

## Who wants the Abolition of Parliament Bill?

DAVID HOWARTH

**Hardly anyone has noticed, but British democracy is sleepwalking into a sinister world of ministerial power**

LAST WEEK all eyes were on the House of Commons as it debated identity cards, smoking and terrorism. The media reported both what MPs said and how they voted. For one week at least, the Commons mattered.

All the more peculiar then that the previous Thursday, in an almost deserted chamber, the Government proposed an extraordinary Bill that will drastically reduce parliamentary discussion of future laws, a Bill some constitutional experts are already calling "the Abolition of Parliament Bill".

A couple of journalists noticed, including Daniel Finkelstein of *The Times*, and a couple more pricked up their ears last week when I highlighted some biting academic criticism of the Bill on the letters page of this paper. But beyond those rarefied circles, that we are sleepwalking into a new and sinister world of ministerial power seems barely to have registered.

The boring title of the Legislative and Regulatory Reform Bill hides an astonishing proposal. It gives ministers power to alter any law passed by Parliament. The only limitations are that new crimes cannot be created if the penalty is greater than two years in prison and that it cannot increase taxation. But any other law can be changed, no matter how important. All ministers will have to do is propose an order, wait a few weeks and, voilà, the law is changed.

For ministers the advantages are obvious: no more tedious debates in which they have to answer awkward questions. Instead of a full day's debate on the principle of the proposal, detailed line-by-line examination in committee, a second chance at specific amendment in the Commons and a final debate and vote, ministers will have to face at most a short debate in a committee and a one-and-a-half hour debate on the floor. Frequently the Government will face less than that. No amendments will be allowed. The legislative process will be reduced to a game of take-it-or-leave-it.

The Bill replaces an existing law that allows ministers to relieve regulatory burdens. Business was enthusiastic about that principle and the Government seems to have convinced the business lobby that the latest Bill is just a new, improved version. What makes the new law different, however, is not only that it allows the Government to create extra regulation, including new crimes, but also that it allows ministers to change the structure of government itself. There might be business people so attached to the notion of efficiency and so ignorant or scornful of the principles of democracy that they find such a proposition attractive. Ordinary citizens should find it alarming.

Any body created by statute, including local authorities, the courts and even companies, might find themselves reorganised or even abolished. Since the powers of the House of Lords are defined in Acts of Parliament, even they are subject to the Bill.

Looking back at last week's business in the Commons, the Bill makes a mockery of the decisions MPs took. Carrying ID cards could be made compulsory, smoking in one's own home could be outlawed and the definition of terrorism altered to make ordinary political protest punishable by life imprisonment. Nor will the Human Rights Act save us since the Bill makes no exception for it.

The Bill, bizarrely, even applies to itself, so that ministers could propose orders to remove the limitations about two-year sentences and taxation. It also includes a few desultory questions (along the lines of “am I satisfied that I am doing the right thing?”) that ministers have to ask themselves before proceeding, all drafted subjectively so that court challenges will fail, no matter how preposterous the minister’s answer. Even these questions can be removed using the Bill’s own procedure. Indeed, at its most extreme, in a manoeuvre akin to a legislative Indian rope trick, ministers could use it to transfer all legislative power permanently to themselves.

The Bill raises fundamental questions about the role of Parliament. Ministers, egged on, some suspect, by the Civil Service, treat Parliament as a voting machine. Its job, in their view, is merely to give legal cover to whatever ministers want to do. They treat debate and deliberation as mere chatter before the all-important vote. They see no great difference between full parliamentary procedure and a truncated procedure for statutory instruments because, for them, the result either way is the same, that ministers receive legal authority for their plans. Just as a perfect criminal statute for ministers appears to be one in which everything is illegal so that prosecutors have discretion to put anyone in front of a court, a perfect authorising statute is one that makes lawful any ministerial act or policy.

Some of us have a different view. We think that deliberation and debate matter, that they are part of what makes parliamentary democracy work and make the new laws we pass legitimate. Deliberation improves legislation but more importantly, it forces governments to give reasons for their proposals that go beyond their narrow self-interest. In private meetings of the governing party, or in the Cabinet, or above all in telephone calls between ministers and special advisers, purely partisan reasons can hold sway. But in public, especially where there is real debate, ministers have to offer reasons that might persuade others. If they cannot think of any such reasons, their embarrassment constrains them. As the political scientist Jon Elster says, even hypocrisy can have a civilising effect.

The Government claims that there is nothing to worry about. The powers in the Bill, it says, will not be used for “controversial” matters. But there is nothing in the Bill that restricts its use to “uncontroversial” issues. The minister is asking us to trust him, and, worse, to trust all his colleagues and all their successors. No one should be trusted with such power.

As James Madison gave warning in *The Federalist Papers*, we should remember when handing out political power that “enlightened statesmen will not always be at the helm”. This Bill should make one doubt whether they are at the helm now.

**David Howarth is Liberal Democrat MP for Cambridge and Reader in Law at Cambridge University**