ombudsman may request the department to notify him within a specified time of the steps it proposes to take to give effect to the recommendation. If no action, or inadequate action is taken, the Ombudsman may send a copy of the report to the Prime Minister and, thereafter, report to Parliament. He may also inform the complainant and make such comments as he thinks fit.

The powers of the Danish Ombudsman are more definite in some instances. He may order prosecuting authorities to institute preliminary investigations and bring a charge before the ordinary law courts when he deems a criminal offence to have been committed or he may order the administrative authority to institute disciplinary investigations. The results of these powers, however, are capable of being achieved under the New

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Zealand legislation. Departments will have to investigate complaints referred to them with an Ombudsman recommendation and when a breach of the law is revealed a complainant could prosecute.

The New Zealand Ombudsman, like the Danish, is required to present an annual Report to Parliament. The first such Report was laid before the House in November, 1962. It indicated that 142 complaints had been received some of which had already been lodged before the Ombudsman first took office. Of these complaints 44 were declined after initial investigation, most of them because they were outside the Ombudsman's jurisdiction. Two complaints were rectified before he took action under Section 19. 92 of the complaints were still under investigation when the Report was made. 4 investigations were completed but the complaints were not considered to have been substantiated. The Report indicated that about 2 complaints a day were being received and that 'from the complaints received there appears to be evidence of the need for the existence of the Office.'

44 Ibid., p.3.
General Comments on the Ombudsman.

The more informal, less public, methods of the New Zealand Ombudsman are better suited to New Zealand conditions and traditions of Ministerial responsibility. There appears, nevertheless, to have been some confusion about these traditions in the drafting of the legislation. The anonymity of public servants and the general responsibility of a Minister for his department are important features of Parliamentary control. This responsibility is the price of the Minister's control over his department. While naming by the Ombudsman of some minor official for some minor fault would not result in a serious break in this pattern of responsibility, not all cases that the Ombudsman is likely to consider will be confined to such matters. Already the Ombudsman has admonished a department for a decision which could only have been made at a high level, though no attempt was made to assign blame to individuals. The decision in question did, however, show the delicacy of the Ombudsman's position and the importance of an appreciation of this, on the part of the Ombudsman. A local authority conducted a referendum to determine whether its water supply should be fluoridised. As in most places in New Zealand where a similar referendum has been held, an Anti-Fluoridation Society campaigned strongly and effectively. The Society apparently has a core of members who
are very highly motivated 'fundamentalists'.\textsuperscript{45} No comparable religious zeal was exhibited by those in favour of fluoridation. To meet the flood of propaganda issuing from the Society, the Health Department presented counter-propaganda. For this action, after a complaint from the Society, the Department was criticised by the Ombudsman who said that it had exceeded its powers in interfering in a local political struggle. The decision is open to criticism which has nothing to do with the merits or demerits of fluoridation. It raises the question of the use of referenda and the proper role of those who normally tender advice to decision-makers. It raises questions about the relationship between local and central government and whether there is any reason why central government should not permit and persuade local authorities when this is possible, rather than require them to act. But it also indicates how careful the Ombudsman must be not to leave the impression that only the department, not its Head, the Minister, is responsible for a decision he criticises. This was, in fact, the impression that was left, because the

\textsuperscript{45} see Austin Mitchell, 'Fluoridation in Dunedin', \textit{Political Science}, 12, (March, 1960), 72.
report achieved its main publicity, not through Parliament where the Minister would have been forced to associate himself with the decision and take general, though not personal, responsibility for it but through the Press. The Minister did make a brief statement, accepting the Ombudsman’s judgment, but this did not result in the kind of public identification that would have been produced in the House. This was because the Ombudsman’s recommendations were submitted, as required in the Act, to the department, but a summary of the findings, at the Ombudsman’s discretion, was sent to the complainant, the Anti-Fluoridation Society. The Society, naturally enough, handed it over to the Press. What seems to be required is a tightening up of the Act to prevent any adverse report about a department reaching a complainant before a report has been made to, and discussed in, Parliament. When Parliament was in session this would involve some delay, but only in publicity, not in recommended remedial action which the department could take immediately. It might be required that when a department refused to take adequate action and the Prime Minister had been informed, the Minister-in-Charge of the department must notify the Ombudsman who could in turn notify the complainant if he thought fit. It

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would also be advisable to make any part of the Ombudsman's report which named individuals or which implied a distinction between the responsibility of the Minister and that of the department, confidential to the permanent head of the department and the Minister.

Financial Control.

One particular area of control, financial control, requires separate attention because it is complicated and subject to its own rules.

The relationship in financial matters between Crown and Parliament in England is preserved in New Zealand. Financial initiative must come from the Crown but all charges on revenue and measures for raising revenue, must be authorised by Parliament. The Crown (in New Zealand the Governor-General acting on the advice of Ministers who must have the confidence of Parliament) being the executive power, is responsible for the management of all the revenue of the State and for all payments for the public service. It, in May's words,

makes known to the Commons the pecuniary necessities of the Government; the Commons, in return, grant such aids or supplies as are required to satisfy these demands; and they provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which they have granted. Thus the Crown demands money, the Commons grant it...but the Commons do not vote money unless it be required by the Crown; nor do they impose or augment taxes, unless such taxation be necessary for the public service, as declared
by the Crown through its constitutional advisers. 47

The financial relationship between Crown and Parliament thus outlined by May, took shape in England in the period when the King still governed through personally-chosen Ministers and when Commons exercised the more passive function of granting or withholding supplies.

The practice of demand (by the Crown) preceding grant had accordingly solidified into an invariable rule before Parliament began to take steps to appropriate its grants to the purposes for which they were demanded... When, with the commencement of Parliamentary control over the Exchequer the granting of supply was differentiated into two functions - the voting of sums of money and the provision of revenue by taxation - it was accepted without question by the House of Commons that the rule applied to both. 48

In the case of the resolutions imposing taxes which are considered in Ways and Means, the Royal Initiative is now not actually expressed but is taken to be implied in the demand for supply, on the established principle that no more money will be raised by Commons than is necessary to meet supplies granted or demanded. When, as a result of increasing control by Parliament, particularly through Appropriation, there were unspent surpluses

47 May, op.cit., p.677
48 May, op.cit., p. 690 - 1
in the Exchequer which had not been appropriated, the
House was able to protect itself from the many petitions
for pecuniary relief brought before it by individuals by
applying the rule to novel expenditures as well as the
ordinary annual expenditure which is the basis of the Estimates
under existing powers of the executive. Thus in 1706 it
passed the resolution which became a Standing Order in 1713
and is now numbered 78 and reads as follows:—

This House will receive no petition for
any sum relating to public service (or
proceed upon any Motion for a grant or
charges upon the public revenue) (whether
payable out of the consolidated fund or
out of the money to be provided by Parl-
liament) unless recommended from the Crown.

At first the Queen's recommendation was only required
for proposals which directly authorised expenditure and ordered
payments from the Consolidated Fund. Later it was extended to
proposals which were not in themselves effective, merely direct-
ing that payment should be made "out of moneys to be provided
by Parliament", i.e., by estimates to be subsequently presented
which the House might vote or reject as it pleased. 49

The working of the two rules that financial initiative is
to come from the Crown and that all charges on revenue must be

49 May, op. cit., p. 692
authorised by the legislature has been affected by the institution of the Consolidated Fund. Taxation is not raised for specific purposes but is paid into the Fund. This means that after Committee of Supply has voted the Estimates, the Committee of Ways and Means has to authorise the necessary payments from the Consolidated Fund. The Appropriation Bill is then founded on the resolution from these two Committees.

The practice, now rule, of initiating consideration of financial matters in a Committee of the Whole House, is also based on ancient usage of the House of Commons in the case of matters dealt with annually by the Committees of Supply and of Ways and Means. As it applies to novel expenditure not falling within their scope, (i.e., new legislation involving expenditure,) it rests on Standing Orders. For novel expenditures it is necessary to appoint a Committee of the Whole House which ceases to exist when it has reported on a resolution on the matter referred to it. This practice had its beginnings in the seventeenth century in England when it left Members free from the intervention and influence of the Speaker, exerted on behalf of the Crown. In the same period the practice which prescribed that not more than one stage of a Motion or Bill of a financial character be taken in one day

50 see May, *op.cit.*, p.693
was strengthened by a House of Commons resolution of 1667 on which the present Standing Order is based, though this rule is now modified by other Standing Orders.

Application of the Principles Governing Financial Procedure to Amendments.

Of the four principles: legislative authorisation of charges, financial initiative of the Crown, preliminary consideration in a Committee of the Whole and intervals between stages, the second and third restrict amendments to the Estimates and to most public Bills. Thus, though a charge may be reduced by an amendment, any attempt to increase a charge would usurp the financial initiative of the Crown. This rule applies equally to Ministers and ordinary Members, for the initiative is taken in a number of definite ways — by the speech from the throne, by the presentation of Estimates, by Messages under the Sign Manual and by statements through a Minister that a particular charge is 'recommended'.

Such communications defining the scope of financial proposals are made at the outset of proceedings preliminary to legislation and cannot be enlarged in their course without recommencing such proceedings.

51 S.O. (House of Commons) 83

52 see May, op.cit., 696 - 7
An extension of the objects of the recommendation, or a relaxation of its conditions is an infringement of the principle.

The third rule, which requires preliminary consideration in Committee of the Whole, prevents a charge which has been reduced or eliminated in Committee from being restored by an amendment in the House on Report. In such cases the Bill or resolution has to be recommitted.

These principles, with the exception of the rule requiring a day for each stage, apply in New Zealand and are partially embodied in New Zealand Standing Orders.

The House shall not proceed upon any Motion for a grant or charge upon the public revenue whether payable out of the consolidated Fund or other Accounts or out of money to be provided by Parliament unless recommended from the Crown. A Committee of Supply may not attach a condition or an expression of opinion to a Vote nor alter its destination nor make any clerical amendment therein.... The House shall not proceed upon any Motion or Bill for granting any money, or for releasing or compounding any sums of money owing to the Crown, except in a Committee of the Whole House.

Any Motion for a charge upon the public revenue whether payable out of the Consolidated Fund or other Accounts or out of money to be provided by Parliament or for any charge upon the people'

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53 May, op cit., p. 700
must be referred to a Committee of the Whole, and a Motion for an Address to the Governor-General for the issue of money or incurring expense has to be proceeded with in a Committee of the Whole. 54

Finally, Standing Orders embody to a limited extent the principle that more than one financial stage should not be taken on the same day. It is laid down that

Any Report of Resolutions from the Committee of Supply or the Committee of Ways and Means shall, unless the House otherwise orders, be brought up on a future day, except in relation to Imprest Supply and Appropriation Bills when the Report may be ordered to be received and considered forthwith. 55

In New Zealand, as in England, Government is financed annually, each financial year being treated as a separate period. Money voted in one year may not be saved by the department and carried over for spending in the following year. A balance remaining to the credit of a department is surrendered to the Consolidated Fund in the Accounts, though not, in practice, physically. Departmental estimates of expenditure for each year and the Government's proposals for raising the money are considered each year by the House in Committee. Three of its

54 S.O. 288, 305, 290, 291
55 S.O. 306
Committees are the principal tools of the House for this purpose.

The Estimates are first considered by a Select Committee. Until the 1962 changes in Standing Orders this was the Public Accounts Committee, consisting of six Government and four Opposition Members. This Committee, in spite of its name, did not actually consider the Accounts. Like the Select Committee on Estimates in England it examined the Estimates, attempting to assess their adequacy or inadequacy. Though public servants could be called and questioned, the Committee was not able to make a very searching inquiry into expenditure. It did not have the benefit of expert advice from a servant of Parliament. It was chaired by a Government Member who could save the Government from embarrassment at times, since the Chairman had power to rule that a question dealt with policy and was therefore outside the Committee's jurisdiction. The Minister of Finance was usually one of the Government Members though he did not attend all meetings. Its report was short and submitted to the Government, not the House of Representatives. The report was not published.

The comments on this Committee submitted by the present writer to the Algie Committee, 1961, are relevant here, since they show the reasons why changes were made in 1962.
1. Examination of Estimates.

One of the main instruments of control, the Public Accounts Committee, could certainly be altered and improved. Its counterpart in Britain, the Select Committee on Estimates, in the House of Commons, has always been regarded as far less satisfactory than the House of Commons Public Accounts Committee. This according to the Comptroller-General's evidence to a Select Committee in 1931 was because of the difficulties 'which are inherent in any attempt to institute detailed examination and control by the House of Commons without offence to the cardinal doctrine of Cabinet and Ministerial responsibility'.

Expenditure is determined mainly by policy and policy is beyond the terms of reference of the Committee. There are other difficulties. The task of examining the Estimates is too large for one body to perform and, as the Select Committee on National Expenditure commented in one of its Reports if only a fraction is considered each year, a department which has been examined knows it is free for the next few years. Recognising

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56 Quoted by Sir Ivor Jennings, Parliament, p.310

57 H.C. (1918), No.98
the difficulties, the British Government, after a Report by the Select Committee on Procedure in 1946, enlarged the Estimates Committee to thirty-six Members (from twenty-eight) and empowered it to appoint sub-Committees and to adjourn from place to place. The sub-Committee examines specific items of the Estimates, if necessary at the place where the expenditure is to be incurred, and it reports to the Committee. The Committee submits interim reports to the House, where they are frequently discussed in Committee of Supply. Another problem is that expert advice needs to be made available if intricacies of the Estimates are to be understood and the most fruitful lines of investigation pursued. It has been recognised in Britain that the Comptroller and Auditor-General should not be asked to act as adviser to the Estimates Committee as this would make for complications in his relation with the Treasury and the spending departments. On an occasion when the suggestion was made, the Comptroller and Auditor-General expressed his objections to the extension of the functions of his office so as to require him to advise on current expenditure, because his staff was composed of accountants engaged in audit and would not be qualified to exercise the wider function.\footnote{H.C. (1945-6), No.189} The appointment of a special
Officer of the House, an Examiner of Estimates, has been suggested in Britain, but unless such an Officer were given a large staff he would probably be much less successful than is the Comptroller and Auditor-General working with the Public Accounts Committee of the House of Commons. The present position in Britain is that the Estimates Committee operates with the advice and assistance of a Treasury Officer. To some extent this arrangement has the effect of reinforcing Treasury control through the Committee's support of the Treasury when there is some dispute with a department over a Treasury ruling. But, apart from this, there is obviously only limited utility in the Committee's working through the Estimates under the guidance of an official from a department which has already agreed to them.

2. Examination of Public Accounts.

The Public Accounts Committee in Britain is far more successful, and its work suggests the lines along which New Zealand procedure might be improved. It examines the audited accounts of public expenditure for the past year and 'such other accounts laid before Parliament as the Committee may think fit.'

59 H.C. Standing Order 90
It is to consist of not more than fifteen members, who shall be nominated at the commencement of every session and of whom five shall be a quorum. The Committee shall have power to send for persons, papers and records and to report, from time to time.60

By convention the composition of the Committee is representative of the voting strength of the parties in the House, though its traditions, even in voting, are non-partisan. Also by convention, the Chairman is a member of the Opposition, usually the Financial Secretary to the Treasury in the previous Government. The Committee works in very close collaboration with and with the advise and assistance of, the Comptroller and Auditor-General and his subordinates, as well as with Treasury Officers. It meets on two afternoons a week during the second half of the session.

Each meeting is preceded by a consultation lasting two hours or more, between the Chairman and the Comptroller and Auditor-General during which the Chairman studies the weak spots in the departmental defences.61

There is ample testimony to the success of this Committee. The Select Committee on National Expenditure reported in 1918 that:

60 H.C. Standing Order 90
61 Kr. Osbert Peake, H.C.(1945-6),No.189. Q.3929 quoted by Jennings, Parliament, p.335
'It is recognised on all hands that the work of the Comptroller and Auditor-General and of the Public Accounts Committee is highly efficient and useful', and Mr. Speaker in the same year said that Government Departments had 'a wholesome dread' of the Public Accounts Committee. 'Beyond doubt,' agrees Paul Einzig, probably the most severe critic of present financial procedures in the British House, 'in certain directions, such as the scrutiny of the audited accounts by the Public Accounts Committee, Parliamentary control is indeed very effective.' Accountability has "ceased to be an unattainable ideal. It has been attained far beyond the most optimistic expectations." The work of the Comptroller and Auditor-General is greatly assisted by his collaboration with the Committee. He has

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62 Mr. Speaker, Report from the Select Committee on National Expenditure 1918, p.122 quoted by Jennings, Parliament, p.336


64 ibid., p. 209
been encouraged by the Committee to direct its attention
to expenditure which appears to be uneconomical (by
comparison for example with similar expenditure elsewhere).
According to a former Comptroller,

The mere fact that the Committee exists and
that the Comptroller and Auditor-General can
invoke its assistance, fortifies the Account-
ing Officers against temptation to stray
from the path of economy or of financial
regularity; further, it enables the Compt-
troller and Auditor-General to dispose at
once and in his stride, of many matters of
which Parliament never hears... Without the
Public Accounts Committee I would be quite
ineffective, or more ineffective than I am
now. They are the sanction on which it all
depends. 65

Recommendation.

Evidently a Committee performing the same function for
the House of Representatives would be an important addition to
New Zealand Parliamentary control of public expenditure. The
present Public Accounts Committee, enlarged to include some 18-
20 Members with, say, 5 constituting a quorum, should be empow-
ered to sit throughout the year, to appoint sub-Committees, to
adjourn from place to place and to submit interim reports to the
House. Its main function would be the same as that of the Public
Accounts Committee of the House of Commons; to review the

65 Comptroller and Auditor-General H.C. (1931), No.161 p.365,
quoted by Sir Ivor Jennings, Parliament, p.337
accounts with the assistance of the Comptroller and Auditor-General. Its secondary function would be the consideration of the Estimates with the assistance of Treasury officials and possibly an officer of the House specially appointed as Examiner of Estimates. The Controller and Auditor-General should not be required to assist in this work. The Committee should be chaired by a Member of the Opposition.

One alternative suggestion with considerable merit is that consideration of the Estimates might be improved by dividing them among a small number of Committees of, say, three members each, two from the Opposition and one from the Government, making separate reports to the House.

It may be noted that the relationship in which the Government stands to the House for consideration of the Estimates is rather different from its usual position. Ordinarily it is leading Parliament in the business of legislating, the Opposition criticising but not obstructing. When the Estimates are being considered the House is exercising its 'watch dog' function

66 This alternative suggestion was made to the author by Mr. Speaker Algie in an interview.
rather than its critical, debating, function and the lines are more strongly drawn from the constitutional point of view between Government and Parliament. It is thus the Opposition which plays the leading role at this point and it is from this point of view that the Opposition Chairmanship and Opposition majorities on small Estimates committees might be justified.\(^67\)

On its Report the Algie Committee took a similar view to the Writer's, recommending the setting up of a Public Expenditure Committee which would combine the functions of the two House of Commons Committees. It was not felt that in the case of a small single-chamber Parliament like New Zealand, it was necessary to have two Committees. \(^68\)

\(^67\) Part of submission made by the Writer to Select Committee on Standing Orders of the House of Representatives (1961-2), cyclostyled. (Wellington: Political Science Department, 1961). Footnotes have been modified.

\(^68\) _A.J.H.R._ (1962), I.17, p.21
The work envisaged for the Public Expenditure Committee was specified in some detail.

During the session it would examine the Estimates of Expenditure after presentation to the House and in due course after the various sums had been granted it would follow that expenditure through from the Estimate to the audited account. The Controller and Auditor-General would not be in attendance when the Estimates were being examined as his presence on that occasion would be inconsistent with his statutory powers. As is the case overseas it would not be competent for the Members of the Committee to inquire into or make recommendations on questions of policy. On the other hand the final consequences that flow from Executive policy can only be examined at the stage of results and it would be within the province of such a Committee to inquire into and comment on the financial results of Executive policy. Experience in other countries has shown that such inquiries can take place without it being necessary for Members to probe into the matter of policy itself or without the merits or demerits of that policy being questioned or discussed. The Committee, acting on behalf of the House, should satisfy itself that money transactions under consideration are covered by the sanction of Parliament. If its investigation should lead to the conclusion that such is not the case, it should as a matter of financial principle, bring the matter to the notice of the House.69

These recommendations were adopted in S.O. 308B, which came into force in June, 1962. The new Committee has 12 members and is charged with examination of the Estimates to see what

economies may be affected. It is also to examine the Public Accounts, having regard to matters raised in the annual report of the Controller and Auditor-General and elsewhere and it is to examine any other matters referred to it by the House. It has power to sit during the recess, to adjourn from time to time and place to place and to appoint and refer matters to sub-Committees. In its first year of operation the new Committee has worked as two sub-Committees, one under a Government Chairman, the other under an Opposition Chairman. While examining the accounts the Committee availed itself of the services of the Controller and Auditor-General and his staff of Treasury officers. The Committee presented its report to the House. It is not clear from the Standing Order whether it has a right to do so, since the Order states that the Committee is to report 'to the House or the Government.'

According to its report, the Committee made a general review of the Public Accounts and then its two sub-Committees undertook probes in depth into aspects of the work of two departments. One undertook to examine Hospital costs and to review the finances of the Hospitals Division of the Department of Health, the other examined the finances of Civil Aviation Administration. Both submitted valuable reports and recommendations which were transmitted to the House in the full

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Committee report. All the members of the Committee who spoke to the report expressed their satisfaction with the new procedure. One said,

I had the privilege of being on the old Public Accounts Committee for many years and, in fact, I was Chairman for three years, but I feel that at no stage did that Committee achieve results comparable with the results achieved by the new Committee under the new Standing Orders and new order of reference.71

The Estimates are also considered by a Committee of the Whole House, the Committee of Supply. This Committee examines and consents to the Estimates under a number of separate Votes. The Votes limit the power of the departments to distribute expenditure over the various items of the Estimates.

Another Committee of the Whole House, the Committee of Ways and Means, considers how the money shall be raised and authorises its issue from the Consolidated Fund.

In one of these two Committees (the Committee of Supply unless there are taxing resolutions to follow) the House hears the financial proposals for the year explained by the Minister of Finance in his Budget Statement. The Budget debate takes place a few days afterwards (giving the Opposition time to prepare) on a Motion that the Speaker do leave the Chair. When the debate, which runs for about four weeks is finished, this

71 N.Z.P.D., 333, (5 July, 1963), 353
Motion is agreed to and the House goes into Committee of Supply and begins considering the Estimates. Most of the discussion in Committee of Supply is comment on small points of policy. Waste and inefficiency are more infrequent topics because Members are not well equipped to expose them and are interested less in economising than in benefits for the sections of the community they represent. The House can make the Civil Service careful, however, by stumbling upon an occasional mistake or extravagance. Certainly its interest in the actual items of the Estimates is less perfunctory than that of the House of Commons at the same stage.

The documents available to the Committee during its examination of the Estimates are the Summary of Public Accounts, the Public Accounts (including the return of public debt outstanding), the Controller and Auditor-General's Report, the Return of Securities held by Government Departments, the Budget Statement, the Estimates, the Annual Reports of Departments, the Economic Survey, Balance Sheets and Annual Accounts of Trading Departments, Report of the Public Debt Commission and the Official

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72 see N.Z.P.D., 331, (3 August 1962), 1223 (Mr. Whitehead, Mr. Nash, Mr. Rowley.)

Estimates of National Income. The Public Accounts show cash receipts and payments under the various Parliamentary Votes. However, major instruments of Government financial policy like the State Advances Corporation (which in spite of its name is under direct Ministerial Control) and the Post Office Department are not within the Public Account.

The accounts do not give a very clear indication of what money has been spent for what purpose. For example, the figures will indicate an amount spent on construction of certain buildings but they do not indicate how much of the work has been done and how much of the cost of the buildings will be borne in the following year. Estimates suffer from the same defect. Members have little basis to make a judgement on an estimate of £4,800 for Schools of Mines or £4,000 office expenses for the Mental Hygiene Division of the Department of Health. Then, the amount spent on an activity carried on by several departments will appear only in a fragmented form in each of the accounts or estimates of those departments. Departmental reports are somewhat general. 'They tend to contain wordy platitudes, mild propaganda and often meaningless statistics.' However, they do give some explanation of what each department is doing and what

the results are.

The Controller and Auditor-General's report is concerned with the legality of expenditure. It is not an efficiency audit. The Controller and Auditor-General is an Officer of Parliament and Head of the Audit Department. He is appointed by the Governor but holds office during good behaviour and can be removed only on a vote by Parliament. His function is to ensure the legality of expenditure under Parliamentary authorisation. His control is partly pre-audit, in that his consent is required before certain types of payments and transfers can be made and, partly by a post-payment check on vouchers, receipts, etc. In the main, his reports deal with minor peccadilloes but they occasionally indicate more important irregularities in financial affairs. However, working in conjunction with the new Expenditure Committee the Controller and Auditor-General will be in an excellent position at its direction to point out economies which his examination has suggested might be possible.

The Budget statement gives a broad review of what Government has done and its proposals for the future. It makes reference to Tables and Returns and these are appended to the statement. The Budget is useful as a survey of the overall

75 They appear in A.J.H.R., B.6
financial picture, but is necessarily not particularly detailed. Neither the Budget nor the Economic Survey provide a critical review of economic progress for the latter is also issued by the Minister of Finance. The Official Estimates of national income, compiled by a Government Statistician provide another, more comprehensive, review than those provided by the Budget and Economic Survey, but require more interpretation.

These are voluminous but not particularly impressive information facilities for financial control. Some of these documents are certainly capable of being improved and made more useful. The Economic Survey for example is prepared by Treasury and is occasionally in conflict with the Budget. However, a Monetary and Economic Council appointed by the 1961 Parliament is charged:

- to make reports from time to time on the extent to which stability in the prices of goods and services, economic growth, full employment and higher standards of living are being achieved and, to make recommendations from time to time relating to short-term and long-term measures that should, in its opinion, be taken to promote economic growth and raise standards of living while maintaining full employment and the maximum stability in the internal price level.

76 In the Monetary and Economic Council Act, N.Z. Statutes, 1961 No. 12

77 See the Monetary and Economic Council Report (Wellington:Government Printer, Sept. 1961) p. 5; and for further details see Second Reading discussion N.Z.P.P. 327 (25 Aug. 1961) 1782-4, 1794-1802, 1809-1835. For the critical attitude of the Commission when warranted see e.g., pp. 38-40 of this Report. See also general criticism of Budget Statements for the purposes of informed discussion. ibid., p. 38
The Council has three members, none of whom may be members of the Public Service. The first appointees were a Professor of Economics (Chairman), a Public Accountant and the Dean of a University Commerce Faculty. The members of the Council have three-year appointments, one retiring each year. The Council has the right to publish its reports. The reports, the first of which was issued in September 1961, because they are from an independent source, are more critical than the Economic Survey and may replace it to the advantage of Parliament.

The presentation of the Public Accounts has also been strongly criticised and various suggestions have been made for their improvement in order to improve Parliamentary supervision. Consolidation, economic explanation, greater comprehensiveness, the inclusion of long-term programmes of expenditure by departments are probably the most pressing needs.

Whatever improvements in the documents available to the Committee were made, a thorough efficiency scrutiny of the Estimates by Parliament is not a practical hope. Improvements would give Members a better chance than they now have in this respect but the main advantage would be in enabling more intelligent discussion of economic policy.

Consideration of the Estimates in Supply goes on, after the Budget Statement, with interruptions, for most of the rest of the session. When the last item has been taken the resolutions of the Committee are reported to the House and then, in a series of formal Motions without discussion, they are referred to the Committee of Ways and Means (for authorisation of necessary payments from the Consolidated Fund), Agreed to by Ways and Means, agreement reported to the House, Report agreed to by the House, and the items are authorised in the Appropriation Bill which is read through all its stages at once.

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S.O. 307 lays down the procedure for agreement on the Report. The First Reading of the resolution is "without question put" but at the Second Reading they may be agreed to, disagreed to, amended, postponed or recommitted.
General Comment on Financial Procedure.

That all financial recommendations should come from the Crown, that there be no spending without legislative authorisation - these are rules which protect the public purse. Legislative authorisation not only binds the Government, considered collectively, but under the Vote system of authorisation protects it by inhibiting its parts. The prior consideration of financial recommendations in Committee, however, and the now almost forgotten rule that each stage of financial business be considered in a different day - these have little significance under present procedure. Committee consideration once had the advantage of removing Parliament from the King's scrutiny and influence, exercised through the Speaker. It no longer serves that purpose. Today, it means, in New Zealand, that when a Message in the form of a Bill is received from the Governor-General requiring supplies, it becomes, (before Members have seen it, on the basis of a brief explanation from the Minister who brings it down) a resolution of a Committee, agreed to by the House and, thereby, subject to only limited kinds of amendment. The practice of introducing complete Bills by Message, a legacy of colonial days, is the ne plus ultra of the detailed financial resolution against which British M.P.'s complained bitterly and successfully in the 1930's.80

80 see the account in Jennings, Parliament, particularly the Speaker's comment on p.261 and his letter on p.267
It seems to be tamely accepted as a piece of procedure by New Zealand's M.P.'s in spite of the fact that its disadvantages are obvious in practice. A debate frequently takes place on the Message. It may be a rather futile debate because, apart from the Minister's brief statement, Parliament has no idea what it is being asked to approve, but the fact that it takes place reflects the uneasiness of the Opposition in such a situation. But it is not the character of this debate which is the main disadvantage of this procedure for, it may be acknowledged, there are occasions when Members rise above the difficulties and make excellent use of the opportunity it offers to cross-examine a Minister on the Government's motives and reasoning and have the exchange reported in Hansard. \(^{81}\) A second and more important disadvantage is apparent when the Opposition wishes, during the course of the Bill in Committee of the Whole, to offer an amendment which in any way extend the purposes of the Bill. Such an amendment may in fact be offered and the Member who offers it may do so at the end of a speech which justifies it. But it will immediately be ruled out of order and no other Member can speak to it. \(^{82}\) If the Government approved the purpose

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81 see the discussion of this point at greater length, above, under Procedure on Bills. pp. 211-212

82 see e.g. amendment raised by King on Family Benefits, Home Ownership Bill. _N.Z.P.D._, 328, (21 and 28 Sept. 1961) 2509, 2567.
of the amendment and decided to adopt it, it could be introduced in Committee by Governor-General's Message, but this procedure is obviously less satisfactory to the Opposition than one which would allow discussion of the amendment.

The introduction of Bills by Message, in effect, robs the Committee initiation rule of most of its utility which consists now in the informality that facilitates cross-examination. In English practice, which could be employed by the House of Representatives, Committee initiation of financial proposals gives Members slightly more freedom in financial matters than they would have if complete Bills involving expenditure or the collection of revenue were introduced in the House. The 'setting up' resolutions (the Crown recommendations which the Committee of the House of Commons considers) are so framed as not to restrict the scope within which the Committee on the Bills may consider amendments further than is necessary to enable the Government to discharge their responsibility in regard to public expenditure and to leave to the Committee the utmost freedom for discussion and amendment of details which is compatible with the discharge of those responsibilities.83

The Commons financial resolution is the equivalent of the Governor-General's Message but it is not the complete Bill.

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83 from a written instruction to Departments and to the Parliamentary Counsel's Office, read to the House, House of Commons Debates, 5th ser. 328, (9th Nov. 1937), 1595.
No amendment can take place in the debate in Committee on the financial resolution, or at any subsequent stage, which would increase its scope, but since it is more general in its terms than the complete Bill it does not prevent small amendments of detail, even if they increase marginally the charge proposed in the Bill, provided they do not infringe the terms of the financial resolution.

It may be objected that it is convenient for the Government to set the procedure for passing a Bill in motion before the Bill is ready for the inspection of the House and they are able to do so under the existing procedure. The adoption of the House of Commons method would not prevent this if it were thought absolutely necessary. It would be necessary to provide that a Bill to give effect to the financial resolution be proposed and given its First Reading immediately, without amendment. Since the terms of a Message to be made the basis of a financial resolution would be only slightly more general than Bills, Section 54 of the New Zealand Constitution Act which requires Crown initiative would not have to be amended if British procedure were adopted.

The rule that the stages of financial procedure be taken on different days is, because certain stages have become, by convention, the occasion for protracted exhausting debates of a general nature, subject to so many exceptions that it has become
debased currency. If Standing Order 306 which requires that the report of Resolutions for Committee of Supply or Ways and Means be brought up on a future day, were made absolute, or only subject to exception 'by leave', this would constitute a protection for the Opposition and the public which does not exist now, but which, especially in a unicameral legislature, is desirable.

Financial procedure under the British system has to meet two requirements, somewhat opposed in practice, though fundamentally in harmony; they are Government effectiveness and Parliamentary control. Parliamentary control is necessary to responsibility, since it is through Parliament and the electoral process that responsibility is achieved. However, responsibility also depends on the Government's power to secure majorities for its proposals in Parliament. For this reason the negative character of Parliamentary control over financial matters under British conventions is important. The party discipline which ensures Government effectiveness is maintained,

84 A pronounced feature of the procedure followed in the unicameral Nebraska legislature is the number of provisions for delay on all Bills, see e.g. Rules of the Nebraska Legislature (Lincoln: 1961), 12, sec. 8 and sec. 11.
partly, by not putting too great a strain upon it. If increases in expenditure could be proposed by ordinary Members of the legislature, as is possible in the United States or the Netherlands, party discipline might be subjected to strains it could not bear. Government Members can present the claims of their constituencies and their region forcefully in debate without embarrassing the Government, but if Opposition Members could propose amendments involving expenditure upon which Government Members from the same region would be called to vote, the Government majority would be continually in jeopardy. Other political systems are protected in other ways. The United States has some protection against pork-barrel legislation in the Second Chamber and in the Presidential veto; the Dutch Government remains free to use an increase voted by Parliament or ignore it, and in any case the electoral system and the ethics of political life in Holland are against regional representation. The constitutional separation of powers is far stronger in the Netherlands than in Britain, protecting the Government. It would be no exaggeration then to say that the Government monopoly of proposals which make a charge on public funds is fundamental to the British system.

The Parliamentary check on Government expenditure cannot be complete and 'adequate' is not a particularly informative word for critical purposes—what can be said of the New Zealand Parliament in this respect is that whatever its limitations,
Parliament does inhibit Government and Civil Service in their handling of public money.

**General Comment on Controls.**

Control of those who exercise discretionary power is one of the key problems of modern democratic government. Parliament itself exercises discretionary power and then delegates it. In doing so, it imposes restrictions and conditions but these alone are not sufficient to ensure that such power will not be abused. Parliament must, therefore, maintain some supervision over its public service. Eighty Members cannot attempt complete supervision. But through the various forms and procedures, random, probing techniques, for the most part, which have been examined here, they do manage to implant considerable inhibitions against autocracy and corruption in the public service and transmit some of their own sensitivity to public opinion. The more general methods by which this sensitivity finds expression in Parliament and by which Parliament itself assists in the formation of public opinion, is the subject of the next chapter.
Representative Function - Parliament and the Expression and Formation of Opinion. Ch. 12

The assumption that Governments in Britain and New Zealand can be held generally responsible for their actions depends partly on the existence of an informed public opinion. The system offers electors a choice between two sets of governors and the choice is more meaningful when the electors have some idea what the present Government has done or left undone and what it proposes to do, and how the opposing party differs in these respects. In practice, the parties do vie with each other for public approval and there is continuous responsibility in the sense that Governments have to estimate the reaction of public opinion to proposals under consideration and the extent to which those reactions should influence Government policy.¹

'A wise Government', says Morrison, 'would not wish to bring itself into sharp conflict with predominant public opinion or, unless the public interest really required otherwise, with informed bodies of opinion entitled to respect and consideration.'²

Responsible government then, is, in a sense, government carried on under the imperfect scrutiny of a public opinion tribunal³ which

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² *ibid.*, see also Emden C.S. The People and the Constitution, 2nd ed. (London: Oxford University Press, 1959) for a detailed consideration and historical survey of the influence of public opinion via individual members, Government, party, groups, in terms of the doctrine of the mandate.
³ The term is Bentham's, *op. cit.*, II p. 310.
must be kept informed, persuaded, and placated. In the two-way pro-
cess by which the tribunal is kept informed and the Government esti-
mates and takes into account its reactions, Parliament plays an imp-
portant role.

As a guide to public opinion or opinions it has no rival in New
Zealand. The major newspapers are primly conservative, advancing
predictably 'safe' opinions. The Broadcasting Corporation, as a
matter of policy, maintains a scrupulous impartiality in political
matters. Radio comment on domestic politics is from invited speak-
ers, not members of the Corporation. There are discussion program-
mes with participants chosen to represent different viewpoints whe-
ther they enjoy wide or negligible support in the country. The main
comment on international politics is in a weekly quarter hour analy-
tical talk by a panel of invited speakers, many of them university
lecturers. A similar programme of comment on domestic politics
has recently been introduced. A programme analysis for a particular
week in March 1961 showed a total for all non-commercial stations of
only 8.6% of broadcasting time devoted to the category 'talks, docu-
mentaries and children's educational programmes.'

Parliament on the other hand, is highly sensitive to, and expres-
sive of, public opinion. Members are the linking threads in a

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4. See discussion in Landfall (Dec., 1962) by M.E. Avery, 'Broadcasting
under New Management', pp. 384-387, also R.J. Harrison, 'The Bro-
adcasting Corporation Act' Landfall, (June, 1962) pp. 185-188.

p. 390.
network of attitude communications. Some Members are closely identified with important interest groups and can be accepted as reliable spokesmen for them; others are spokesmen for regional interests. All Members will press the claims of their districts at every opportunity. Members are invited to receptions and social gatherings where, as in the corridors of the House, they make informal contact with representatives of interest groups. Most Members return to their electorates each weekend and make themselves available to constituents. They make caucus and the leaders of their party aware of feelings current in the electorate. In their reports and in the intensity of the criticism offered by the Opposition the Cabinet is provided with its most effective gauge of public opinion. Mr. Nordmeyer, an experienced Member, now leader of the Parliamentary Labour party, has enlarged on the influence of the individual Member.

The notion that Government can introduce a Bill which is forced through Caucus by a small majority and then pushed through the House by the use of the Party machine is one which has never occurred in practice, and which exists only in the imagination of critics of the Party system. I have been in Parliament for over ten years, and I do not recollect once having to vote for a measure which I did not approve of. There is a fineshow in some quarters of individual freedom, but freedom to vote against the party, even the party which pretends to value freedom, has sometimes meant that the Member exercising this right has found himself in outer darkness when the time has come for selecting candidates for the party in his electorate. Two instances readily come to mind where this has occurred in comparatively recent times.

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The Individual Member

It is commonly alleged that if the party system is to be maintained, the individual Member must gradually fade into the background. This is far from being true. The individual Member, as a supporter of party, can influence party, and through his party achieve infinitely more than he can do as an isolated individual. He can, in the discussions within his party, help to influence party decision and to win support for his point of view. He can, by studying carefully the Bills to be introduced, draw attention, either before they reach the House or afterwards, to any flaws in matters of detail. He can, either as a supporter of the Government or in opposition, raise questions of national importance. He may ask questions in the House for the purpose of eliciting information. He may serve on committees and thereby render a service of which few people in the community recognise the importance. If he is a supporter of Government, his services may be utilised by Members for a special study of certain problems. So far from diminishing in importance, the private Member can, if he has the ability and the will, derive an increasing satisfaction from the carrying out of his Parliamentary duties and interpreting to his constituents the purpose and implications of measures which will be, or have been, passed by the House.7

The effect of Parliamentary expression of opinion is not of a kind that can be documented. It helps to determine when it is opportune to introduce a Bill. As Mr. Nordmeyer has said, 'It is generally regarded in political circles as immensely important that a Bill should be introduced at the right time.'8 It sets limits to what will actually be proposed as legislation by the Government, but it does not produce important amendments to legislation during


8 ibid., p. 7.
its passage. The House does not, except in quite minor respects amend proposals put before it by the Government except when the amendments are proposed by the Minister in charge of the Bill. The amendments may have been inspired by debate in the House and by Committee discussion, but they are never of a kind which would show the Government accepting the Opposition as the best judge of public opinion on an issue. What does happen when the Government is forced to doubt its own estimate of opinion is that a Bill is allowed to lapse or a clause of a Bill withdrawn for further consideration. The situation is the same in the British House of Commons. In New Zealand in 1959, for example, and again in 1960 a Crimes Bill was introduced and allowed to lapse by the Labour Government. The Bill would have abolished the death penalty and liberalised the law on homosexuality. The abolition of the death penalty was a plank of the Labour party policy but Government support for the Bill lacked determination in the face of some strongly expressed Opposition criticism. The death penalty was later abolished in an amendment proposed by a National Government Member to a Government Crimes Bill in the Parliament elected in November, 1960. National Members were in both lobbies on a free vote while the Labour Opposition voted for the amendment en bloc as a plank of party policy.

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9 see Jennings, Parliament, p. 161.
11 N.Z.P.D., 328, (12 Oct. 1961), 2990
Another Bill introduced in 1959, the Police Offences Amendment Bill was strongly opposed by the National party Opposition and became the subject of a want of confidence amendment. This opposition succeeded in delaying the passage of the Bill for a year. It lapsed, and was reintroduced and passed in 1960.

It must also be remembered that the amendment and repeal of legislation as a result of debate in the House may be undertaken after a change of Government. Reference was made above to the desirability of keeping a Bill before the House long enough to enable those who object to it to voice their criticism and persuade the Opposition to oppose the Bill. Of course, on many occasions, the Opposition persuades itself. Debate clarifies the views of Members and forms their opinions on issues. Sometimes it produces an Opposition determination to reverse a piece of legislation as soon as it becomes the Government — and this becomes a factor in the election campaign of either general or sectional interest. Thus, following an energetic debate on the subject, it became a plank of the National party in the campaign of 1960:

13 N.Z.P.D., 324, (31 Aug. 1960) 2001. Other recent notable examples have been the Emergency Regulations Continuance Bill and Supply Regulations Bill, strongly opposed in 1947 (see e.g. N.Z.P.D. 279 (Nov. 25, 1947) 973-1046) and substantially amended and made temporary as a result; see also N.Z.P.D., 284, (Dec. 1 1948), 4243-4; the Land Settlement Promotion Bill 1952, see N.Z.P.D. 298 (3 Sept. 1952), 1270-1290, and (10 Sept. 1952) 1389-1440 amended after strong opposition from within the Government party; and the P.A.Y. E. legislation of 1957 which is discussed by A. Robinson in 'The National Campaign; Political Science, (N.Z.) 10, (March 1958), pp.27-8
that the compulsory residential clause in the Land Settlement Promotion Amendment Act, 1959, restricts the opportunity for prospective farmers, share farmers and farm workers in land settlement, therefore a National Government will repeal this provision.

and the clause was in fact repealed by the National Government in the next Parliament.

The expression of public opinion in Parliament is a feature of all its procedures. If it is a reaction to proposed legislation it occurs during the debate on the Bill. If some aspect of administration is involved then the procedures most relevant to the control function are likely to be employed. There are, however, certain procedures which give Members carte-blanche to air subjects and opinions of their own choice and, on such occasions, matters arousing comment in the constituencies and in the country are raised, and the views of organised bodies are represented. These procedures are the main general debates of the year: the Imprest Supply debates, the Address-in-Reply, the Budget, and the Legislative Department Estimates. A Motion is before the House on these occasions, as is required by Standing Orders but the general character of the Motion permits a very wide range of debate.

Imprest Supply debates take place on the Motion that the House resolve itself into a Committee of Supply. The practice is based on the British principle of raising grievances before granting supply. Imprest Supply is by convention an opportunity not so mu-


though for the Private Members as for the Opposition as a whole to choose the subject for a one-day debate, though the National Government defeated in 1957 occasionally stole the initiative during its term of office. Before 1962 one Imprest Supply debate was staged each month. The introduction of the new evening adjournment procedure, which, unfortunately, for reasons already discussed, has taken a similar form to the Imprest Supply Debates, has been accompanied by a reduction in the number of the latter. There were only two Imprest Supply Bills in 1962.

The Address-in-Reply debate takes place each session on a Motion to present a respectful Address to His Excellency the Governor-General in reply to His Excellency's speech. Members raise matters on their own initiative, though a prior caucus meeting may have agreed that some subjects deserve emphasis. A very wide field is likely to be covered. In 1962, for example, the first three speakers alone dealt with juvenile delinquency, liquor laws, capital punishment, Maori education, E.E.C., and New Zealand trade, industrial relations, meat packing, fishing industry, public services, education, assistance to music and the arts, unemployment, taxation, encouragement of industry, conditions of the aged, savings, increases in charges for services, overseas earnings, take-over-bids in industry,

18 see N.Z.P.D., 299, (10 April, 1953), 8.
use of Ministerial powers for personal advantage, university fees, local body finance. Occasionally the debate may be, to some extent, commandeered by the Opposition as a party and limited by the terms of an amendment to the Motion. Thus, in 1960, the Leader of the Opposition, speaking first for his party, moved the addition of words to the Motion expressing want of confidence in His Excellency's advisers because of their financial policy, their use of restrictive controls, their foreign policy, industrial policy, and their general failure to provide constructive leadership.

The effect of the amendment was to put some emphasis in the debate on the subjects mentioned. It did not, however, formally exclude any other matter which a Member wanted to raise, since, in order to preserve the freedom of this debate, it is provided that an amendment to the Motion for an Address may only be of a kind which seeks to add words, and shall be deemed to involve consideration and decision of the main Question. The character of the debate is also emphasised by the fact that the Motion is in the charge of back-benchers. It is normally moved and seconded by two newly-elected Members of the Government party if there are any.

The other main general debate, the Budget debate, takes place on the Motion that Mr. Speaker do now leave the Chair in order that

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21 S.C. 18.
the House may resolve itself into Committee of Supply. The debate, though, in practice, it often turns on points made in the Budget, allows Members the same freedom as the Address-in-Reply. It has been ruled that items on the Estimates may not be discussed, but, provided it has some relevance to the administration of the country, any topic is in order. A different rule from that employed in the Address-in-Reply debate is employed with respect to amendments offered during the Budget debate. Unless the Government elects to treat the amendment as a Motion of 'no confidence', the amendment formally confines debate to the subject matter of the amendment. It is thus a potentially useful, though seldom employed, method of emphasis. Debate on the amendment will last while Members will speak to it and it is then disposed of. The debate on the general, original question is then resumed. It is also in order to move a 'Want of confidence' amendment. This does not confine debate.

Debate on the Legislative Department Vote on the Main Estimates is a short general debate. The subjects raised must be fastened to some item on the Estimates. Since these cover the entire field of Government administration, the scope is very wide. There is a general rule that a matter of policy or a matter requiring legislation may not be discussed on the Estimates but it is not, in practice,

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22 S.R. 40/4
23 S.R. 41/2
24 see e.g. N.Z.P.D., 129 (Aug. 5, 1904) 256-264
25 see e.g. N.Z.P.D., 316 (July 1, 1958) 352
very confining. The importance Parliament attaches to its role as a vehicle for the expression of public opinion is indicated, to some extent, by the amount of time devoted to the general debates. The Address-in-Reply normally lasts from two to three weeks. In 1957 the Address-in-Reply continued between 18th June and 4th July, the Budget from 30 July to 27 August. In 1958, the Address was from 11 June to 26 June, the Budget from 1 July to 25 July. In 1959 the Address was from 30 June to 9 July and the Budget from 14 July to 6 August. In 1960 the debate occupied most of the twelve sitting days between the 23rd June and the 13th July. The Budget debate in 1960 was conducted (excluding the Financial statement itself and consequent tax resolution in Committee of Ways and Means) between the 26th July and 12th August, a total of 11 sitting days, for 10 of which the Budget debate was the main business. Thus, for 21 of the 74 sitting days in the session, one of these two debates was the main business. While they are in progress, the two debates have precedence over all other business and are to be set down for the beginning of each sitting unless otherwise ordered by the House. This precedence gives way from time to time for the despatch of urgent business and the disposal of items of formal business but it almost entirely excluded, until 1962, Private Members Notices of Motion and

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26 S.R. 75/1 & 76/1
28 S.O. 19 & S.O. 296
Private Members Bills. There is special provision for Private Members' business in Standing Orders. On Wednesdays, throughout the session until the House orders that Government business take precedence on Wednesdays, Notices of Motion have precedence over Orders of the day until the time appointed to proceed to Orders of the Day, and Private Members' Notices have precedence over Government's. On such Wednesdays, Private Members Public Bills, (other than Local Bills) have precedence over other Orders of the Day. On Thursdays, for the first six weeks of the session, Private Members' Public Bills are taken after Local Bills, which have precedence, and before Government Orders of the Day. The time devoted to the Address-in-Reply and Budget debates whose precedence over-rises these provisions considerably reduces the time available to Private Members prior to the taking of Government precedence on Wednesdays. Thus, in 1960, typical in this respect, only two Wednesdays were available for Private Members' Bills, Wednesday 20 July, the only Wednesday between the Address-in-Reply and Budget debates, and Wednesday 17 August, the only Wednesday between the end of the Budget debate and the taking of Government precedence for Wednesdays, which came into effect on Wednesday 24 August. The one Private Members Bill on the Order paper was discussed on the second of these two Wednesdays, having been post-

29 S.O. 68
30 S.O. 68
poned by Leave on the first occasion.\textsuperscript{31} The precedence accorded to Private Members' Notices of Motion on Wednesday was ineffective owing to the practice of extending until the tea adjournment the time devoted to discussion of written replies to questions. This lack of opportunity for the Private Member was one of the reasons why time limits in all debates were reduced in 1962. With the introduction of the new Questions procedure, which abolishes the debate on written replies, Private Members' Notices of Motion are now discussed.\textsuperscript{32} Though, theoretically, it is of no great importance under the British system whether or not Private Members have an opportunity to promote an occasional Bill, it is of some practical importance, in that it seems to determine the public image of Parliament. Some of the critics of the disciplined two-party system in Parliament, for example, Muir\textsuperscript{33} and Hollis\textsuperscript{34} seem to be more concerned with the vitality of Parliament and the resurrection of its influence vis à vis the Government than with the preservation of the values of the system within which Parliament plays its role. The public nature of Parliamentary debate, necessary to its representative function, is one of the factors which lessens its role and influence in the policy making process. Public discussion does not provide the best environ-

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\textsuperscript{31} Journals (1960) pp. 77 & 156-7
\textsuperscript{32} see above pp. 285-6
\end{flushleft}
ment for development of policy in detail. So as not to prejudice Parliament's right to criticise and to help form and represent public opinion on all official activities, departments find it necessary to discuss policy privately, not informing Parliament until the real decisions have been made. Cabinet and caucus discussion is, for the same reason, though, of course, not only for this reason, more influential. Members themselves, particularly if they are long in Opposition, become frustrated by their inability to alter the course of events directly by their efforts on the floor of the House. Some Members are much less satisfied than others with the routine of criticism, Select Committee work, the watching brief on administration, caucus and lobby persuasion. Then, in the electorates, there is the myth that Parliament makes the laws, that a Parliamentary Act should be the direct end-product of a Parliamentary debate, of the collective wisdom of its Members. The debates must offer some testimony of the validity of this myth if they are not to diminish respect for Parliamentary institutions. By curtailing the Address-in-Reply and Financial debates the Algie Committee hoped to increase correspondingly the opportunities for the discussion of Private Members' Bills. It was also clear that more Parliamentary time than could profitably be used by Members was being devoted to these gen-

eral debates. The hour-long speeches on the Budget were padded with self-congratulation, recriminations, taunts, which were neither informative nor representative of opinion. Members themselves were sensible of this. As a former Leader of the House put it on one occasion, 'The financial debate has lasted four weeks and the public has 'had it'.' In 1946, Mr. Nordmeyer wrote, from the heart it would appear,

I do not know who was first responsible for extending the time limit for speeches on the Budget debate to one hour, with the privilege of extension of time. This was an infliction the House or the country has never really deserved ... Nothing can be more weary than a Budget debate.

The time devoted to these general debates was considerable and clearly it was less a reflection of the importance attached by Parliament to this aspect of its role than of purely mechanical factors like the time limit on speeches. The reduction effected by the change in

36 see "Clamping down on boring words" 2nd Leader, Evening Post, (Wellington, June 8) 1962, p. 10. It is noteworthy, however, that the writer of this article, while labelling the Address-in-Reply as a "notorious time consumer" and commending the proposed limitation of speeches acknowledges the importance of Parliament as representative of opinion. He says, 'In any rearrangement of speaking time limits the position of the private member must be protected. He may be wearisome on occasion ... but he is the only channel through which matters sometimes of real importance to small communities can be aired in the House.'; and see above, pp. 171, 189-190.

37 N.Z.P.D., 304, (18 August 1954) 1280

38 op. cit., pp. 4-5
Standing Orders has corrected the imbalance and improved the debates. The effect of reducing the time limit on speeches from 30 minutes to 20 minutes in the case of the Address-in-Reply and from 60 minutes to 30 minutes in the Budget debate has been to lend a sense of urgency to Members' speeches and to reduce the overall time taken up by these debates. In 1962, the Address-in-Reply began on 12 June and was concluded on 21 June, only seven sitting days; and the debate on the Budget began on 3 July and ended on the 13 July, being conducted on seven of the eight sitting days in this period. Time saved in this and other ways was allowed for Private Members' business and new procedures like the adjournment debates.

Parliament both expresses and helps to create public opinion. Parliamentary debates gain wide publicity in England through extensive newspaper reporting, radio reporting, through comment in the numerous journals of opinion and to a small extent through gallery attendance and Hansard. They are a constant source of information and persuasive argument, feeding the mass media and reaching a wide audience. In New Zealand the main publicity Parliament enjoys is full broadcasting of its debates by the Broadcasting Corporation during normal sitting hours. Parliament has been broadcast since 1936. At first the debates to be broadcast were selected by the Government and the House was informed in advance through Mr. Speaker when they were to take place and how many speakers were to be heard.

Special time limits were announced for speakers during these broadcasts. Two principal speakers were allowed an hour, or three quarters of an hour. Others were allowed some shorter period. Hours of broadcasting were under the control, as now, of the Prime Minister and were rapidly extended to full coverage during normal sitting hours. Some problem was recognised in 1940 in connection with matters involving wartime security and Mr. Speaker was given power to censor speeches by use of an apparatus which showed a warning light to Members when employed to cut off broadcasting.

Unless the Prime Minister orders otherwise, debates are, at present, still cut off the air at 10.30 p.m., though the House may be in the middle of a debate on which urgency has been taken.

The Corporation has made no listener surveys of Parliamentary broadcasts but there is no reason to suppose that the peak listening period is different from that of other programmes, that is during the evening from 7.30 p.m. to 10.30 p.m. The size of the listening audience may also be assumed to vary with the importance of the legislation being discussed. An impression that a very large proportion of those who vote listen to the Budget is widely shared. Though no Corporation figures are available a sample survey made in 1957 in an urban electorate gives some guide to average listening.

\[40\] see e.g. \textit{N.Z.P.D.}, 244, (22 April, 1936), 503.

\[41\] see \textit{N.Z.P.D.}, 257, (May 30, 1940), 6-18

\[42\] M.P.'s with whom I talked, and officials of the Corporation, were among those convinced of the Budget audience.
figures. The figures would be higher in rural areas where there are relatively few diversions.\textsuperscript{43}

In an election year, since the Budget, $59\%$ of major-party voters had not listened to Parliament at all, $25\%$ had listened for less than 3 hours per week, $8\%$ for between 3 and 6 hours, $4%$ 6 to 9 hours, and $4%$ 9 or more hours.

Making due allowance for the fact that the electorate in which these figures were obtained includes the downtown area of the capital city where most of the apartment buildings housing young, childless, adults are located, and where there are many diversions, it seems probable that between $20\%$ and $30\%$ of New Zealand voters listen to Parliament for at least 3 hours a week in an election year. Subject to the quality of the debates, broadcasting is evidently an important instrument of political education in New Zealand.

Labour politicians, bearing in mind the conservative political bias of the main newspapers\textsuperscript{44} attach considerable importance to it. There is some doubt, however, whether all its effects are good ones. Broadcasts have done some damage to the esteem in which politicians and Parliamentary institutions are held. There are repercussions such as those discussed in connection with leadership.\textsuperscript{45} The style

\textsuperscript{43} For this survey see R.S. Milne, 'Voting in Wellington Central', 1957, \textit{Political Science}, 10 (Sept. 1958) 45.


\textsuperscript{45} See above pp. 72-3.
of debate may well have been affected. Debate is characterised by an oratorical rather than conversational style. Members often appear to be addressing themselves to the listening public rather than, through Mr. Speaker, to their fellow Members. Most speeches are heavily prepared. If a Member is challenged for reading his speech as he turns over page after page he resorts to the formula 'I am speaking from rather full notes' and carries on. Most Members declaim their speeches in a recognisable Parliamentary style, a rather high, whining shout with little variation in pitch. This style and many of the arguments that are traversed are reminiscent of the election platform, particularly the appeals to the past, comparing the achievements of the parties. These faults may be due to broadcasting. Comparisons with the pre-broadcasting era are not, unfortunately very useful. Immediately before 1936 when broadcasting of Parliament began, debates were vigorous and serious because economic questions of great importance affected and deeply divided the country as they do not today. Before that time the two-party system and the pattern of control that goes with it had not fully developed and a greater variety of viewpoints was expressed. It is impossible merely by reading the reports of the debates to come to any reliable conclusion, therefore, about changes in debating style as a result of broadcasting. The comments of European visitors to this country have been particularly scathing for many years. Sidney Webb recorded in his diary for August 1898 his impression of great vulgarity in Parliamentary life. According to him, manners in the House were
worse than outside.

It is rare to meet in the streets a man who is in liquor whereas the Speaker of the House is constantly absent, incapacitated from his duties by drink, whilst the Leader of the House is frequently boozey in the evenings. Andre Siegfried, later recorded similarly his impression of the unedifying character of debate. Lord Bryce was very unflattering. Lipson made the same strictures. In the case of the Englishman, or the visitor with some knowledge of the social and educational nuances of English accent there may well be an element of unrealised imported snobbery in his judgement on Parliament, for the New Zealand accent is very like that of the uneducated Londoner. Nevertheless it is clear that the standard of debate in Parliament has never been very high and broadcasting has not improved it.

The connexion between one aspect of the present system of party control and broadcasting is not in doubt. The fact that the peak listening hours are during the evening half of the sitting has led to an extensive pattern of party control of speaking time. The Whips determine the order of speakers on any Bill or in any general debate, so as to ensure that the leaders of the party are heard in the evening and that the evening time available for ordinary Members is div-


47 Democracy in New Zealand, trans. E.V. Burns (London: Bell & Sons, 1914) p. 76

48 James Bryce, Modern Democracies (New York: Macmillan Co., 1921) II, pp. 318-20

ided fairly among them. One Senior Whip makes a chart showing at a glance the time each Member has had during the day, at night, and on the evening adjournment debates, for this purpose.

A loose control is also exercised over the content of speeches. Each party has a well-developed procedure for the prior consideration of legislation. In Opposition, proposed Bills, as soon as they are printed, go to committees of caucus, set up by both parties in each Parliament on roughly the same basis as the Select Committees of the House and including the party representatives on the Select Committee. The chairmen of the caucus committees (available ex-Ministers when the party is in opposition) report to caucus with the committees' recommendations. After caucus discussion, the Whip goes into consultation with the committee chairman, and then tells the speakers who have indicated that they wish to speak the points which they should press. Sometimes the committee chairman prepares a written report for the Whip which he can have cyclostyled for the information of Members.

The practice of not only determining who shall speak for the party but arranging the order of speaking does not add to the quality

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This information was obtained in an interview with Hon. Henry May, Senior Opposition Whip, on February 1, 1963, and describes Labour procedure. Mr. W.J. Scott, Senior Government Whip informed me that a similar procedure is followed by National Members. A pamphlet by J.A. Lee, *I Fight for New Zealand*, (Auckland: Auckland Service Printery, undated), brought out shortly after his expulsion from the Labour party in 1940, contains interesting accounts of caucus procedures and debates.
of debate. Even without agreement on emphasis with the ships, speeches prepared in advance of the debate produce the same points as those made by others. The debate is not an argument, with points made and answered and party policy thereby insightfully developed by being sharpened against counter argument. The prepared speeches often bear no relation to each other, apart from a few brief remarks a Member may have scribbled in at the beginning of his notes in reply to a previous speaker. The special talents of the man 'who can begin nothing of himself' but is 'excellent at improving a hint by another, or correcting an error, or supplying a deficiency',51 tend to be wasted as a result. Broadcasting and such consequent arrangements, are not of course the only possible cause of this deficiency. Some of the features of Parliamentary debate which I suggest may be attributed in part to broadcasting are also to be found in the House of Commons by its critics. Christopher Hollis M.P. reserves his strongest attack for the 'party line' control over the content of speeches. Party controls, it is true operate at least as strongly in New Zealand as they do in Britain, but some other explanation would seem necessary for the differences between New Zealand debate and British debate revealed in this typical description of the House of Commons.

The speeches in the House of Commons tend to be conversational, and resort to the stentorian tones of an orator would be frowned upon. The debates in the House of Commons give an overall impression of spontaneity, and at the same time the debates are conducted so that some concrete action is taken. The impression of spontaneity is enhanced by the fact that speeches are not read; disc-

51 _cit._, II, p. 347.
Discussions are primarily conversational, with oratory roundly discounted; short interruptions are freely permitted; and the Member must be prepared to speak whenever he can catch the Speaker's eye. A high premium is placed on an interesting and lively speech, containing perhaps a quip or two to amuse one's colleagues and annoy the party opposite, and one test of an effective Member is his ability to hold the attention of the House.52

In New Zealand the small membership of the House throws a considerable burden on the ordinary Member.53 He cannot afford the same degree of specialisation as his counterpart in the House of Commons and is virtually forced to fall back on the speech from very full notes. As Bentham put it:

It requires longer preparation and deeper meditation to be able to speak extempore than to write at leisure. To have completely mastered his subject — to have studied it under all its aspects — to have foreseen all objection — to be ready to answer every one: such are the conditions necessary for a public speaker.54

However, while the respective effects of broadcasting and small membership cannot be isolated it is not unreasonable to ascribe the lack of spontaneity in part of broadcasting. Certainly, the hopes Amery has rested on broadcasting of Parliamentary debate in England

52 Young, op. cit., pp. 132, 133-4.

53 In the 1962 session on Second Readings, Notices of Motion, and Adjournment, only 7 Labour Members spoke less than six times, two of the 7 being Members who were seriously ill and have since died and another being a new Member who had won a by-election. 10 Labour Members spoke 19 times or more, the most frequent speaker being the Senior Whip who spoke 28 times. These figures are abstracted from a record kept by the Labour Senior Whip, made available to the writer.

54 Bentham, Works, Bowring ed.,II 362.
are not, in spite of what he says about its success in New Zealand and Australia, supported by the results of broadcasting here:

I do not believe that this would lead to 'talking to the gallery' ... On the contrary, broadcasting audiences would raise the standards of debate.55

There are other problems created by broadcasting. The main audience, at work during the day, becomes familiar with only one aspect of Parliamentary life: debates on Orders of the Day in the evening. Since these Orders are, for the most part, general debates or debates on legislation, interesting business like Question Time, Reports on Petitions and Private Members' Notices of Motion is relatively little heard.56 Committee of Supply on the Estimates is heard on a few evenings each year and provides some contrast but not enough to affect the overall picture obtained by the other evening debates.

A debate in the House, to the visitor in the galleries, is invested with the dignity which the Chamber, the imposing Speaker's chair, the wigged and robed Speaker and Clerk, give to it. Divorced from these trappings, over the air, ordinary men sound like ordinary men, talking, not particularly well, and with no visible results. The general effect is to detract from the esteem in which Parliamentarians and Parliamentary institutions are held. Broadcasting gives a false picture of Parliament; false because it is superficial and one-sided.

56 Standing Order 65 provides that the House proceed to Orders of the Day after the tea adjournment or, on Friday, the lunch adjournment.
In the early years of Parliamentary broadcasting, Members themselves were occasionally astonished when, away from the House, they listened to its debates on the radio. In 1939 one Member told the House:

I think, Sir, we are all agreed that the decorum and dignity of this House is in capable hands—your hands. But I find that the majority of the people are getting a false conception of how the debates in this House are carried on. Recently I had occasion to go home... and while I was there I took occasion to go and turn on the wireless in one of the men's huts, and knowing something about the dignity of the House, I was astonished to realise the false impression I would have gained if I had not been a Member... The broadcast gave the impression of a Donnybrook Fair, and brought back memories of forty years ago, to an up-country race meeting and the gathering afterwards at the local 'pub'... This is a deliberative body, and we do not want people to tune into our debates as they would for a cheap variety show. 57

Broadcasting shatters some illusions, illusions about the direct effect and quality of the debates, but leaves others, particularly the illusion that Parliament's main job is the production of legislation, intact. The contempt which familiarity breeds is the price Parliament risks having to pay for the equally intangible educational value of broadcasting.

Improvements could be made in the present situation by varying somewhat the order in which business is taken so as to present a more balanced diet of Parliamentary food to the evening listener. The recent advent of television to New Zealand offers an additional

means of correcting the false impression which sound radio gives. It has been suggested recently in England for House of Commons debates.\textsuperscript{58} Provided Members were not constantly made aware of their watching audience by obtrusive, whirring cameras and harsh lights, televising debates would probably be an improvement over sound broadcasting.

It is sometimes suggested that only selected debates should be broadcast, the interest of the subject being the criterion.\textsuperscript{59} It is difficult to believe that the present deficiencies of broadcast debates would not be magnified as a result of such a process. While debates which were not broadcast might be more informal, the public image of Parliament given by selected debates would be even more false than it is now.

However, there is a possible alternative improvement in parliamentary broadcasting which does depend on selection, though on selection after debates have taken place. The B.B.C., in England, broadcasts, each day at 10.45 p.m., a summary of the day's proceedings in Parliament. This summary is repeated on the following morning at 8.45 a.m. The B.B.C. also broadcasts a weekly account of Parliamentary activities by some Member of Parliament. Members are chosen in rotation from the parties and the account is not expected to be impartial or comprehensive. Members are also used frequently in various

\textsuperscript{58} The Times (airmail ed.; Oct. 21, 1963) p. 6

\textsuperscript{59} see e.g. R.M. Algie M.P., 'A critical examination of the functioning of Parliament', Journal of Public Administration (N.Z.) 8, (March, 1946) p. 17.
programmes which comment on current affairs. Party political broadcasts are also arranged annually, not simply at election time. A development of this pattern could be used in New Zealand as an alternative to indiscriminate broadcasting of debates. Proceedings might be taped and edited by the Broadcasting Corporation and broadcast daily between 9.30 p.m. and 11 p.m. to provide a lengthier and more elaborate summary than is provided by the B.B.C. each day in the U.K.

This would be a very much more radical and therefore less generally acceptable change than the suggested variations in times of taking business, but it has the advantages of the latter and would also eliminate some of the other disadvantages of broadcasting, particularly the allocation of speaking hours, which probably does more than anything to rob debate of spontaneity.

General Comment

The importance of expressing and creating an informed public opinion is difficult to assess. The link between the nominally sovereign people and those who actually exercise power cannot be absolutely maintained. To delegate power, as the people do to Parliament, is to lose it. Parliament itself, delegating power to an executive, as we have seen, cannot maintain anything like complete control in spite of its devotion to the task and the procedures it

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60 For an account of such programmes and other aspects of political broadcasting in the U.K. see Grisewood H., 'The B.B.C. and political broadcasting in Britain,' Parliamentary Affairs, XVI, (Winter 1962-3) pp. 42-5.
has devised to effect it. Government 'by the people' in the Lincoln formula, is impossible. Democracy stands opposed to autocracy. It is a competitive struggle for political leadership in which the elector acts as arbiter.

A loosely defined object of these arrangements in British liberal political philosophy, and in popular thought, is the community interest. In other words, democracy is not merely a system which gives the people the choice of leaders. The process of choice is intended to secure other values, in general, the community interest. This rather nebulous concept tends to be identified in practice with the popular will, in the sense that those who compete for political leadership do so by promising benefits to the community, benefits which they believe to be objects of desire. The behaviour of leaders is, thus, guided by anticipations of reaction to it from electors.

No practicing politician of any discernment though, is unaware of the possibility of differences between the community interest and the popular will. Moral or utopian judgements are not inherent in recognition of these differences. It may be simply a matter of a quite fallacious, illinformed judgement about the best means to an avowed end. In the long run it is not in the politician's interest, nor in most cases is it his personal inclination in New Zealand, to submit cynically to a popular judgement he believes to be fallacious. More often than not he can take the decision he believes to be right without having to worry too much about the immediate repercussions in public opinion. On most issues, there is no real problem because,
though his perception is distorted, the average elector is barely informed and not particularly interested. But when the political leader senses that the tide of public opinion is strongly adverse he may well decide that a particular decision still has to be taken and that public opinion must be educated to accept it, either before or after the event. Government in other words, finds it necessary to be not only responsive to, but responsible towards, public opinion.

The various procedures of the New Zealand Parliament and the broadcasting of its debates, discussed in this chapter help Government to fulfil this need, though they could be made more effective for this purpose.

Conclusions

This study of Parliamentary procedure has resulted from time to time in judgements about the efficacy of a particular practice in relation to the functions of Parliament in the British system, bearing in mind the local environmental factors which limit possibilities in New Zealand. Some general conclusions, however, may be drawn.

From the brief account given of the activities of parties and pressure groups in New Zealand, from comparisons made with non-political vocations in the discussion of leadership, and from similar comparisons made in discussing public debate, it will be clear that the various functions performed by Parliament are not a Parliamentary monopoly. Parliament is not the only source of national leadership. A Royal Commission on the State Services in New Zealand in 1962 observed that the country had for long been well-served 'by loyal, incorruptible and politically neutral state servants' and the Commission was 'favourably impressed by the quality of many of the officers who appeared', though it was apprehensive for the future. A Royal Commission on Education has painted recently a less rosy, but not alarming picture of educational leadership. In Letters, Industry, Commerce, the professions and the Arts, leadership certainly does not fall

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below, and is probably above, the standards set by Parliament. If extra-parliamentary standards of leadership are higher this is by no means a necessarily unhealthy phenomenon. Minogue has observed that 'Where a spontaneous common good exists, political activity is hardly necessary,' and New Zealand is certainly a homogeneous society. Deep divisions of political sympathy do not exist in the bulk of the population. It might be alleged that this leadership phenomenon (namely a rather low rating for Parliament compared with other sectors) is merely a symptom of a vigorous but harmonious pluralism. It probably is such a symptom in New Zealand but the situation has, nevertheless, its perils. Trotter suggests that England was in such a situation before World War I and that it gave her an immense advantage in the unifying circumstances of war but he says that in peacetime it placed the English at a disadvantage in comparison with the Germans.

'Their social type made it impossible for them to combine and organise themselves' for economic growth; 'against peaceful conquest by Germany in the industrial sphere England was therefore practically helpless,

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3 De Tocqueville drew attention to the same phenomenon in the United States in the 1830's. "I was surprised to find so much distinguished talent among the subjects and so little among the heads of the government." Democracy in America, The World's Classics, 496, (London: Oxford University Press, 1961) p. 135.


5 see Instincts of the Herd in Peace and War, (London: Ernest Benn Ltd, 1940), p. 249.
and to it would probably in time have succumbed.  

The climate in which industrial and other leaders operate in New Zealand is of course very different from that of pre-1914 England and a recognition that the state does have a role to play in the adjustment of interests is now very widespread. This means that the 'game' leaders of a pluralistic society play today in New Zealand is rarely, in the convenient terminology of games theory, a 'zero-sum game' (that is, one in which the players either gain or lose but do not mutually benefit). Leaders expect Government institutions to suggest a non-zero sum game, one which may benefit all interested parties. However, if, in the absence of imaginative Parliamentary leadership the loyal, incorruptible, and politically neutral civil servant is called upon to suggest the adjustment, the very qualities of the civil servant, particularly his neutrality, may lead, not to the game which has the greatest total benefit to the parties in competition but to the one which divides the gains most evenly. On the other hand, a partisan solution by an 'interested' department is objectionable when it can be seen to prejudice the more general interest of the community or in so far as it justifies an accusation that bureaucrats are so dominant that there is little prospect of seeing their decisions reversed by a different Government. When the interests of two or more departments conflict, the inadequacy of a bureaucratic adjustment of

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6 see Instincts of the Herd in Peace and War, (London : Ernest Benn Ltd. 1940), p. 249.
interests can be seen in yet another light. Thus, while the suggestions in the first section of this study as to the way parliamentary leadership may be improved must be approached with a due consideration of the leadership needs of other sections of New Zealand society, they clearly deserve careful consideration.

First, it may be observed, whatever the deficiencies of leadership which arise out of conditions of recruitment to Parliament, no training superior to Parliamentary training suggests itself as a qualification for Ministerial responsibility. A Minister is representative of his department in Parliament. He is its public relations man. He is concerned with all major policy decisions and, though the tendency is for the three year term to lower his sights somewhat in comparison with the permanent Secretary, he should be actively involved in planning. Only in a limited way does the administrative efficiency of the department - its day to day operation - depend on the Minister.

The rough and tumble of Parliamentary life, the experience of facing public meetings, of chairing committees, of scanning reports and other documents in preparation for policy discussions, of arguing a case in caucus and showing independence and toughness of mind, of defending his party in the House, of taking advantage of complaints from constituents to search out administrative weakness or waste, of keeping irregular hours, all allow a man to exhibit and develop the qualities which are necessary in a Minister.
The Parliamentary 'selective function', however, is exercised within limits set by the size of the House and the quality of its Members. Eighty Members is a small pool of talent from which to choose and the quality of the pool is probably affected adversely by the short Parliamentary term which makes Parliamentary life look insecure, and also favours vocations which can be pursued concurrently or taken up early after an election defeat. Party conventions affecting the selection of candidates have also prevented maximum use being made of the talents available.

Then, it was observed, the New Zealand politician struts a small stage. The compensations for this in status, financial rewards, accommodation, and working conditions, are not striking in comparison with other positions in the community. In particular, secretarial and research facilities could be provided both to increase the efficiency of the ordinary Member and to make the profession more attractive.

Parliamentary debate, whether specific, on proposals for legislation or on some aspect of the activities of the bureaucracy, or general, expressing and helping to form public opinion, tends to maintain the responsibility of Government to the electorate. The main burden of public debate in these terms is thrown upon Parliament. No outside body plays a comparable role. For this reason the broadcasting of the proceedings of Parliament seems to be necessary in spite of the undesirable consequences it appears to have on the style and quality of debate, and on the esteem in which the House is held. However, in this study a number of judgements have been made about
the procedures of the House and the effectiveness of discussions to which they give rise. The general conclusion to which these judgements lead is that what is heard of Parliament during the peak evening listening hours could be improved most easily by varying the order of business. Question-time and Private Members Motions deserve a wide listening public and there is no reason why on Wednesdays, when both are taken in the afternoon under present procedure, the order of business should not be reversed so that they could be taken in the evenings from 7:30 to 10:30 p.m. Less frequently other items of business like the discussion of reports on petitions or on Committee reports might be heard in the evenings. Finally, the Motion for the evening adjournment on Tuesdays and Thursdays could be improved by providing for 15 minute speeches making it an opportunity for one Member and a Minister. Weight is lent to this suggestion by the attention that the adjournment Motion already appears to have attracted in the press, in radio comment, and in discussion among politically informed people. The debates are interesting but their deficiencies and their popularity are both in evidence in the label which has gained currency for them: "Hancock's half hour". This is the name of a half-hour B.B.C. comedy programme.

Neither the kind of criticisms made here of debating procedures in the House of Representatives, nor the history of the former Legislative Council gives any reason to suppose that the reintroduction of bicameralism would prove a useful addition to public debate or counterbalance the deficiencies of the Lower House in this respect. The problem of how to select the 'best' in politics remains unsolved
but, in any case, before 1950, the experience of the Legislative Coun-
ny demonstrated that few men of talent would be tempted to serve
actively a chamber which had no power; and to give a second chamber
power if it were significantly different in composition and control
from the popular chamber would be to threaten the system values of
effectiveness and responsibility. Men of talent do serve the House
of Lords in England and there is no doubt that standards of debate
are high in that House. However, the factors which have induced peo-
ple to serve in the Lords do not exist in New Zealand. No-one in New
Zealand with an intense interest in politics and a leaning towards
a political career is excluded from the lower chamber by an accident
of birth. There lacks the drama of the politics of a second-rate
Great Power. There lacks a considerable leisured class. There is
not a still prestigious aristocracy with a concept of its political
role.

The argument of a body called the New Zealand Constitutional
Society, founded in February 1957, that the barrier of a second c.am-
ber must be available to place in the way of the lower House in case
it overthrows democratic institutions, provides, to meet an inconceivably remote possibility, a dubiously efficacious remedy. It is a
remedy with collateral potential disadvantages which have in fact
led to a decline in the power of second chambers (and hence a decline
in their ability to check) in countries which have Parliamentary Gov-
ernment.

That some check is desirable on the speed at which legislation
may be introduced and passed may be conceded. The customary pressure
of legislation at the end of every session has been noted, as well as the considerable use of urgency procedure and consequent all night sessions. Delays which give legislators opportunity for research and reflection; which increase the likelihood that all those who would object to a Bill will be aware that it is in progress and have time to register their objection, can be achieved, however, without the expense or the problems of an Upper House. Some stress was laid in this study on the desirability of observing some delay between the end of the Committee stage and the Report stage on bills. The rules of the House could be altered at any point to provide for automatic delays only capable of being eliminated when, in the opinion of Mr. Speaker, a matter of urgent public importance (defined by reference to some of the existing precedents relevant to adjournment Motions of this kind) required it. Alternatively, emergency legislation effective for, say, five days might be exempted from delay requirements. Such Bills could be made subject to a Fourth Reading within the 5 day period. It might also be provided that a Bill whose Second Reading was not moved until the last day of any session be ratified within five days of the commencement of the subsequent session or cease to be effective. More use could profitably be made of the Select Committees to consider Bills before the House, hearing evidence and bringing experienced Members together for critical discussion.

The present rules permit haste but not complete surprise by Government. Those which relate to the bringing forward of business for discussion, the manner of speaking and content of speeches generally favour reasoned, orderly debate. The rules are enforced to ensure
that only one question is before the House at any time. If there is some irrelevance and tedious repetition during the course of debate it is because Mr. Speaker, interpreting the mood of the House, tolerates it. There are rules which could be enforced more rigidly if the House wished. Decisions preferred by the majority are normally secured because there is disciplined party voting, but in free votes the possibility of less preferred decisions being taken, due to the order in which amendments, and amendments to amendments, are decided, does arise, but is unavoidable. There is also some possibility of confused voting in the free situation because the form of question for amendments is unnecessarily complex: 'that the words proposed to be omitted stand part'. It would be simpler to propose deletion. The possibilities of confusion in speaking to or voting on a question are rarely, however, realised. A far more obvious fault of debate is the formal nature of speeches. This is partly due to the laxity in application of the reading rule and has probably also been associated with generous time limits on speeches which have been treated as minima by Members, a temptation strengthened by the broadcasting of debates. Time limits can be and have been shortened. The rule against reading should be more severely applied.

The importance which has been attached to ensuring the widest possible listening audience to Question-time, Private Members Motions and petitions is magnified by the desirability of the maximising of extra-Parliamentary development of the control or checking function, to which these procedures are most relevant. Greater familiarity with Parliamentary control procedures would probably sharpen public
awareness in this respect.

Outside Parliament and such Parliamentary officers as the Ombudsman and Controller and Auditor-General, the check on Government is exercised by the courts, to a limited extent by the press, and by a variety of organised interest and opinion groups as well as by Government sponsored but independent advisory committees, councils, and commissions, of either temporary or permanent nature whose terms of reference involve criticism of policy and administration.

These countervailing powers play a checking role of great value and importance, but there is no doubt that the watching brief on behalf of the community, considered as a whole, is given mainly to Parliament. Consequently the new Select Committee procedure for the consideration of delegated legislation, for the examination of the Public Accounts, and the creation of the new office of Ombudsman are welcome experiments to improve controls. In particular, the Public Expenditure Committee has already demonstrated its potentialities.

Organisation and procedure have been examined in this study in relation to the functions of Parliament, functions determined in the first instance by reference to a model. The model and the New Zealand instance of it stand in somewhat the same relationship to each

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7 Reference has already been made to the general tone of the press in New Zealand. It is not a scandal-mongering press and the unearthing of Government slackness and ineptitude is not a conspicuous part of its activity. One newspaper 'Truth' did have such an interest but has exhibited it less in recent years.
other as the general description of the internal combustion engine and a description of the engine in a particular car. Points in the design of a particular engine can be criticised by reference to the general theory of internal combustion, as aspects of procedure have been criticised in this study, by reference to these model-derived functions. But the examination of an engine can also be expected to contribute to an understanding of the general theory. An analysis of the actual content of procedure in use can, similarly, contribute to an understanding of the British Parliamentary system.

Thus, from this study, two salient features of British Government are seen to be reflected clearly in New Zealand Parliamentary procedure. They are effectiveness and responsibility. Procedure in New Zealand enables Government to carry out its task of governing according to the platform on which it was elected, and to circumstances which arise during its term of office. It gives the Government effective weapons, particularly the closure and urgency motions, to defeat obstruction in Parliament. Various rules serve Government purposes by expediting business. The rules of relevancy for various stages of debate on legislation, rules against irrelevance and tedious repetition, rules imposing time limits on speeches are in this category. Rules determining precedence of business and making certain Motions a Ministerial monopoly (particularly Motions which propose the spending of money), ensure that the Government has first claim to the attention of the House and preserve its initiative in legislation. A Government which works within these rules, however, must be prepared to justify every aspect of its activity to Parliam-
ent through which it is ultimately responsible to the electorate.

The rules protect the right of the minority Opposition to inquire and criticise and present minority views. Thus, the closure Motion must be acceptable to Mr. Speaker and his decision is guided by precedents, decisions of former Speakers as to what constitutes a reasonable period for the discussion of a proposal at any stage. Similarly, in the traditionally safe hands of Mr. Speaker, by virtue of his recognition powers, are the rights of non-Government Members to speak on any Motion before the House. Mr. Speaker decides, too, when a matter is of sufficient urgency and public importance to warrant use of the special urgent adjournment Motion.

Procedure places considerable authority in the person of Mr. Speaker to decide how the delicate balance between Government needs and minority rights is to be preserved but, in the final analysis, procedure is sanctioned by all the Members on both sides of the House. Mr. Speaker, enforcing the rules and conventions, protects the minority from the occasional temptation to cut short discussion and brush aside criticism. The tradition is that the House in New Zealand is master of its own rules; that the rules do not master the House. Mr. Speaker has the very interesting and delicate task of determining what this really means in specific situations when tempers are high and the majority clamours.

Against a determined Government solidly backed by the majority party his authority could not prevail. But the authority of Mr. Speaker and the rules and conventions he enforces are given and made
by the House so that it can discharge its functions within the frame-
work of the constitution. To that constitution the two parliamentary
parties in New Zealand are strongly committed. The words of the lead-
er of one of the parties are eloquent testimony to this commitment
and a fitting conclusion to this study.

Parliament is a vital part of our democratic life. It is the means by which the will of the people finds expression in law. As a machine it may be slow-moving and cumbersome. As an institution it may suffer from the defects of the human material which constitutes it. But, in practice, it works. Its forms may on occasion prove defective, its procedure may be based on customs which have outlived their usefulness. In spite of these shortcomings, however, it is an indispensable part of our democratic life. No criticism of the methods it adopts to achieve its ends, or of the men and women who constitute it, can alter the fact that in the long run it operates for the people's good.  

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the files of three Wellington papers, The Evening Post, The Dominion, and the weekly New Zealand-wide paper, Truth. Of the other six major newspapers, New Zealand Herald and Auckland Star, Christchurch papers, The Press and the Christchurch Star Sun, the Dunedin papers, Otago Daily Times and Evening Star, only the Evening Star, Dunedin, has been cited.


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Young, R. The British Parliament.
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