

## Erskine May, Vol. II, Chapter VII, pp. 53-60

### Progress of Reporting

The entire people are now present, as it were, and assist in the deliberations of Parliament. An orator addresses not only the assembly of which he is a member; but, through them, the civilised world. His influence and his responsibilities are alike extended. Publicity has become one of the most important instruments of parliamentary government. The people are taken into counsel by Parliament, and concur in approving or condemning the laws, which are there proposed; and thus the doctrine of Hooker is verified to the very letter: 'Laws they are not, which public approbation hath not made so.' While publicity secures the ready acceptance of good laws by the people, the passing of bad laws, of which the people disapprove, is beyond the power of any minister. Long before a measure can be adopted by the legislature, it has been approved or condemned by the public voice; and living and acting in public, Parliament, under a free representation, has become as sensitive to public opinion, as a barometer to atmospheric pressure. Such being the direct influence of the people over the deliberations of Parliament, they must share, with that body, the responsibility of legislation. They have permitted laws to be passed,—they have accepted and approved them; and they will not [54] afterwards allow them to be disturbed. Hence the remarkable permanence of every legislative settlement. There has been no retrogression in our laws or policy. The people,—if slow to perceive the value of new principles,—hold fast to them when once acknowledged, as to a national faith.(1) No circumstance in the history of our country,—not even parliamentary reform,—has done more for freedom and good government, than the unfettered liberty of reporting. And of all the services which the press has rendered to free institutions, none has been greater than its bold defiance of parliamentary privilege, while labouring for the interests of the people.

Reporting, instead of being resented by Parliament, is now encouraged as one of the main sources of its influence; while the people justly esteem it, as the surest safeguard of liberty. Yet such is the tenacity with which ancient customs are observed,—long after their uses have ceased to be recognised,—that the privilege itself has never been relinquished. Its maintenance, however, is little more than a harmless anomaly. Though it is still a breach of privilege to publish the debates, parliamentary censure is reserved for wilful misrepresentation; and even this offence is now scarcely known. The extraordinary ability, candour, and good faith of the modern school [55] of reporters, have left nothing for Parliament or the public to desire.

The fire which destroyed both Houses of Parliament in 1834, introduced a new era in reporting. Though, for many years past, accommodation of the reporters of the daily press had enjoyed facilities unknown to their predecessors, they still carried on their difficult labours in the strangers' gallery. In the temporary houses, separate galleries, for the accommodation of reporters, were first introduced; and this significant change has been perpetuated in the present buildings.

In 1846, the presence of strangers in the galleries and other parts of the House, not appropriated to members, was for the first time recognised by the orders of the House of Commons; yet this tardy recognition of their presence did not supersede the ancient rule by which they could be excluded on the word of a single member.

## Publication of Division Lists

A further change was still wanting to complete the publicity of parliamentary proceedings, and the responsibility of members. The conduct of members who took part in the debates,—until recently a very small number,—was now known: but the conduct of the great majority who were silent, was still a secret. Who were present,—how they voted,—and what members composed the majority,—and therefore the ruling body,—could not be ascertained. On questions of unusual interest, it was customary for the minority to secure the publication of their own names; but it was on very rare occasions indeed, that a list of the [56] majority could also be obtained.(2) In either case the publication was due to the exertions of individual members. The House itself took no cognisance of names: but concerned itself merely with the numbers. The grave constitutional objections to this form of voting, had not escaped the notice of parliamentary reformers. Lord John Russell, in his speech on parliamentary reform in 1819, said:—'We are often told that the publication of the debates is a corrective for any defect in the composition of this House. But to these men, such an argument can by no means apply: the only part they take in the affairs of this House, is to vote in the majority; and it is well known that the names of the majority are scarcely ever published. Such members are unlimited kings,—bound by no rule in the exercise of their power,—fearing nothing from public censure, in the pursuit of selfish objects,—not even influenced by the love of praise and historical fame, which affects the most despotic sovereigns: but making laws, voting money, imposing taxes, sanctioning wars, with all the plenitude of [57] power, and all the protection of obscurity: having nothing to deter them but the reproach of conscience, and everything to tempt the indulgence of avarice and ambition.'

It was not, however, until 1836,—four years after the passing of the reform act,—that the House of Commons adopted the wise and popular plan of recording the votes of every member; and publishing them, day by day, as part of the proceedings of the House. So stringent a test had never been applied to the conduct of members; and if free constituencies have since failed in their duty of sending able and conscientious representatives, the fault has been entirely their own.

The Commons have since extended the principle of publicity still further. The admission of strangers to debates had been highly prized: but the necessity of clearing them during a division had never been doubted.(3) Yet in 1863, it was shown by Mr. Muntz that they might be permitted to remain in the galleries, without any embarrassment to the tellers;(4) and they have since looked down upon the busy scene, and shared in the excitement of the declaration of the numbers.

In these important changes, the Commons have also been followed by the Lords. Since 1857, their Lordships have published their division lists daily; and during a division, strangers [58] are permitted to remain in the galleries and in the space within the rails of the throne.

## Committees and Papers

In a minor, yet not unimportant change, the personal responsibility of members, as well to the House as to the public, has been extended. In the Commons, since 1839, the name of every member addressing questions to witnesses before select committees, has been published with the minutes of evidence; and in 1862, the same practice was adopted by the Lords. It displays the intelligence, the knowledge, and the candour of the questioners; or their obtuseness, ignorance, and prejudice. It exhibits them seeking for truth, or obstinately persisting in error. Their presence at each sitting of the committee, and their votes upon every question, are also recorded and published in the minutes of proceedings.

One other concession to the principle of unrestricted publicity, must not be overlooked. One of the results of increasing activity and vigilance in the Legislature, has been the collection of

information, from all sources, on which to found its laws. Financial and statistical accounts,—reports and papers upon every question of foreign and domestic policy,—have been multiplied in so remarkable a manner, since the union with Ireland, that it excites surprise how Parliament affected to legislate, in earlier times, without such information. These documents were distributed to all members of the Legislature; and, by their favour, were also accessible to the public. [59] In 1835, the Commons took a further step in the encouragement of publicity, by directing all their papers to be freely sold, at a cheap rate. The public have since had the same means of information, upon all legislative questions, as the House itself. Community of knowledge, as well as community of discussion, has been established. If comments are justly made upon the extravagance of parliamentary printing,—if voluminous 'blue books' are too often a fair object of ridicule,—yet the information they afford is for the public; and the extent and variety of the documents printed, attest at once the activity of members, and the keen interest taken by the people in the business of legislation.

### **Freedom of Criticism**

While the utmost publicity has thus been gradually extended to all parliamentary proceedings, a greater freedom has been permitted to the press, in criticising the conduct of Parliament. Relying upon the candour of public opinion for a justification of its conduct, Parliament has been superior to that irritable sensitiveness, which formerly resented a free discussion of its proceedings. Rarely has either House thought fit, of late years, to restrain by punishment, even the severest censures upon its own debates and proceedings. When gross libels have been published upon the House itself, or any of its members, the House has occasionally thought it necessary to vindicate its honour, by the commitment of the offenders to custody. But it has rightly distinguished between libels upon character and motives,—and comments, [60] however severe, upon political conduct. In 1810, Mr. Gale Jones was committed to Newgate, for publishing an offensive placard announcing for discussion, in a debating society, the conduct of two members, Mr. G. Yorke and Mr. Windham. Sir Francis Burdett was sent to the Tower, for publishing an address to his constituents, denouncing this act of the House, and denying its right of commitment. Twenty years later, both these offences would probably have been disregarded, or visited with censure only. Again, in 1819, Mr. Hobhouse was committed to Newgate for violent, if not seditious, language in a pamphlet. A few years afterwards, such an offence, if noticed at all, would have been remitted to the Attorney-General, and the Court of Queen's Bench. In 1838, Mr. O'Connell, for a much grosser libel than any of these, was only reprimanded in his place, by the Speaker. The forbearance of both Houses has not compromised their dignity, while it has commanded public respect. Nor has it been without other good results; for, however free the commentaries of newspapers, they have rarely been disgraced by the vulgar scurrilities which marked the age of Wilkes and Junius, when Parliament was still wielding the rod of privilege over the press. Universal freedom of discussion has become the law of our political system; and the familiar use of the privilege has gradually corrected its abuses.

### **Footnotes.**

1. Though equal publicity prevails in the United States, their legislation is more sudden and impulsive, and remarkable, therefore, for its instability.—De Tocqueville, *Démocratie en Amérique*, i. 242, 301 (13th ed.). See also an interesting essay of Sismondi, 'De la Délibération Nationale:' *Études sur les Constitutions des Peuples Libres*, 131. See also Bentham, *Political Tactics*, Bowring's ed., ii. 310.
2. At the dissolution of 1689, division lists were first published by the Whigs and Tories, to influence the elections.—Macaulay's *Hist.*, iii. 535. In 1696, the Commons declared the printing the names of the minority a breach of privilege, as 'destructive of the freedom and liberties of Parliament.'—*Com. Journ.*, xi, 572. Mr. Burke wrote, in 1770:

'Frequent and correct lists of voters on all important questions ought to be procured.'—Present Discontents, Works, ii. 325. In 1782, the opposition published division lists, the ministerial members appearing in red letters, and the minority in black.—Wraxall Mem., ii. 591. In Ireland, before the Union, 'the divisions were public, and red and black lists were immediately published of the voters on every public occasion,'—Sir Joseph Barrington's Personal Sketches, i. 195.

3. In 1849 a committee reported that their exclusion was necessary.

4. Report of Select Committee on Divisions, 1853.

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