

growing dependence of the public itself, and, in particular, of defined classes and sections of that public, upon legislative protection and supervisory control of matters which in former times were considered capable of protection from within the ranks of private activities themselves.

Misunderstanding is caused by remarks made sometimes in our Courts, when application to some new set of facts of a regulation or Order in Council is placed before the Judiciary for consideration. Then, and in most cases without justification, the cry is carelessly raised in public that the liberty of the subject is in danger by reason of the delegation to the officers of the Public Service of powers which should be vested in the Legislature itself. It is overlooked that the primary function of Parliament is the safeguarding of that liberty, that Parliament of itself is incapable of performing the now innumerable administrative functions by which such safeguards as it imposes can best be made secure; for it is clear that liberty can best be secured, not by the curtailment of control, but by its extension.

The conditions of modern society have crowded upon Parliament, and, what is no less important, upon the members of Government and Cabinet itself, far more work than either of them can be expected to perform with efficient consideration to detail. Neither body can devote the time to the working out of the administrative details by which the will of the Legislature is made capable of execution.

In England, prior to 1932, there were frequent complaints of the alleged unconstitutional abuses which had arisen by the delegation by Parliament of administrative and executive functions to officers of the Public Service. Quite an extensive literature had grown on the subject, and the attack by the present Lord Chief Justice of England (Lord Hewart) on the whole system of delegation was developed in an address to the American Bar Association in September, 1930, and subsequently in more extended form in his book, "The New Despotism," in which he trenchantly criticized the manner in which, in his opinion, the Government Departments in Great Britain had been encroaching on the provinces of the Legislature and the Judiciary. As a result of the storm of protest raised on the publication of Lord Hewart's disclosures, a Commission was set up to review the position generally. The terms of reference of the "Committee on Ministers' Powers," as the Commission was termed, were as follows:—

"To consider the powers exercised under the direction of (or by persons/bodies appointed specially by) Ministers of the Crown by way of (a) delegated legislation, and (b) judicial or quasi-judicial decision, and to report what safeguards are necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law."

The criticism in Lord Hewart's admission attempted to show that the Civil Service had attempted "to cajole, to coerce, and to use Parliament" ("The New Despotism," page 17). The Committee at the outset removed the foundation of Lord Hewart's case by acquitting the Civil Service of any such sinister motives. Even the Lord Chief Justice could not, in his book, give any examples of abuse of powers by Civil servants. He simply attacked the system of delegated legislation itself. But the Committee's report pointed out that delegated legislation is the inevitable consequence of the adoption of collectivist ideals by Parliament, whatever party may have been in power during the last sixty years.

The Committee expressed the opinion that the Legislature had not the time to discuss minor or technical details: a local example is the Electrical Wiremen's Regulations, which, with their mass of technical diagrams and details, fill a reasonably-sized volume in themselves, and are wholly unsuited to inclusion in statute form. New conditions have enormously increased the amount of legislation necessary for consideration during the time available to Parliament. The Committee stated Parliament has not the ability to discuss details of the nature indicated because the character of the legislation has changed, while Parliament has not developed any such technique of consultation with experts as would enable it to deal adequately with technical subjects, with which such new legislation in the main is concerned.