



I feel instinctively that to do what is suggested below would give rise to a lot of trouble in the House.

Should I tell Sir Robert Armstrong to drop the idea?

If, however, you would like to prove

The Prorogation of Parliament

it, I suggest the first step should be a word with the Home Secretary and Chief Clerk. 2/11/41

Ref. A03617

MR. WHITMORE

Following the events of the evening of 13th November, my attention has been drawn to the implications of the fact that the Order in Council specifies the date on which Parliament is to be prorogued: if, last Thursday, it had been decided (as some members of the Cabinet envisaged) that prorogation should be postponed until the morning of Friday 14th November, there would almost certainly have had to be a fresh Order in Council, and a special meeting of the Council to approve it. Indeed arrangements of this kind would in theory have been necessary, if the proceedings had run after midnight into the early hours of the Friday morning.

2. These are points which it should be possible to cover by a rewording of the Order in Council, so that it provided for prorogation at the completion of the proceedings of Parliament for /13th November/ or at such later date as might seem appropriate to the Commissioners (or words to that effect). I am pursuing that separately. But I think that the events of last Thursday evening raise wider questions.

3. What happened on that evening was clearly a challenge to the authority of the Speaker, which was only averted by the Government's decision to withdraw the announcement of which the Opposition were complaining. It was also a challenge to the right of the Crown to prorogue Parliament. That challenge was made the more dramatic by the ritual nature of the procedure by which the right is exercised: the summons by Black Rod and the Speech from the Throne.

4. Having once tasted the possibility for drama and confrontation inherent in the obstruction of Black Rod, the Opposition may well look for an opportunity of a repeat performance next time Parliament is to be prorogued. The challenge could be renewed, in circumstances in which it would be more difficult to defuse it. This raises the question whether we should consider whether and how the procedure could be changed to remove some of the potentiality for drama and for challenge to the authority of the Speaker and the Crown.



5. It is not clear to me that the Prorogation Speech actually serves any necessary or useful purpose. I doubt whether the amount of attention given by Parliament, the Press or the public to the Prorogation Speech, as a record of the Session being prorogued, justifies the amount of Ministerial (and official) time invested in its preparation, and I do not believe that the Speech fulfils any constitutional function. It is certainly an optional extra when Parliament is being dissolved before an election: there are precedents for no prorogation (and no Prorogation Speech) when the House is dissolved during a Recess (cf. 1964 and October 1974) and even when the House is dissolved in the middle of a Session (e.g. February 1974).

6. If it were possible to abandon the tradition of a Prorogation Speech, there would be no need for the House of Commons to be summoned to attend the House of Lords, and thus no need for Black Rod to come to the House of Commons to summon it. The Queen's Commission could be addressed to the Lord Chancellor and the Speaker. If it was thought necessary for both Houses to be prorogued simultaneously, arrangements would have to be made to synchronise the events; but it might well be possible for prorogation to take effect separately in the two Houses, at times which made sense in terms of the business to be done. In that event, when the time came to prorogue, all that would need to be done would be for the Speaker to read his Commission from The Queen, and declare the House prorogued.

7. If the Prime Minister would be interested in following up these thoughts, without at this stage any commitment or decision, I should like to pursue them within Government, with a view to preparing something more fully worked out and tested. That would provide a basis for the Prime Minister to discuss the issues with Ministerial colleagues, and (if it was decided to take it further) with the Parliamentary authorities.

ROBERT ARMSTRONG

21st November, 1980



Mr Speaker

Speaker's House Westminster London SW1A 0AA

21st November 1980

Thank you for your letter of 17th November, in which you indicated that you intended to raise on the floor of the House the words which I used following Black Rod's arrival in the Chamber on Thursday of last week for Prorogation.

I understand that it is not now your intention to do this, but in anticipation of the occasion I obviously had to prepare a ruling, a copy of which is now enclosed.

I am sending a copy of this letter and enclosure to each of the Party Leaders, in view of the publicity which you yourself have already given to this matter.

Speaker

Alex Lyon Esq MP
House of Commons.

Prorogation

Before I deal with the Hon. Member's Point of Order I must refer to the letter which the Hon. Member addressed to me. I had the advantage of reading its content in the Press before it reached me. It is a long established custom in this House that Hon. Members do not resort to the Press to criticise statements made by the Speaker. The Hon. Member had only to wait until today to raise a Point of Order and I consider that he has shown gross discourtesy.

The task of the Speaker of this House is difficult enough at any time, but it is intolerable that any Hon. Member should write the equivalent of an open letter to the Press in criticism of the Speaker, in the full knowledge that the Speaker is unable to enter into controversy in the media. This is the proper place for Hon. Members to air any grievance they have with a ruling from the Chair. I make this statement because I wish to protect the dignity and authority of this ancient office for those who will succeed me in future years. In my 35½ years in this House I have never known any Hon. Member to behave in the way the Hon. Member for York has done and I hope it will never happen again. We must maintain Parliamtary standards.

With regard to the substance of the Hon. Member's Point of Order, I would invite the attention of the Hon. Member and of the House to the ruling of my predecessor, Mr. Speaker Hylton-Foster, on 12th December 1962, which arose from certain Points of Order - but no more - which had arisen in the course of Prorogation on the previous 25th October. Mr. Speaker Hylton-Foster said:

The House will recall that I was asked to consider whether or no our practice now allows us to decline to admit the Gentleman-Usher of the Black Rod, or by implication, to delay our obedience to his request, for instance by the further transaction of Business.

The answer is, "No". For my assistance an examination has been made of the Journals of the House and of other authority. It confirms the accuracy as a statement of our practice since the Restoration of a passage in Hatsell's Precedents of Proceedings in the House of Commons at page 242 of the first edition of 1781.

The extract which Mr. Speaker Hylton-Foster then read contained the following words:

And, as it is the established custom, that when the Black Rod knocks at the door, he is immediately let in (without any notice given by the Serjeant to the House, or Question put, as is usual in Messages from the Lords, and in other cases) I apprehend that as soon as he knocks, all other Business, of what kind soever, must immediately cease, the doors must be opened, and when he has delivered his Message, the Speaker and the House must, without debate or delay go to attend the King in the House of Peers. Indeed a contrary/...

contrary doctrine might lead into much confusion; [for if the King came, as was not unusual in the reigns of the Stuarts, on a sudden to prorogue or dissolve 'the Parliament' and the House of Commons 'alone' could, by their forms, by refusing to open the door, or, after the Message was delivered, by debating, delaying, refusing to pay obedience to it, decline going to receive the King's commands, they would thereby have it in their power to resist, and render of no effect, the undoubted prerogative of the Crown."]

Mr. Speaker Hylton-Foster in reply to a subsequent Question [by the Hon. Member for Ebbw Vale], observed that before the Restoration the House had treated the Lord Protector's Black Rod in a fashion which, without historical allusion, he might call "Cavalier", but went on to say that he thought that for his duty to the House in 1962, 300 years of precedent would do. Speaking in 1980, I stand foursquare upon the words of my predecessor, and cannot accept that the actions of Mr. Speaker Lenthall in 1642 in the face of a total disregard of the privileges of this honourable House by the Sovereign in person, have any relevance at all to what happened last Thursday.

Finally, let me say that it is when Hon. Members are moved most deeply by anger and indignation that we should take the greatest care to maintain our Parliamentary traditions. This House is for argument and not for a display of force.