

*Procedure and Organization*

matter of time allocation a minister of the government must move a motion under the rules, but it is not the exclusive right of the government to make rules, or to try to impose on parliament as a whole its view on what the rules should be.

It is true that under the rules the government has certain privileges that are not open to the opposition, such as the introduction of money bills and so on. But, equally validly and truly, the opposition has rights that are not necessarily open to the government. I often hear members, chiefly new members, advancing the plausible but nevertheless invalid argument that the government has been elected and given a mandate by the people to carry out its program and hence the government has the right to make the rules of parliament to suit themselves. No argument could be more fallacious. It is like saying that a football team that won its last game can change the rules to suit itself for the next game. Or it is like saying that the heaviest football team has the right to determine the rules. Or it is like saying that if a lawyer wins a case in court he can determine the court procedure to be used for his next case. All of these examples, of course, make complete nonsense.

May I again at this point quote from Beauchesne, commencing at the bottom of page 54. I am about to make a fairly long quotation, but I do so without apology since I think this is a summation of some of the most important points that are pertinent to this discussion:

The principle that the majority rules was conceded in section 49 of Magna Carta which reads: "In all those things which are appointed to be done by these twenty-five Barons, if it happen that all the twenty-five have been present and have differed in their opinions about anything, or if some of them who had been summoned would not or could not be present, that which the greater part of those who were present shall have provided and decreed shall be held as firm and as valid as if all the twenty-five had agreed in it."

That is the principle of the convention of the majority having its way in the passage of legislation.

This principle is also enunciated in Section 49 of The British North America Act which reads: "Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote."

(3) In every country attempts have been made to ensure that there shall be some check on the powers of the majority. Lord Bryce said in "Modern Democracies": "That a majority is always right, i.e. that every decision it arrives at by voting is wise not even the most fervent democrat has ever

[Mr. MacLean.]

maintained seeing that popular government consists in the constant effort of a minority to turn itself by methods of persuasion into a majority which will then reverse the action or modify the decisions of the former majority."

Decision by majority is not an absolute and unquestionable principle. "Our constitution, to use Burke's phrase, is something more than a problem in arithmetic." There is no divine right of a mere numerical majority any more than of King's. Majority decision is a measure of convenience essential to the dispatch of business, the result, "of a very particular and special convention, confirmed by long habits of obedience." The idea that a majority, just because it is a majority, is entitled to pass, without full discussion, what legislation it pleases, regardless of the extent of the changes involved or of the intensity of the opposition to them, the idea in fact that majority edicts are the same things as laws, is wholly alien to the spirit of the constitution.

(4) A minority party may question ministers, may criticize but cannot control in the ordinary case a Government with a reasonable large majority. There can be no control of the Executive where the supporters in Parliament are prepared without question to obey the leaders of their party—through the Whips. All that the minority party—the Opposition—can do without support from members of the majority party is to question, inquire and criticize, but whilst this does not amount to control it is an important method of checking abuses of power.

I do not want to give the President of the Privy Council (Mr. Macdonald) any ideas in this regard.

• (5:20 p.m.)

With the support of a majority of Members it would be possible for a Cabinet to suspend the sitting of Parliament, have the minority members arrested, withdraw the safeguards of liberty such as *Habeas Corpus* and freedom of speech, and to establish virtually a dictatorship. All this, too, could be done within the law. It is surprising how few members of the general public appreciate how uncontrolled the Cabinet is where it has the support of a loyal majority in Parliament and that "the supremacy of Parliament" in this sense is absolute and subject to no real safeguards of any kind.

Beauchesne continues:

We may add that the majority of the House of Commons does not always represent the majority of the electors in the country. It often happens that, owing to the redistribution of electoral districts, a party may come out of the general elections with a majority of elected members without having received the majority of the votes given by the electors who went to the polls or whose names are on the electoral lists. That party may form a Cabinet, but the official Opposition together with other anti-ministerial groups, though sitting to the Speaker's left, are the real representatives of the people; and their right to challenge by legitimate means every measure or proceeding sponsored by ministers cannot be disputed. In such cases, when the House divides, members who oppose the Administration may act on behalf of the majority while