its approval by recommending to the Council of the Association a special allocation of £200 for Westmoreland Lodge. It is felt that there will be many other well-wishers within the ranks of the profession. Apart from money, the subcommittee will be most grateful for stair-carpet and other amenities indicated in the foregoing description.

It has been decided—I think rightly—to associate the name of Arthur Holdsworth Davis with the plan, and a plaque will in due time be put up in the front hall to commemorate his munificence. Lastly, let me add that anyone who is interested and would like to visit the premises will be cordially welcomed; a telephone message to Mr. Pennefather's office (1, Balliol House, Manor Fields, Putney, London, S.W.15: Putney 6128) is advisable so that a time can be fixed when either he or the Warden may be available. Inner Park Road is about a quarter of a mile from the *Green Man* at the top of Putney Hill, along the road to Wimbledon. I myself will be glad to give any further explanation or information that is asked for, but application for admission should be made direct to Mr. Pennefather.

THE NATIONAL HEALTH SERVICE ACT* SOME CONSTITUTIONAL AND MEDICAL ISSUES

BY

REGINALD T. PAYNE, M.S., M.D., F.R.C.S.

"This is true Liberty when free born men
Having to advise the public may speak free,
Which he who can, and will, deserves high praise,
Who neither can nor will, may hold his peace;
What can be juster in a State than this?"
Milton. Motto of *Areopagitica*.

There are two things that are uppermost in our minds at the present time. The first is that we are members of an ancient and a liberal profession; the second, that the National Health Service Act is now law. The immediate decision to be confirmed is whether or not we are to negotiate with the Minister of Health on regulations to be made under the Act. Such regulations would not alter the fundamental principles of the Act though they would affect its details. What is not generally recognized outside the profession is that although there has been a Negotiating Committee in being the Minister has hitherto refused negotiations.

Since the implications of the Act are far wider than their mere application to the medical profession, it is important to return to first principles if we are to define our individual attitude to the Act. I shall therefore approach the matter on two lines: first, from the constitutional aspect, and, secondly, from the medical aspect. In other words, I shall try to answer two questions. How far is a Government Department to be trusted with the powers that the Act confers on the Minister? How far is a monopoly of medicine justified in a democracy? If we answer these questions as citizens who are members of a liberal profession, our duty and responsibility to the community will take us far away from personal or professional considerations, and certainly far away from mere expediency.

The catchwords of the age are "organization and efficiency," but we can achieve these at too great cost to freedom.

Some Constitutional Issues

The essential component parts of the Constitution are the Legislature, the Executive, and the Judiciary. The Legislature makes the laws, the Executive carries them out, and the Judiciary sees that justice is done. Owing to the increase in Parliamentary business, legislation is hurried and much less thoroughly debated than formerly, and it is also increasingly passed in "skeleton" form. This means a greatly lessened Parliamentary control over legislation itself, and little or no control over delegated legislation arising out of the Statutes. It also means that more and more of the work of filling in the framework of Acts is handed over to departmental officials. Few of the resulting regulations and orders are seen by members of the House of Commons, and almost none are debated. Under

the National Health Service Act the majority of regulations will not require affirmative resolutions of the House. Delegated legislation is not only beyond effective Parliamentary control, but it is also beyond the power of the Courts. The Executive department thus becomes Legislature, Executive, and Judiciary. This short-circuiting of the Judiciary has been put forward in some quarters as a means of forcing through schemes based on a particular social theory.

1. DELEGATED LEGISLATION

Acts of Parliament of a "skeleton" or "enabling" type have handed over to the Executive vast powers of making regulations. Such delegated legislation may be by Order in Council or by Departmental Regulations. This type of legislation has a long history, but as a method it has been increasingly used in recent years. During the 1914-18 war there was a flood of delegated legislation. It continued to a lesser extent between the two wars and was further greatly increased as emergency legislation during the recent war. Delegated legislation is constitutionally dangerous since it imposes a strain on the balance between legislative, executive, and judicial activities. By concentrating function in the executive it diminishes the checks of the other two spheres. One of the most criticized features has been the power given to Ministers to override the provisions of a parent Act. Delegated legislation has been subjected to the most scathing criticism of judges, constitutional lawyers, and historians. In 1929 Lord Hewart in his book, *The New Despotism*, condemned the increase in the arbitrary executive powers, and regarded the tendencies as sinister and despotic. Sir John Marriott in 1930, in *The Crisis of English Liberty*, a history of the Stuart Monarchy and the Puritan Revolution, considered the contemporary concentration of executive power a parallel danger to the despotic power of the Stuarts. Dr. C. K. Allen, formerly Professor of Jurisprudence in the University of Oxford, recently expressed similar alarm in his book entitled *Law and Orders*. Furthermore, whenever opportunities have arisen, the Judges of the High Court have always shown themselves the strongest supporters of the citizens' rights against the arbitrary and despotic use of Ministerial powers. In 1929 the Donoughmore Committee was appointed to inquire into Ministerial powers, but most of the recommendations of its report passed into oblivion.

All parties are agreed in theory as to the dangers of delegated legislation, though all use the method during office. Many regulations have to be laid before the House "as soon as may be," but in practice they may be locked away in cupboards in the library and, unless a Member is unusually curious he will have no knowledge of them. Most of the regulations automatically become law after a short period of time. Others can be annulled by prayer. Regulations made as "Provisional Orders" on grounds of urgency escape all Parliamentary control. Recently a Select Committee was set up to examine statutory rules and orders. The unsatisfactory position can be appreciated by examining their third Special Report (Oct. 29, 1946). The Committee complain of the delay in publication and presentation to Parliament, of the tendency to make draft rules appear as if they were the final and valid instruments, of the printing of orders back to back, and of orders consisting of provisions purporting to give retrospective effect to the instrument where the parent statute confers no express authority. They also criticize "five-tier legislation," which by cumulative delegations hands on powers to the great-grandchildren of the parent statute.

2. AURICULAR CONSULTATION OF JUDGES

In order to secure the independence of the Judiciary, the Act of Settlement of 1701 provided that judges could not be removed except on the address of both Houses of Parliament. Previously, from time to time, attempts had been made to tamper with the judges and undermine their independence. James I certainly did this and attempted to secure the judges' determination for the Crown. Sir Edward Coke, the Chief Justice, objected that "such particular auricular taking of opinions was not according to the custom of this realm." Charles I at the time of Ship Money similarly intervened to secure the judges for the Crown.

Lord Hewart, in his book, discusses in detail the most recent case where an attempt was made to establish a system whereby His Majesty's judges would be ordered and required to give

* Being the substance of some remarks made at a special Meeting of Fellows of the Royal College of Surgeons of England on Nov. 29, 1946.

their opinions beforehand. This proposal was contained in the Rating and Valuation Bill, 1928, and the department concerned was the Ministry of Health. The dangers of such a system are obvious, and the detailed comments during the committee stage in the House of Lords gradually revealed the nature of the attack that was being made on the Constitution. Eventually the Minister of Health dropped the sinister clause.

3. QUASI-JUDICIAL BODIES

Delegated legislation not only renders the Courts increasingly powerless, but statutory tribunals of a quasi-judicial nature are set up either semi-autonomously or within Government Departments to administer what I may call rough justice. Such tribunals exist in connexion with medicine, agriculture, rent, etc., and others have been appointed under the National Health Service Act. The essential characteristics of such tribunals are that their composition is not necessarily based wholly or partly on those trained in the law, witnesses are not necessarily on oath, the taking of evidence does not follow the usual court rules, the proceedings may be in camera, the Press are at times excluded, and the right of appeal may be absent. Such tribunals are outside the main legal processes of the country. They thus fit in with delegated legislation and make executive rule much more complete. The dangers of these tribunals have been repeatedly stressed, and in an article in the *Spectator* of Oct. 6, 1944, Sir Henry Slesser pointed out that since the decisions of the tribunals are to be "final and conclusive for all purposes" there has been a serious invasion of the rights of the individual.

4. GENERAL MEDICAL COUNCIL

The General Medical Council is a quasi-judicial tribunal. Its penal activities have lately come under serious criticism for the reasons set out above. Attempts are now being made to secure that there shall be an appeal to the Courts from its decisions. It is therefore ironical that the Minister of Health should now secure to himself powers to prevent appeal to the Courts from the decisions of his tribunal. It is not generally realized that the General Medical Council is under the authority of the Privy Council. What will be the position of the Council's penal activities when all or most of the Council are State servants?

5. THE NATIONAL HEALTH SERVICE ACT TRIBUNAL

This Tribunal is a Government tribunal. The relevant words of the Act are as follows:

"The Tribunal, on receiving representations from an Executive Council, shall, and in every other case may, inquire into the case and, if they are of the opinion that the continued inclusion of the said person in any list to which the representations relate would be prejudicial to the efficiency of the said services, shall direct that his name be removed from that list, and may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list, kept by any other Executive Council under this Part of this Act."

The decision of the Minister's disciplinary tribunal is final. There is no appeal from this quasi-judicial body. The offending doctor may have been justifiably dismissed, or he may have infringed some minor Ministerial regulation, or he may not have carried out treatment in accordance with some Ministry of Health circular, or his political or private views may not coincide with those in authority, and the Ministry decides to terminate his employment. From this there is no redress and no appeal. The evils of the penal system of the General Medical Council will be perpetuated and aggravated by this Government tribunal.

6. RENDERING THE COURTS POWERLESS

With the mounting volume of delegated legislation and the increase in judicial powers granted to Executive Departments the citizen finds it increasingly difficult to secure redress in the Courts. The various quasi-judicial bodies also limit appeal to the Courts. The Executive thus becomes prosecutor, judge, and jury in its own case, and the citizen is rendered helpless. Finally, time after time, Executive Departments, not content with their existing powers, have acted in the most arbitrary fashion and taken the law into their own hands. Fortunately the Courts have proved the citizens' stoutest defenders in these cases of *ultra vires*. The seriousness of the situation has been and still is being stressed by the judges and by constitutional writers.

7. THE CROWN PROCEEDINGS BILL

The individual is at a grave disadvantage in claims against the Crown. An action which would be successful against another citizen may fail when the Crown is litigant. Owing to the unfairness of the position a committee was appointed in 1921 to inquire into the matter, and reported in 1927. Subsequently a draft of the Crown Proceedings Bill was put forward with the object of giving equality to the individual in claims against the Crown. This Bill has had the support of all political parties, of the judges, and of the Bar. Nevertheless there have been all sorts of delays, and the Bill has never been proceeded with. The rapid extension of nationalization and the mounting numbers of Crown servants in the community make it a matter of elementary justice to secure that the Crown has no special privileges as an employer in the eyes of the law.

Recent legal decisions stress the even greater urgency of the matter. Lord Justice Scott, in summing up an action in which the Crown was involved—*Royston v. Cavey* (*The Times Law Report*, Nov. 12, 1946)—is reported as follows:

"With the complexity of modern business carried on by Government Departments and the great increase in commercial concerns owned by the Government, it was a crying evil that legislation to remedy the position should not be passed by Parliament. He wished to express his opinion as strongly as possible that it would be a crying wrong if the necessary legislation was not introduced at an early date."

But in so important a matter affecting the citizen's legal rights the Government "can hold out no hope of early legislation." Thus nationalization robs the citizen of legal remedies.

8. CERTIFICATION

A consideration of certification is included here, as the subject has been made a political one. Any doctor who has had experience of practice knows the problems presented by certification. We are faced with human material and not abstract propositions, and in issuing certificates the doctor does his utmost to serve his calling justly. In the latter part of the debate on the National Health Service Bill in the House of Lords the Lord Chancellor spoke as follows: "No one could have been, as I have been, Minister of National Insurance without realizing that the success or failure of all our schemes depends in a very large measure on our getting satisfactory certification. If we are going to have lax—still more, dishonest—certification, then all our schemes are going to break down on that rock." Certification is thus the crux of the problem. The Government is going to control the doctor, because if the doctor were not controlled he might be "lax or dishonest," or, worse still, he might treat his patients with kindness and humanity. The doctor is to be coerced because as a humanist he is not to be trusted. And who defines "satisfactory certification"? The Minister of Health and his officials. Perhaps when a "production drive" is in progress the Minister of Labour may arrange a further tightening up of certification. The Lord Chancellor's statement is a damning admission of the Government's intention.

In a letter to the *Journal* of Dec. 4, 1943, I commented on the use of *agents provocateurs* in attempts to trap a medical practitioner into giving certificates. In the case in question three police spies admitted they had acted on instructions from the Criminal Investigation Department, that they had been instructed to give false information and to feign sickness to the doctor, and that they had also been told what to say. All these facts were admitted by the legal representative of the Director of Public Prosecutions. The charges against the doctor were dismissed and costs awarded against the prosecution. The magistrate's comments on this case left no doubt as to the importance he attached to honesty in the relation between patient and doctor. If suspicion in connexion with certification is to be the underlying principle governing the attitude of the authorities then it will be a sad day for Medicine. The fact that a few men are lax or dishonest is an insufficient reason for putting the profession in chains or for justifying the employment of spies from Government Departments to see how we are doing our work.

9. THE CLOSED SHOP

The significance of the recent Willesden episode has not been lost upon the profession. If a local authority can issue

instructions ordering all its employees, including its nurses and doctors, to join their appropriate trade unions or professional organizations, it leaves little to the imagination to realize the coercive powers in the hands of the Minister of Health. Since the recent repeal of the Trades Disputes Act, 1927, more and more local authorities have made union membership a condition of employment.

The first condition of employment is the production of a union ticket. The individual trade union is affiliated to the Trades Union Congress, and a contribution to the political funds of the Labour Party is automatically secured unless the individual member contracts out, and contracting out may be a matter of grave difficulty in certain communities.

Doctors therefore have not been slow to realize the implications of the Willesden episode. We will not be a party to any proceedings which make our activities part of any "closed shop" organization. An organization where union membership is a primary condition of employment and that union is linked to one political party rapidly approaches the one-party State. This is not merely a question of which political party is involved. So long as we remain a free and liberal profession we will have no dealings of this type.

10. THE MINISTRY OF HEALTH

The record of the Ministry of Health in constitutional matters is such that, if aware of the facts, no citizen would willingly concede any increase in powers to the Ministry, and no doctor would willingly hand over either the sick public or the medical profession to the sole charge of such a Department. What is the evidence that has led constitutional writers to criticize the activities of the Ministry of Health beyond all other Ministries?

A. It has constantly used the method of "skeleton" legislation, leaving the substance of Acts to be determined by departmental regulations.

B. It was one of the Departments most responsible for the huge increase in delegated legislation between the two wars.

C. It has constantly used the procedure of "Provisional Rules" to enforce its decision on grounds of urgency. Such regulations become valid immediately they are made, and may remain in force for years though unconfirmed by Parliament. More than half the regulations made by the Ministry of Health under the Local Government Act of 1929 were of this type.

D. It has used in its legislation the so-called "Henry VIII clause," which gives an executive authority "power to amend the parent Act, or (usually) any other Act, in order to bring the parent Act into 'full operation.'" By extension it enables the Minister "if any difficulty arises," in bringing an Act into operation, to "remove the difficulty" by Order. This obnoxious and arbitrary type of legislation was used under the National Health Insurance Act, 1911, the Rating and Valuation Bill, 1925, and the Local Government Act, 1929.

E. The Ministry of Health was the Government Department which most recently attempted to tamper with the independence of the Judiciary. This occurred in connexion with the notorious Clause 4 of the Rating and Valuation Bill, 1928. This clause would have allowed the Minister to submit doubtful points of law to the Courts and, by being armed with anticipatory opinions, would have denied justice to litigants. The clause was attacked in the House of Lords as a most sinister attempt at Executive encroachment on the independence of the Judiciary.

F. The Ministry of Health is already choked with quasi-judicial functions. These include the hearing of disputes in connexion with National Health Insurance, Old Age Pensions, Blind Persons, etc. The even less than quasi-judicial ministerial local inquiries have come to be regarded as mere farces.

G. The Tribunal of the Ministry of Health under the National Health Service Act will be an additional quasi-judicial function. It will not be a legal tribunal, it will merely be a tribunal for the exercise of the Minister's administrative discretion.

H. For the foregoing reasons the Ministry of Health has been the Executive Department where there has been the greatest concentration and confusion of legislative, executive, and judicial functions. As its powers have increased, so has it been able more and more to prevent appeal to the Courts.

One of the most recent examples of the activities of this Ministry is described in *The Times Law Report* of Jan. 26, 1944, in an action—*Minister of Health v. Bellotti and Another*. The following is from *The Times* summary of the Master of the Rolls's judgment:

"He could not leave the case without saying this. Where persons were to be ejected from premises which they had lawfully occupied, the general expectation would be that recourse would be had to the Courts rather than to the high-handed method of ejection by force. That was particularly applicable to a Government Department, which one would expect to act with some sense of dignity.

"But the Ministry concerned here, having failed to secure obedience to its rules, instead of coming to the Courts, proceeded, with the help of four porters, to try to drag the respondents from the flats. That having failed, the next step appeared to have been to withdraw the respondents' meal-tickets, and in fact to endeavour to starve these people out.

"He did not think that that particular incident was one which those responsible for it would look back on with any sense of self-congratulation, and it was to be hoped that that type of action would not be regarded as a precedent. He would say no more except that he did not like departing from the strict path when delivering judgment, to administer rebukes, but he did it because it was very relevant on the question of costs."

This is the Ministry which is to be entrusted with entire charge of the sick public and full control of the medical profession!

Some Medical Issues

The National Health Service creates a monopoly of Medicine in regard to hospital and consulting work and makes general practitioners subject to a measure of State control hitherto unknown. It is an Act for the better control of doctors and their patients.

1. *The Patient*.—Under the Act the patient can only be seen at hospital by a consultant who is a State employee. Even if the patient goes to the part-time consultant privately the latter will still be a State servant. There can be no really independent opinion for the patient, and independent opinions in connexion with his patient's welfare. Hitherto the conscientious doctor has been able to advise his patient to go to this or that hospital or to this or that consultant, and he has chosen the hospital or consultant in relation to the special problems presented by his patient. That freedom of the general practitioner to do his best for the patient will now be hedged by Ministerial regulations or directives. In future the doctor will have to send his patient to the appropriate officer, at the appropriate hospital in the appropriate region. The State controls the relationship between the patient and the consultant, and the general practitioner must give up his position as counsellor and adviser.

2. *The Consultant*.—The hospitals are in the hands of the Minister and are controlled by the Minister. The hospital staffs are restricted to those in the Service. The Minister controls all the beds and has refused to negotiate on this. The consultant therefore has the choice of joining the Service or being liquidated. Mr. Bevan does not conscript or direct the consultant but he produces a "Coercion Act" which says "Join or be destroyed." The voluntary hospitals have not contested the Act in the way that might have been expected, and they seem to have forgotten the living principles which founded them.

3. *Patient and Consultant*.—Under the Act all hospitals become State hospitals, and the definition of a "hospital" is so wide as to include any institution for the reception of the sick. If the consultant is to have hospital beds he must therefore have them within the State service. Mr. Bevan's recent sop to consultants should deceive no one. The independence of the honorary consultant within the State service must be shortlived, and the logic of the situation must force all consultants into the salaried service. The patient will then have no choice of seeing a consultant outside the service since independent consulting work can be carried on only from independent institutions. The elimination of free association of doctors and patients is a doctrinaire restriction of the freedom of the public and the independence of the doctors.

4. *The Medical Student*.—How will the Act affect the type of students? Hitherto Medicine has attracted a variety of types. That variety has been determined by the variety of careers that Medicine offered. In the future that variety must

be sacrificed, and will be limited to men and women who are content to work within the framework of a rigid Service. There will be less scope for individual initiative, and less for purely personal considerations. Variety must be sacrificed to uniformity. The ambitious doctor of the future will be the administrative climber and not the scientist, humanist, or artist. The only serious criticism of the medical student type has been that owing to the cost of the training it has been impossible for youths from the poorest homes to take up Medicine. This is certainly true. But it is also true that, although men from humble homes have made excellent doctors, the poorest home is not a real background for the future doctor. But in the future the student is to be State-aided, State-conditioned, and rendered servile, docile, and mobile.

5. *The Royal College of Surgeons of England and Other Medical Corporations.*—What will be the position of the Council of the Royal College of Surgeons in ten years' time? By that time half the Council will be civil servants in all but name, and the other half will be Government pensioners. What will have happened to the much-prized independence and prestige of the College then? It will no longer be the Royal College of Surgeons, it will be the Royal College of Surgical Serfs.

What will be true of the Royal College of Surgeons will be true of every medical corporation. The Fellows forming the respective Councils are invariably consultants and as such will be Government employees who must carry out the instructions and wishes of their master, the Minister of Health. The Minister will not be their immediate master, but he is in a position to exercise his authority. He can declare that the corporations' examinations are no longer recognized by the State, or that the higher examinations are no longer necessary in a world of "graded specialists." And by so doing he can at a stroke of the pen destroy both prestige and income. And why should not the Minister do these things by Departmental regulation? There is certainly nothing to prevent him if we acquiesce in working his Act. The destruction of the independence of the medical corporations means their destruction as expert medical bodies.

6. *The Central Health Services Council.*—This Council, which is to advise the Minister of Health, looks formidable enough on paper. Six members are *ex officio*, and the other thirty-five are appointed by the Minister. But will it be either formidable or disinterested when most of its members are State servants or State pensioners, and the Minister of Health is their employer? The Presidents of the Royal College of Surgeons of England, of the Royal College of Physicians, London, and of the Royal College of Obstetricians and Gynaecologists may now be impressive figures, but in ten years' time their respective Colleges may have lost all their prestige and most of their power, so that their respective Presidents' real capacity to offer independent and expert advice to the Minister will not be worth a fig. It will be more important to keep on the right side of the Minister and his officials than to offer independent advice or criticism. It will be more important to know your Minister than to know your medicine. It is not without significance that the Minister is enabled to suppress, either in whole or in part, the publishing of the Council's Annual Report to Parliament "if the public interest should demand it." Who is to decide the matter of public interest? The public or Parliament? Neither; the Minister. Such a proviso at the centre of the Health Service hands it over at once to the possibilities of obscurantism, dishonesty, and jobbery.

7. *The Scientist.*—What will be the position of the doctor as a scientist under the Act? Will every publication of every medical man employed in the Service have to pass the official scrutiny of the Minister of Health's officials? Will the right to publish be taken from the doctor and be dependent on the whim of some medical official? Will the real test no longer be scientific or clinical interest or advance, but the furtherance of official policy or a desire to hoodwink the public? Will the publications department of the Ministry have an eye on possible repercussions on the Treasury? Will the doctors' reports be doctored before being published, and will the obedient official doctor get preference over the less acquiescent one?

These are not merely theoretical matters. In the early part of the recent war I was engaged in carrying out some research

in connexion with peptic ulceration. At only one hospital was I asked to suppress a piece of evidence. That occurred at a hospital directly under a Government Department. In that hospital I asked one of the senior medical officers if there was any statistical evidence that disease X had any connexion with peptic ulceration. I was told that there was definite statistical evidence but that under no circumstances must I mention the fact, or claims might arise and the Treasury would object. Scientific medical facts are suppressed because their publication might be inconvenient. Think of the endless possibilities under the Health Service Act for the suppression of scientific facts in the interests of official policy or Treasury economy. But doctors in this country are humanists first and scientists second, and the humanist may prove a harder nut to crack than the scientist.

Conclusion

The National Health Service Act is symptomatic. It takes away the personal responsibility of patients and doctors and substitutes the coercive activities of the Minister of Health and his officials. In view of the constitutional and medical implications of the Act, what evidence is there that the doctor should lift a finger to assist in implementing its provisions? What evidence is there that would justify our handing our patients and the medical profession into the keeping of such a despotic Executive Department as the Ministry of Health with its unhealthy constitutional record? History does not support the view that the State can be regarded as a "kind nanny" where the interests of citizens are concerned, and Medicine has duties and obligations to the community which are not compatible with mere Departmental status. What evidence is there that the health services will even be improved? The fundamental feature of this Bill is to transfer all real power to the Minister. If the Bill is operated no patient or doctor will ever feel safe from interference by some Ministerial edict or regulation, and no independent institution connected with Medicine will feel safe from interference, expropriation, or dissolution. The Minister's spies will be everywhere and suspicion and intrigue will rule. "Power corrupts and absolute power corrupts absolutely." Lord Acton's words are as true to-day as when they were written. The medical profession is still a free and independent one, and it is our duty to assert our democratic rights and those of the community at large against the encroachments of the Executive.

I owe allegiance to no political party. As a liberal I am alarmed at the destruction of individual and personal freedom and the substitution of the coercive power of the State. The present constitutional crisis of liberty is comparable to that of the seventeenth century. Then it was the attempt of the king to become a tyrannical power and overrule Parliament, complicated by attempts at religious uniformity. Now it is the weakening of Parliamentary control and the concentration of power in the hands of the Executive.

The community is not coextensive with the State. The democratic community is built up of all the various individuals with differing needs, hopes, and capacities. The modern State is a central organization which attempts to establish a central philosophy for its citizens. So that when Mr. Morrison talks of "the design for corporate living, informed by a conscious philosophy" (*The Times*, Dec. 17, 1945), we know that he and his friends are prescribing their philosophy for the community. Such philosophy uses men as means and not ends. It is the philosophy of infallibility in Church, State, or party. It obliterates the individual, the spontaneous and the native forces of democracy, and substitutes central direction and uniformity.

No Government or political party in this country dare attempt State uniformity in either religion or education. Religious toleration of minorities was established two hundred years ago. Education has repeatedly proved a thorny problem for statesmen and administrators, and the recent Education Act did not impose a State monopoly. But the doctors, alas, are easy prey. They are good-natured and overworked, and their work in a social service has been exploited by all political parties. Meanwhile, voices are being raised that other callings must be nationalized and made free for all. State-sponsored free-law-for-all may have some advantages, but it has grave dangers.

In the face of the spiritual and political tyranny of to-day, we shall serve the community best by standing by our essential freedoms. Do not sell that birthright for a mess of pottage. Do not exchange that freedom for pay and a pension. Do not give up the right of association either as members of the public or as doctors. Do not become gagged Government functionaries with minds in cold storage. Health organization and even health itself can be bought at too great a cost to freedom. And what evidence is there that health will be gained? Freedom and liberty are conditions of health and conditions which allow of constant change and constant adaptation. Coercion and the centralization of power mean sudden change and then stagnation. The analogy of 1912 is utterly false. At that time Parliament was alive, the Executive had not become a tyranny, and the State was not regimenting its citizens in every sphere of life.

We are members of a free and liberal profession. I want that freedom to continue as one of the freedoms of a democratic community. As healers of the sick, we shall continue to give our best if free from State coercion.

I am particularly indebted to the following sources:

- Allen, Dr. C. K. *Law and Orders*. Stevens and Sons, Ltd. 1945.
Carr, Sir Cecil Thomas. *Concerning English Administrative Law*. Oxford University Press. 1941.
Dicey, A. V. *Law of the Constitution*. Macmillan and Co., Ltd. 1941.
Hewart, Lord. *The New Despotism*. Ernest Benn, Ltd. 1929.
Jennings, W. Ivor. *Cabinet Government*. Cambridge University Press. 1936.
Marriott, Sir John A. R. *The Crisis of English Liberty*. Oxford, The Clarendon Press. 1930.
Slessor, Sir Henry. *The Law*. Longmans, Green and Co. 1936.
First, Second, and Third Special Reports from the Select Committee on Statutory Rules and Orders, etc. His Majesty's Stationery Office, Oct. 30, Dec. 11, 1945, and Oct. 29, 1946.

INCREASE IN CAPITATION FEE

The following statement on the current capitation fee has been issued from the Ministry of Health. A report of the special meeting held on Jan. 8 by the Insurance Acts Committee to consider the Minister of Health's proposal to raise the capitation fee appears on p. 5 of the Supplement this week.

An agreement has now been reached between the Minister of Health and the Insurance Acts Committee of the B.M.A. on the application of the Spens Report to the current capitation fee under the existing National Health Insurance scheme. Mr. Bevan has proposed that the present capitation fee of 12s. 6d. should be increased to 15s. 6d., with effect from Jan. 1, 1946, and that there should in addition be an increase in the special payments made to rural practitioners.

In making this offer the Minister has made it clear that remuneration under the new National Health Service will be a matter for negotiation with the medical profession. Some of the factors on which the 15s. 6d. is based will, in his view, have a bearing on the negotiations for the remuneration in the new Service, which, it is agreed, will be on a higher level than the remuneration now settled for health insurance. The Insurance Acts Committee of the B.M.A., in accepting the offer, have stated that they have done so without prejudice to the assessment of remuneration in any future service.

RELEASE FROM THE FORCES

The Central Medical War Committee is informed that medical officers in the following age-service groups are being released during the first three months of 1947:

	January	February	March
Royal Navy	57	58	59
Army:			
(a) General duty officers ..	54	55	56
(b) Specialists	42	43	44
Royal Air Force	54-56	—	57

Reports of Societies

BRITISH ORTHOPAEDIC ASSOCIATION

The Annual Meeting of the British Orthopaedic Association, held in London on Oct. 18 and 19, under the presidency of Mr. GEORGE PERKINS, opened with a discussion on "Fractures of the Os Calcis."

Mr. N. W. ROBERTS and Mr. W. SAYLE CREER had each followed up some scores of cases over several years and had independently reached similar conclusions concerning compression fractures involving the subastragaloid (subtalar) joint; namely, that an incapacity period of about a year in cases treated by reduction and immobilization was approximately halved in cases treated by early movement. More than three-quarters of the patients returned ultimately to full work in their old occupations, and the proportion was not materially influenced by the method of treatment adopted. Mr. W. GISSANE, nevertheless, considered reduction important, and showed a film illustrating its performance and maintenance with a sagittal os calcis pin. Mr. K. H. PRIDIE demonstrated some patients, including a policeman, who showed extremely good function following excision of the os calcis—an operation to be reserved for the most severely affected.

In his presidential address, "Rest versus Activity in the Treatment of a Fracture," Mr. GEORGE PERKINS confined his remarks to fractures not directly involving joints. Activity was of importance in preserving the extensibility of muscle, thereby preventing stiffness. If both fragments in a fracture bore muscles, these would look after immobilization, and the sole function of the limited splinting necessary was the preservation of alignment. Failing this condition (as in fractures of the femoral neck, medial malleolus, and scaphoid), splinting was necessary not merely for alignment but also for immobilization. Such splinting must be prolonged, uninterrupted, rigid, and extensive; consequently it impaired function, and internal fixation was often preferable.

Prof. E. SORREL presented a paper on the treatment of tuberculous arthritis, in which the results of some usual and unusual extra-articular arthrodeses were illustrated. He strongly advocated arthrodesis as a final stage of treatment, deferred, however, until active disease was at an end.

Prof. H. J. SEDDON showed a film of preliminary work carried out with Dr. A. E. BARCLAY on the cineradiography of joint movements. Mr. K. I. NISSEN gave a comprehensive account of Morton's metatarsalgia, with a clinical and pathological description of 13 cases in which he had excised the fibromatous thickening first described by L. O. Betts of Adelaide. He had carried out a follow-up of three years and more. Mr. I. LAWSON DICK discussed the late results of iliac bone transplantation, and Mr. L. GILLIS showed a film on amputations near the elbow-joint.

At the General Meeting Mr. S. A. S. MALKIN was elected president for 1948-9, and Mr. F. G. Allan and Mr. E. A. Nicoll were elected to the Executive Committee.

SOCIAL SERVICE AND THE HEALTH ACT

The British Federation of Social Workers in collaboration with the British Council for Rehabilitation arranged an all-day conference of social workers on Dec. 7 at the Royal College of Nursing to discuss the new situation created by the National Health Service Act. Mr. ALEXANDER FARQUHARSON presided.

Alderman C. W. KEY, Parliamentary Secretary to the Ministry of Health, in a brief exposition of the Act, said that it was comparatively easy to put into the words of a statute the steps it was desired to take in the curative field, but prevention and rehabilitation were more indefinite and therefore more difficult to express in black and white. Yet this indefiniteness might be an advantage, for if the functions of social workers were closely set out in the Act and then in a few years' time some new development came forward it would be unfortunate if, because they were bound by the Act, they were prevented from using their experience and skill. He went on to say that the fact that the Minister would own the hospitals would