

Statutory Instruments

regulation that they have to account for the exercise of the power they have given themselves under regulation.

I do not think there is any magical cure for this. Government being what it is there will always be misuse of power. But as I said earlier, Mr. Speaker, there should be statutory committees. For example, I do not think we should pass the bill amending the Transportation Act without including a provision for the establishment of a committee which would ride herd on the extent to which the government makes use of the power to use the order in council procedure, what authority it gives, and how it has conducted itself in implementing the regulations.

The scrutiny committee—that is, the joint standing committee—must be strengthened. It is not for us just to bring in reports. I would go further than my hon. friend from Halifax-East Hants and say that it is not enough to bring in a report perhaps once a session. The authority should be granted, either by statute or amendment of Standing Orders, so that when our committee comes to a decision that the government has acted inequitably, that it has breached the rules of natural justice, that it has made unusual and unexpected use of some power, or whatever may be the case, that we should be entitled to bring into the House a petition seeking to have that order in council amended or set aside. I do not think there need be too many.

Some of my hon. friends in the government may say that this will take too long. It is my experience as a member of this House, having observed the machinery of government, that if the civil servants who draft these regulations and enforce them knew that the orders in council that they produced to their minister for signature by the governor in council could, in due course, be brought into the House after committee examination, and a thorough and detailed study made of the extent to which they had been used, this would be a very salutary brake. It would be a silent policeman on the inequitable abuses of the capacity of government to govern by order in council.

● (2030)

Committees should have the power to call witnesses, but under what is known as Crown privilege any minister can say that he will not allow a civil servant to be called. This is a power which has been exercised. He can say that he will not allow civil servants to produce documents if he does not want them to do so.

We had a situation a week ago when an agent of the Department of Justice appeared before a provincial tribunal and said "I want a blanket exemption and blanket immunity for every civil servant whom you have called as a witness before you." What gall, what a travesty of justice! The Department of Justice headed by a member of this House, a constitutional adviser to the government, says "I won't allow civil servants to be called to give evidence." What right have they to have immunity different than that open to the rest of us? That is the sort of thing governments claim as a right and that has to be taken away.

There must be much more care taken in the drafting of orders in council. They should be drafted by people who have a common experience. One only needs to look at the thousands of orders in council. My friend from Halifax-East Hants said that our committee had looked at a little over 1,000 of them. My understanding is that during the course of one year there are between 3,000 and 4,000 orders in council regulations passed, aside from countless directives which do not qualify under that title. I think there should be some common approach in the drafting of these so that people will know what they are up against. There should be notice published, not only in the *Canada Gazette*, but in newspapers in areas where people will be affected.

We all remember the story of the Roman emperor who was called upon by law to have his laws engraved on tablets of stone. He did so, but had them hung up so high that people could not see what was on them. This is the trouble today. There are very few people, even in government, who know how many order in council regulations are passed, where they are hidden away, and what effect they have. There must be publicity. There must be some changes on the question of judicial review. At the moment we can only have judicial review if there is a question of something being ultra vires. People will have more confidence if there is a simple, inexpensive method of challenging some of the regulations. People have more confidence in the courts than they do in some of the tribunals.

I have tried to keep this debate on a non-partisan level, just as it has been in the committee. I suggest to my hon. friends opposite that if they believe a parliamentary democracy is the least dangerous of all the systems of government which man has invented, then they have got to do something about it. We on this side have been doing the best we can. I am convinced that dozens of laws are passed every session which do not have the approval of the majority of the members of the House, but because the government side feels compelled to go along, they do so. Then we have a situation where provisions for orders in council are included in the enabling powers in those bills, and are entrusted to our public servants.

Public servants are not bad people. They are not dishonest people. But sometimes when they get into the highrise towers of power and get their hands on the levers of power, they run wild. If our system is to survive, is to flourish and is to have that capacity for creativity to make this House of Commons a place of light and learning, rather than what it is today, then a lot of the responsibility lies on the shoulders of hon. members opposite. They have a very considerable responsibility. If they fail in that responsibility, then the people of Canada will well and long remember it.

Mr. Goodale: Mr. Speaker, I consider it an honour to be able to participate this evening in a debate on this important subject, and particularly to have the opportunity to follow my learned friend from Peace River who has, in the course of the last few minutes, made a valuable contribution to this debate. I do not intend to take a long time this evening because I think there are other members of the House, particularly those who