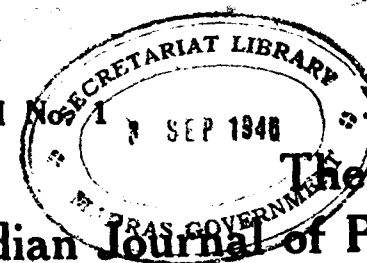


Vol. I No. 1



July—September, 1939.

The Indian Journal of Political Science

CONTENTS

NO. 1-4
PAGE

Political Theory—

THE JURISTIC AND POLITICAL IDEAS OF DUGUIT—By N. Srinivasan	1
THE MUSLIM POLITICAL THEORY OF REBELLION—By M. Abdul Qadir	23

Political Institutions—

HOW WILL CONVENTIONS ARISE IN THE INDIAN CONSTITUTION?—By Bool Chand.	30
CONSTITUTIONAL DEADLOCKS AND CONVENTIONS—By Mukut Behari Lal.	42
INDIAN SPEAKERS AND PARTY POLITICS—By S. V. Kogekar	47
THE COST OF ADMINISTRATION IN THE PUNJAB—By J. N. Khosla	58
PROVINCIAL FINANCES UNDER AUTONOMY—By P. J. Thomas	69
A NOTE ON LOCAL FINANCE IN RURAL AREAS OF SOUTH INDIA—By M. K. Muniswami	75
REORGANISATION OF RURAL LOCAL SELF-GOVERNMENT IN THE CENTRAL PROVINCES & BERAR—By P. J. Jagirdar	80

International Affairs—

REFORM OF THE COVENANT OF THE LEAGUE OF NATIONS—By V. Shiva Ram	90
---	----

Developments in Law, Constitution, and Administration.

Periodical Surveys—

PARLIAMENTARY GOVERNMENT IN THE PUNJAB: A FEW ASPECTS—By Sri Ram Sharma	95
BENGAL: MINISTERS AND THE LAW OF SEDITION IN INDIA—By D. N. Banerjee	98
THE CENTRAL PROVINCES—By D. K. Garde	101

Book Reviews—

THE CRUMBLING OF EMPIRE, THE DISINTEGRATION OF WORLD ECONOMY (M. J. Bonn) Bool Chand	105
--	-----

The Indian Political Science Conference—

REPORT—By Gurmukh Nihal Singh	107
PRESIDENTIAL ADDRESS—By the Hon'ble Pt. G. B. Pant.	113

JL
W. 2m N39
N40.1
69214

Vol. I, No. 2

October—December, 1939.

The Indian Journal of Political Science

CONTENTS

	PAGE
Political Theory—	
THE ROLE OF MYTHS IN THE DEVELOPMENT OF POLITICAL THOUGHT—By S. V. Puntambekar	121
Political Institutions—	
PROBLEMS BEFORE THE PROVINCIAL GOVERNMENTS: PRO- VINCIAL GOVERNMENTS AND PARTY ORGANISATIONS —By Dipchand Varma	133
Local Self-Government—	
THE ORGANISATION OF THE LOCAL SELF-GOVERNMENT—By M. Venkatarangaiya	143
International Affairs—	
THE CONTEMPORARY WORLD CRISIS AND ITS BACKGROUND —By Reverend Leonard M. Schiff	155
FUTURE OF SINO-JAPANESE WAR—By S. Lautenschlager ...	196
THE INDIANS ABROAD—By C. Narayana Menon	206
Developments in Law, Constitution, and Administration.	
Periodical Surveys—	
LAWS AND ADMINISTRATION IN THE MADRAS PRESIDENCY (1937-39)—By E. Asirvatham	212
CONSTITUTIONAL DEVELOPMENT THROUGH CONVENTIONS. SOME RECENT RULINGS IN THE BENGAL LEGISLA- TURE—By B. N. Banerjea	223
NEW CONSTITUTIONAL REFORMS IN GWALIOR—By B. Narain	231
Reviews—	
"PARLIAMENTARY GOVERNMENT IN ENGLAND—A COMMENTARY" (Harold J. Laski)—By Gurmukh Nihal Singh	238
"THE INDIAN STATES IN THE FEDERATION OF INDIA" (D. N. Narvane)—By Bool Chand	241
"INDIAN ADMINISTRATION" (M. R. Palande)—By Mahadeo Prasad Sharma	242
"LA PENSÉE" (Editions Sociales Internationales, Paris)— By Tara Chand	243
The Indian Political Science Conference—	
AN IMPORTANT NOTICE	Cover 3rd page.

JL
W. 2 m N 39
N 40.1



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Vol. I, No. 3

January—March, 1940.

The Indian Journal of Political Science

CONTENTS

	PAGE
Political Theory—	
DEMOCRACY TO-DAY—By N. Srinivasan	345
THE NATURE OF SOVEREIGNTY—By V. K. N. Menon	262
CHRISTIANITY AND DEMOCRACY—S. H. Leger	273
Political Institutions—	
SOME FINANCIAL ASPECTS OF PROVINCIAL AUTONOMY—By B. K. Madan	281
International Affairs—	
THE FAR EASTERN (JAPANESE) MONROE DOCTRINE—By V. S. Ram	290
RECENT DEVELOPMENTS IN INTERNATIONAL LAW—By K. R. R. Sastry	298
THE CHINESE CO-OPERATIVE MOVEMENT—By Y. S. DJANG	309
Developments in Law, Constitution, and Administration.	
Periodical Surveys—	
PROVINCIAL AUTONOMY IN THE N. W. F. P.—By Jagannath Khosla	324
PROHIBITION—By Kailash Nath Katju	333
Reviews—	
INDIA'S TEEMING MILLIONS (Gyan Chand)—By Bool Chand	349
TESTAMENT OF INDIA (Ela Sen)—By Bool Chand	351
PROBLEMS OF DEMOCRACY IN INDIA (S. Srinivasa Iyengar)— By Bool Chand	354
THE DEVELOPMENT OF LOCAL BOARDS IN THE MADRAS PRESIDENCY (M. Venkatarangaiya) M. P. Sharma	355

Vol. I, No. 4

SEP 1940

April—June, 1940.



Indian Journal of Political Science

CONFERENCE NUMBER

CONTENTS

	PAGE
Political Theory—	
THE DILEMMA OF DEMOCRACY—By A. R. Wadia	363
Political Institutions—	
THE THEORY OF THE CONSTITUENT ASSEMBLY—By N. Srinivasan	376
THE NATURE OF THE GOVERNOR'S INSTRUMENT OF INSTRUCTIONS: Is it a Law?—By D. N. Banerjee	393
THE UNITED PROVINCES EMPLOYMENTS TAX—By M. H. Gopal	411
THE EVOLUTION OF THE LEGISLATURE IN HYDERABAD—By H. K. Sherwani	424
International Affairs—	
A CRITICISM OF STREIT'S <i>Union Now</i> —By K. N. Venkatasubba Sastri	439
THE I. L. O. AS AN AGENCY OF WORLD PEACE—By P. P. Pillai	442
Developments in Law, Constitution, and Administration.	
Periodical Surveys—	
PROVINCIAL AUTONOMY IN THE PUNJAB—By Dip Chand Verma	449
CONSTITUTIONAL REFORM IN MYSORE—By H. Krishna Rao	464
Reviews—	
THE BLOCKADE (W. Arnold-Forster)	} By
CAN GERMANY STAND THE STRAIN? (L. P. Thompson)	
Bool Chand	471
THE MUNRO SYSTEM OF BRITISH STATESMANSHIP IN INDIA (K. N. Venkatasubba Sastri)—By M. Venkatarangaiya	472
The Indian Political Science Conference—	
THE ANNUAL REPORT OF THE INDIAN POLITICAL SCIENCE ASSOCIATION (1939)	475
REPORT OF THE LAHORE SESSION (1940)—By Gurmukh Nihal Singh	477
INAUGURAL ADDRESS—By H. E. the Governor of the Punjab..	482
PRESIDENTIAL ADDRESS—By Dr. Pramathanath Banerjea, M.L.A.	485
SYNOPSIS OF THE PAPERS READ AT THE LAHORE CONFERENCE	502

THE JURISTIC AND POLITICAL IDEAS OF DUGUIT*

BY

PROFESSOR N. SRINIVASAN,
Andhra University, Waltair.

I

The aim of Duguit is to construct a science of Law and politics free from all fictions and metaphysical notions and "to establish in a positive way, a jural principle limiting the power of the State in accordance with right (par le droit)."¹ In Duguit's view the establishment of a jural principle limiting the State is the supreme object and sole reason of a science of jurisprudence and politics.²

Constitutional Law and economics are branches of Sociology and are positive and observational sciences. The super-organic phenomena of the interactions and interrelations of collective entities or groups form a third and a distinct category of facts, different from the facts of the physical and biological sciences and constitute the subject-matter of Sociology. Constitutional Law is defined by Duguit as "the systematic study of the facts relative to the origin of the State, its development in ancient societies and its forms in contemporary societies with a view to determine its forms in the society of the future."³

As a positive science the method of constitutional law is the observation of social fact and induction from the results of observation. Metaphysical concepts and deductive reasoning have no place in it. It is concerned with perceptible facts (faits sensibles) alone. Duguit emphatically affirms that "only the perceptible is the real and the real is the perceptible."⁴ The world outside of perception is also a world that is outside the province of constitutional law. The legal and political theorist must go to the rock-bottom of social and economic facts for his generalizations. To observe facts which are subject to a social determinism that is not less ineluctable than biological or physical determinism, to discover their constant relationships, to determine the order of

* See Note on Duguit at the end. Passages which are quoted in the text are translations by the writer of this article. They are free renderings.

¹ Duguit: *The Law and the State*, page 6.

² Duguit: *The Law and the State*; *Traité III*, pp. 589, 590; and the Introduction contributed by Duguit to the French translation of Wilson's *State*. This seems to contradict the notion of constitutional law as a pure science.

³ *Revue de l'Enseignement*, 1889, pp. 484—505, on the whole of this paragraph.

⁴ *Traité de la Droit constitutionnel*, I.



succession and coexistence of social phenomena and to foresee the probable future with the aid of the laws so formulated, constitute the task of the social theorist.

It is not the function of the social theorist to moralise or preach homilies on ultimate ends and the ethically right. Progress and decline are terms without meaning in a pure science such as constitutional law should be. The Social theorist "can only point to the fact of significant difference"⁵ when changes or transformations occur in social organisation. If there is an ideal in Law, it is not transcendental. It is to be deduced from the facts around us. "It is in the reciprocal penetration that is becoming every day more and more intimate and profound, of mind with mind and heart with heart; it is in the daily toil of the individual for the common welfare; it is in the steady realisation of the social fact which is simply the interdependence of individuals."⁶ The realism of Duguit pushes him to seek a 'pure' science of constitutional law and a 'biologized' social theory.

Social theory, in short, must be an induction from the facts of life by the methods of the physical and natural sciences. It is the claim of Duguit that the effort so to build it leads to the substitution of a realistic, concrete, objective and socialistic or at least solidaristic jurisprudence and politics for the traditional studies which were metaphysical, abstract, subjective, and individualistic.⁷ Duguit's theories, in fact, reduce themselves to a series of destructive negations of the fundamental concepts of older theories and a series of parallel affirmations: the negation, at least on the surface, of the concept of natural law and the affirmation in its place of a *Droit Objectif* based on the fact of social solidarity; the negation of natural rights conceived as belonging to man as man, anterior to society and independent of special exigencies and the affirmation of the objective duties of men imposed by social solidarity; the negation of subjective law and the concept of the subject of law and the affirmation of objective law and of the obligations imposed by it on individuals and collectivities; the negation of the personality and even the reality of groups and collective entities and of a group-will and the affirmation that the future of society lies with groups, whether syndical or "fonctionnaire;" the negation of the personality of the State, its sovereignty, its right to public power, and its will and the affirmation of a sociological view of the State as government with a monopoly of power; and finally the negation of the autonomous power of the will to make law and the affirmation that law is the result of a social determinism of which the juridical consciousness of a people is seized through the feelings of justice and sociality.⁸

⁵ Law in the Modern State, p. XXXVI.

⁶ *Traité I*, p. XVIII—XIX. cf. *Ibid.*, pp. 98-99.

⁷ Law in the Modern State.

⁸ Geny : Science et Technique en droit privé positif, IV Pt., p. 169.

II

The jural principle, it has been said, has to be sought in the facts of society. It appears as "the practical synthesis of social solidarity." The observation of social life reveals the supreme fact of social solidarity. Man is a social being. He has always lived in fellowship with his kind and can never live isolated from them. Natural man, living in isolation, endowed with rights which he carries with him into society as the eighteenth-century philosophers conceived him, is a figment of the imagination. The natural man is the man in society, bound to it by the vital bonds of social solidarity. "The formula of Descartes, I think, therefore I am, is not true, or at any rate, true only of a certain stage of human thought; man had thought society into being before he thought of himself."⁹ The group comes into the consciousness of the individual before his own individuality. The totem of the primitive tribe is the symbol of this realisation of the importance of the group.¹⁰ Society appears as the primary and irreducible fact.

Social solidarity has its basis in the common and different needs and the identical and differing aptitudes of men in society. It is in society that common needs could be satisfied. Men render mutual help by pooling together their common aptitudes for the satisfaction of their needs which are identical. This constitutes the first element of social life, the solidarity of similarities, or mechanical solidarity. The utilisation of the different aptitudes of men for the satisfaction of needs that are different by a division of labour and the exchange of services which individuals by themselves would be unable to produce leads to progress. "There is thus produced in human societies a vast division of labour which constitutes social cohesion par excellence." This is solidarity through the division of labour or organic solidarity.¹¹

Social solidarity or social interdependence is thus primarily the result of the operation of economic forces, and is a fact that becomes clear through observation. Different degrees of social solidarity are possible. In primitive societies the solidarity of similarities predominates; in highly advanced modern societies it is the solidarity of division of labour that occupies the front place. As societies advance we see mechanical solidarity giving pride of place to organic solidarity. But whatever its degree it is always "the irreducible constitutive element of every human grouping."¹²

Different groups have manifested solidarity in the course of history following the epochs of man's sociability.¹³ We begin

⁹ *Souveraineté et Liberté*, p. 18.

¹⁰ Durkheim : Les formes primitives de la conscience religieuse.

¹¹ *Traité I*, pp. 85 ff; The idea is taken from Durkheim's : *La Division au Travail*, 1893.

¹² *Traité I*,

¹³ *Manuel*, pp. 8—10.

with the Family and advance through the Horde and the City to the modern Nation. The Nation is the group which to-day exhibits social solidarity par excellence. But social solidarity does not stop at national frontiers. It can extend beyond them and some day it may embrace the whole of the race. Solidarity is seen as a constantly evolving phenomenon.

Individual autonomy does not disappear as a result of the development of solidarity. On the contrary the greater the individual's autonomy, the more likely is the prospect of welding a closer and stronger solidarity. The greater development of individual activity means the better satisfaction of the different needs of society. "Correctly understood social solidarity is the permanent coincidence of individual and social objectives."¹⁴

From the fact of social solidarity is born the Rule of Law.¹⁵ Social solidarity is both the basis and objective of the Rule of Law. The Rule of Law is the heart and centre of Duguit's juristic and political theories. The Rule flows from the nature of man. Man is a being conscious of his acts; he is a being, who by his very nature, must live in society. "This posed," writes Duguit, "we see immediately the necessity of a law imposing itself on man living in society and the character of the law. If the direct proof of facts does not allow us to grasp a power belonging to a human will or to certain human wills, on the contrary, they reveal directly a law imposing itself on men living in society. This law is quite simply that which obliges them to live in society, since given their nature, they cannot but live in society. A social law, therefore, exists. To affirm that man is a social being, that he can live only in society is to affirm the existence of a social norm."—"Society and the social norm are two inseparable facts."¹⁶

The Social Norm is a law of end. Man is conscious of his acts which he determines consciously if not freely. Laws of society cannot, for this reason, be assimilated to the laws of physics or biology. The Social Norm is a law that directs and limits the conscious and voluntary activities of man, fixes the object and end of his desire, prohibits some activities while it imposes others.¹⁷

Taking the strictly realist view Duguit insists that the social norm is a matter of demonstrable fact and imposes itself in actual fact on individuals. It does not in any way modify the substance of their wills or establish a hierarchy of wills exalting some and subordinating others. It does not command an attitude; it is

¹⁴ L'Etat, p. 615.

¹⁵ Duguit does not maintain this position consistently. In his latest thought the social norm figures more as a product of the sentiments of sociability and justice than as the direct product of solidarity. The latter becomes more and more an ideal to be realised.

¹⁶ Traité I, p. 66.

¹⁷ Ibid., pp. 78 ff.

simply the expression of the law that regulates the conscious attitude. It is not an imperative formulated by a superior will.¹⁸

Different from a biological or physical law in that it is a law of end yet it is assimilated to them as far as it is possible. As the cells composing an organism are subject to the law of the organism, the law that presides over its formation and its development, the individuals who compose a social group are subordinated to the law of the group, the law which presides over the formation and development of the group in question. Both have the same inevitability. Both are laws of coordination. The laws of the group are called laws because men are conscious and move consciously for the achievement of a purpose, while the cells of an organism are not. If we admit that the law of the organism is based on a fact, why, Duguit asks, cannot a social norm be founded on a fact, the fact of society? The social norm is merely the norm inherent in human society.¹⁹

The Social Norm imposes negative and positive obligations whose object is the preservation of the social equilibrium and the prevention of disorder. Negatively any act that is likely to cause social disorder is prohibited; positively every act that contributes to social solidarity is enjoined. The Rule of Law is succinctly summed up in two general propositions: "Not to do anything that injures social solidarity and to do everything that contributes towards it in both its forms, mechanical and organic."

The violation of the Social Norm produces a forcible reaction that tends to reintroduce an equilibrium that has been disturbed. It is violations of the Norm by producing the inevitable reaction of society that makes us realise the existence of a Rule of Law. We can distinguish on the basis of the intensity of the reactions three categories of Social Norms, in an ascending order of validity: economic, moral and juridical. The violation of an economic Norm touches the production and distribution of wealth. Moral rules are the rules that require conformity with the manners of a society. There is no suggestion here of a superior principle of morality, or of good or evil in an ethical sense. These rules are founded on society and regulate the relations of its members.

A norm becomes valid in the highest sense when it becomes a juridical norm, and this happens when a natural social element—the element of material constraint—intervenes to enforce a moral or economic precept. "Where we see no tendency towards the organisation of such sanction (for moral or economic norms), where the sentiment that the sanction ought to be organised, does not exist or again, where there is no conception of the possibility of assuring their observances by the employment of material constraint juridical norms do not exist."

¹⁸ Traité I.

¹⁹ Revue de l'Enseignement, 1889; Also Traité I, pp. 78-79. The substance of this paragraph is the paraphrase of a passage that is repeated by Duguit.

This is the case with many rules. But for some rules, on the contrary, the desire to organise a sanction is evident. "These appear to the mass of men as so important for social life and so essential to the realisation of the double sentiment which is the irreducible and general foundation of the human species, sentiment of sociability (solidarist feeling) and the sentiment of justice (individualist feeling) that the intervention of the collective force for sanctioning them appears to everybody to be natural and legitimate. Further no social reaction takes place if force is employed to punish or prevent the violation of these rules. Force does not create these rules; force never creates right. Men are conscious that for guaranteeing respect for certain social norms the use of force is legitimate. Likewise, in the measure that civilisation appears and develops, in the measure that the differentiation between the rulers and ruled is produced and made precise, it comes to be realised that the force held by the rulers could legitimately be organized and employed to guarantee the essential rules for the realisation of sociability and justice. Furthermore rulers will be the better obeyed if they intervened more efficaciously and actively for sanctioning such rules." ²⁰

In this passage from the *Traité* is enshrined the core of Duguit's juristic argument. It is the mass of the people who invest a norm with juridical content. Law has its origin in the juridical consciousness of the people. By desiring, organizing, provoking and tolerating material constraint for enforcing a norm they make it law. The ensemble of the Rules of Law which have thus penetrated the consciousness of the people constitute the *DROIT OBJECTIF*. Law is not the command of a sovereign or superior will. Assuredly the State intervenes by statutes; and in modern nations which have arrived at the legislative phase of juridical evolution it does so increasingly. But what it does is merely to declare a preexisting rule of law. By itself it is powerless to make law. ²¹

Law is thus independent of political authority and is superior to it. A few other characteristics of the Law must be noticed here. It is objective. To the individual it is external and imposed from outside. But there is a sense in which it is subjective and individual. In its origin the Law is social but in its appreciation and application it is individual. Its existence is to be found in the individual consciousness. The duties it imposes vary with the individual's capacities. It is at the same time permanent and changing. Solidarity is always its aim, but the constituents of solidarity vary and the particular dispositions of the Rule of Law are evolutionary in the highest degree.

In the later development of his doctrine, the fact of

²⁰ *Traité* I, p. 93.

²¹ *Traité* I, p. 97. Cf. *Ibid.*, pp. 173-174; *The LAW and the STATE*, pp. 163-164.

solidarity does not appear as the sole basis of the Rule of Law. Rather it is replaced by the sentiments of sociability and justice. Sentiments of sociability and justice doubtless are facts; but they are neither material nor objective, but are essentially subjective. This makes the basis of the law less objective but at the same time more realistic. This was a concession to the pointed criticism that a matter of fact cannot transform itself into a legal obligation.

III

The conception of Law as independent of political authority and as immanent in human societies from which Duguit approaches the problem of the State strips it of its traditional majesty. Duguit denies that the State has a right to sovereignty or public power which he defines as the power of issuing unconditional orders. He denies that the State is endowed with a personality, whether as a legal fiction or as the 'moi commune,' the common self, that Rousseau conceived to be real. He denies, indeed, the reality of collective personality in any sense. They are all gratuitous hypotheses and perfectly useless. He rejects also the notion of a General Will as metaphysical. There are individuals and groups in society; and there are individual wills and identity of individual wills on occasions. These are the facts and the theory of the State must be built on a substratum of fact.

The State, in any realistic view, is merely a human collectivity in which political differentiation has taken place. Rulers have come to be distinguished from the ruled by the possession in fact of the largest force in the community. Rulers are individual men who hold in some way or other "one or another of the social forces which is also the predominant, or ruling force." The force may be religious, moral or material constraint. But the essential and irreducible characteristic of a State is this differentiation between the rulers and ruled. States are products of historical evolution. We see them existing in primitive tribes as well as in modern nations. The important fact for us is that it is in the social milieu of the nation that the State has evolved. As the statement of a fact Duguit holds Treitschke's definition of the State as power to be true. What he denies is the *right* to sovereignty, the right of some wills to issue unconditional orders claimed by the State and not the actual exercise by some of material constraint. Governments have and ought to have the monopoly of the largest force. Governments cannot be governments if they cannot bring into force an irresistible power. The absence of power is the mortal sin of governments. "The State is a pure abstraction, the reality is the individuals exercising state power." ²² We ought always to speak of the government and not of the State.

²² *Traité* I, p. 672; *The Law and the State*.

The will of the government is the will of the individual men who compose it. It is in no way different from the wills of other men. It has no inherent superiority. The declaration of the will of the government have no claims to obedience because they are the declarations of the will of the government; they have not the force of creating law by themselves. Their validity is in the measure of their conformity to the Rule of Law. "In my conception," writes Duguit, "law (loi) has not the character of an order given by Parliament and imposing itself because Parliament formulates it. The nine hundred individuals who constitute Parliament (in France) could not give me an order; the law (loi) will impose itself on the obedience of the citizen only if it is the expression or the execution of a Rule of Law (droit). The duty of government is so to organise the Legislature that all possible guarantees are combined to see that it does not depart from this mission. Judicial decision has value only in the measure of its conformity to the Rule of Law whether it applies a Rule of law or decides the existence of a subjective juridical situation. Finally administrative acts have effect only if the normal and general conditions of every juridical act are united in them; thus the regalian character of administration disappears."²³ The will of the State, speaking in a metaphorical sense, in all its manifestations, legislative, judicial and administrative, depends for its validity on the Rule of Law, which is the law of social existence. The State's subordination to this Rule is, at least in theory, absolute.

The government, as a body of men, is subject to the social discipline like all other men. The Rule of Law imposes negative and positive obligations on it as it imposes on others. These amount always to the two general propositions: to do nothing contrary to social solidarity and to co-operate in the measure of one's abilities towards its realisation. If one were to state in a few words the duty of the government as the holder of the largest force in the community it is the realisation of the Law. Government has to place the power in its hands at the service of the Law. In it are contained all other purposes.²⁴ It is not different from the ancient formula of order and peace through justice. The obligatory mission of the State is "always the realisation of the Law."²⁵

This means that the government ought to employ the force at its disposal for the organisation and control of public services. This is a fundamental idea in Duguit's conception of the State. For "the State is not as some have wished to make it or as has been sometimes thought to be, a power that commands, a sovereignty; it is a co-operation of public services organised and controlled by government."²⁶ The basis of the public

²³ *Traité II*, pp. 38-39.

²⁴ *Traité I*, p. 678.

²⁵ *Traité I*, p. 680.

²⁶ *Traité II*, p. 61.

service is the Rule of Law binding on the government and the subjects alike. "The foundation of every public service is the juridical obligation imposing itself on the rulers for assuring the uninterrupted accomplishment of a certain activity, which is of capital importance for social life; since, given the manners, the tendencies, and the needs of an epoch, there is not a single member of the society who does not need the realisation of the activity. And one of the most important problems of modern public law is to determine the guarantees given to the individual for obtaining the regular functioning of the public services. These guarantees are to be found in the law of the service determining its method and functioning, formal law and regulations."²⁷ It is of the essence of the public service that its operation should be continuous and it should be of such a character that the intervention of the force of the government is necessary for its realisation.

Public service so conceived is the foundation and limit of governmental power. The activities which constitute the public service vary with time, place and circumstance. They are evolutionary in the highest sense of the word. All that can be said with certainty is that advance in civilisation brings with it an increase in these obligations. The line between public and private activities is constantly shifting and is difficult to draw. Some activities are obviously public as for instances, defence, police and justice. Quite early in the history of government these became public functions. To-day it would appear that imparting a minimum of education, and assuring work for all and rendering assistance to the aged and the infirm are among public services. We see the notion of public service replacing the notion of sovereignty as the basis of public law. The conception of the State as power is giving place to the conception of the State as a cooperation of public services.²⁸

With the notion of the public services goes the notion of State responsibility and the two together constitute the essential core of Duguit's theory of the State. Services must be accomplished in accordance with the law. The State is under the duty of so organising its structure that the possibilities of its realising the Rules of Law are maximised. It has also the duty of organising the "voie de droit" the legal means for the individual to force the compliance of the government or other individuals with the Rules of Law. It is the duty of government to provide both preventive and repressive guarantees for the preservation of individual liberties in a mechanism that at once tries to formulate the Law correctly and to operate it effectively and prevent its violation or neglect by its servants. In other words it has to set up the principles of legislative and administrative responsibility.

The structural safeguards for the realisation of the law that

²⁷ *Traité II*, p. 71.

²⁸ *Law in the Modern State*.

Duguit suggests have not much novelty in them.²⁹ From a premiss different from that of traditional individualism Duguit arrives at almost identical conclusions. He holds up the parliamentary regime with all its defects and inconveniences to be most effective device that men have yet found for assuring the State under law (*Etat de droit*). There is to be no rigid separation of powers, but a collaboration between the Executive and the Legislature with the former responsible to the latter but with the right of appealing to the Electorate. Duguit considers majority representation as imperfect and would like to see Proportional Representation established as more likely to secure complete national representation. The principle of collaboration dictated by Solidarity requires universal suffrage.

But side by side with the proportional representation of parties and individuals there ought to be established a professional representation of interests in a second Parliament, a sort of Senate of the Syndicates. Duguit sees politics to be clearly tending towards the realisation of these two types of representation. A Parliament would be representative of the nation only if it represents its two constitutive elements, the individual and the collective. A representation of the large industrial forces in the country, such as agriculture, the great urban industries, and the forces in the artistic and cultural world is what Duguit contemplates. In France professional representation would in the main be a representation of the syndicates of workers and the Chambers of commerce of capitalist owners. Such representation is inevitable. For a social and economic force has in it the power of equating itself with political force in time. In the Syndicalist movement³⁰ Duguit sees a powerful means of social integration and peace, and a means of setting up a counterweight to the political parliament. Social evolution is tending to replace the isolated individual, impotent in the face of the all-powerful State, by an ensemble of powerful professional groups, closely knit together by an intimate social interdependence, born of an identity of interests, aspirations and ways of living. In the words of Herbert Spencer whom he quotes "it is an evolution that tends to make for the passage of society from an indefinite homogeneous state to a definite and heterogeneous state."³¹

But the power of coordination would be reserved for the political parliament to resolve the conflict of interests that may arise among autonomous groups and self-administering services. Duguit presents an economic notion of the State, a cooperation of public services functioning under the control of the governments. This control will always subsist in order to assure harmony in the public services, continuity in their functioning

and for guaranteeing the rigorous application of the rules of law of the service.³²

The chief interest here lies in the proposed safeguards for legislative responsibility. The Legislature is limited to the declaration of the Law and the making of constructive or technical statutes. The latter set up the procedure for realising the principles of the former. Positive law (*loi*) has its basis in the Objective Law that is implicit in the juridical consciousness of the people. "Written law is the exteriorisation of the juridical consciousness of a people."³³ And statute is binding in the measure of its conformity to a pre-existing rule of law. Positive law is not imperative in itself. Statute is a species of custom as it were, only it is more precisely and more definitely formulated than custom and jurisprudence. It is the limit for the administrator and the judge and a document for the jurist, but not the law unless it registers a pre-existing Rule of Objective Law.

Legislatures are bound to respect the limitations of Fundamental and Organic Laws, whose purpose is to organise the State for the realisation of the Law. A hierarchy of Laws in an ascending order of validity is proposed with the Rule of Objective Law at the top. It may be noted that Duguit upholds the legal force of the Declarations of Rights in French Constitutional Law. This is to be enforced by a supreme judicial tribunal for pronouncing on the constitutionality or as Duguit would call it, the legality of legislation and to set aside illegal laws, in the way that the American Supreme Court does.

There is to be the widest dispersal of authority in the State by the most extensive decentralisation. Several authorities, each rigorously limited in its functions, should be set up. Decentralisation by region, by service, by concession and patrimonialisation have been tried in France and they have Duguit's warmest approval, particularly decentralisation by service.³⁴

For assuring administrative responsibility Duguit would like to see established an administrative jurisprudence of the type that has been set up by the Council of State in France. To limit the action of the agents of government to the letter of the law they administer, to hold them responsible personally for their faults, omissions and commissions, and to make the service responsible for the risks its operation involves, to judge the validity of administrative acts by reference to their ends, to declare illegal, acts of "excess du pouvoir" (excess of power) and "détournement du pouvoir" (misuse of power) with the annulment of illegal acts and damages for injuries to private individuals as sanctions, have constituted the chief elements of the system of

²⁹ These are developed in the second and third volumes of the *Traité*.

³⁰ La représentation syndicale au Parlement (*Revue Politique Parlementaire* July, 1911, pp. 46-60) *Traité II*, pp. 753-768; *Le Droit Social*.

³¹ *Souveraineté et Liberté*, pp. 172-190.

³² *Traité II*, p. 757.

³³ *Traité I*.

³⁴ *Traité III*, pp. 174 ff. and 714.

'administration' responsibility set up by the Council of State in France. The sphere of discretion of the official has been reduced to the very minimum possible and perhaps the individual is better protected against the arbitrariness of the official in France than anywhere else. On the other hand the Civil Servant has obtained his protection in the State by the Law of the Civil Service. In sum we can see in the jurisprudence of the Council of State a system that admirably assures that the notions of public services and responsibility shall prevail in the most important sphere of modern government, namely, administration. Duguit applauds this development.

But with all this, Duguit is not sure that the State under Law is effectively safeguarded. He is haunted by the thought that strictly legal sanctions must perforce be insufficient to secure the compliance with the Law of a body of men who wield the largest force in the community. He falls back upon public opinion and finds comfort in the thought that force that is not justified, that public power that is not vindicated by public service *must* be precarious. To the individual conscience he would reserve the right to judge the validity of laws and the right to give and refuse obedience as his conscience dictates. This, he proclaims, is the best of all guarantees against the arbitrariness of government. Where resistance to lawless laws is certain the legislator would be compelled to wait for a quasi-unanimous adherence before he ventures to legislate. Duguit returns to the doctrine of sedition of the Catholic Fathers of the thirteenth century and the justification of tyrannicide of the Protestant Monarchomachs, to Locke's theory and the Declarations of Rights which assert the right of resistance to oppression and to that great liberal thinker of the Restoration, Benjamin Constant for asserting in his turn a right to resistance and rebellion as a last weapon, for ensuring the legality of the law and the responsibility of the State. He passes over in sympathetic review the different kinds of resistance, passive resistance, *i.e.*, obedience under constraint, defensive resistance with force and aggressive resistance as the Mediæval Fathers did and like them counsels their prudent use. Constitutional law, of course, cannot provide for these. But as extra-constitutional sanctions they would remain to call erring legislators to account. We might conclude this section with the closing words of the second volume of the *Traité*: "Thus is born a rigorous obligation for the State the obligation to organise the political powers in a manner that reduces to a minimum the danger of rulers taking arbitrary decisions, making laws contrary to the Law, ordaining or permitting actions of individuals contrary to the Law."

IV.

In the individualist conception rights belong to individuals because of the 'eminent dignity of the human person.' Rights are natural, or inherent, and subjective. They are the powers

of a will that is autonomous. They are equal for all men and in some accounts of Natural Law, of universal applicability and valid for all peoples and all times in all countries. They are anterior to society and men bring them with them into society. Formulated by John Locke in the seventeenth century in a dogmatic form through the famous Declarations of rights of Man and Citizen of the Revolutionary Era in France they have come to dominate modern legislation. Rights to life, liberty, and happiness, and the right to property and security have been affirmed and they constitute the basis for the limitation of State power. They are not to be infringed except in the measure necessary to assure for all an equality of rights. The purpose of the social order is the maintenance of rights so conceived. To use Duguit's language the subjective right of the individual is the basis of the Objective Law of the society.

Duguit denies that there are any rights.³⁵ Right is the power of a will to impose itself on another will in regard to a particular object. In the isolated pre-social state, such a power cannot obviously exist. Rights are social; powers are individual. Right, in the second place, involves the superiority of one will over another which is a gratuitous affirmation. All wills are, Duguit emphatically asserts, equal; no will is superior to another. Thirdly, equality is unreal in the sense of the equality of rights. Finally, Duguit holds that to affirm that rights are the same in all places and at all times and among all peoples is extra-scientific and untrue. Duguit argues that the basis of the individualist creed is a series of unproved and unprovable assertions which have no practical utility.

The alternative that Duguit proposes is to base subjective rights (he would prefer calling them duties) on the indisputable fact of the Rule of Law that imposes on man in society and generates negative and positive obligations for government and subject alike, of contributing to social solidarity through the division of labour. Each man is under the duty of developing himself to the utmost to be able to contribute his best for social solidarity. Thus arises the duty to work. No one can be idle. Duguit's principle approves the stern proposition that the tree that doeth not yield fruit shall be cut down and thrown into the fire. There is a function for everyone in the division of labour in the cooperative workshop of the nation for the achievement of social solidarity. The functions allotted to each must be performed. The manual worker has to work; the owner of capital has to save and invest his capital productively; the artist and the craftsman have to play their respective trades for the common solidarity. The right to work is a function; the right to property is a function; the right to Liberty of movement, freedom of speech, of the press, and of education are similarly functions

³⁵ On the whole question: *Traité I*, specially, pp. 208—239.

Also *Souveraineté et Liberté*, from p. 140 to the end.

incumbent on the members of a society for the proper performance of their several functions.

The sanction of these duties or functions is to be found in the dispositions of the Objective Law and its imperatives to the government to use its force for their fulfilment. Any action that is done by an individual in conformity with the Law has the right to the protection by the material force of the community in the hands of the government and no other individual may interfere with the same. The duties of the government under the Objective Law have the effect of protecting precisely the situations, both individual and social, which it is the purpose of a theory of right to safeguard. Government has the duty of seeing every one work and hence arises the duty of providing work for all. It has the duty to interfere to force the social use of agricultural and industrial property in the interests of social solidarity. By the same way is introduced the state's duties to assure a minimum of education, public assistance, public health, legislation and the like. In sum it is a liberal declaration of rights that Duguit's theory achieves.

But the verbal denial is reiterated. Duguit quotes Comte: "In the positive state . . . the idea of right disappears. Every one has duties towards all. None possess any other right than that of doing his duty."³⁶

V

Any summary of Duguit's contribution to juristic and political philosophy must necessarily remain inadequate for no writer of his eminence with a literary output running into tens of volumes spread over a period of three decades can be summarised with justice in a brief article. It is believed that none of his significant contributions have been omitted from the foregoing account and that in exhibiting his thought the emphasis has been laid where it is due. No exhaustive critique can be attempted here and only the salient ideas will be passed over in brief review.

Duguit attempts consistently to be a realist and to look at things from the angle of common sense. His horror of metaphysics is such that he excludes difficult concepts from his purview and confuses the abstraction of scientific reasoning such as group personality in the legal sense, subjective right and the subject of law and a common will with metaphysics. There is clearly no metaphysics in the ordinary sense of that word in these ideas; there is no transcendental element in them and yet Duguit considers them metaphysical. This attempt at an extreme positivism leads Duguit to over-simplify political and social facts and to reduce complex social organisms to the simplicity of their constituent parts as in the case of the State and Group personality. No one may, however, deny that a common-sense view can be of

³⁶ *Souveraineté et Liberté*, pp. 142-143.

immense service in breaking through technicalities to the substance of things and pointing to their essential core. In this case common sense has helped to see law and politics, at their base, and to bring them out as essentially social sciences, and to see that the State and Law alike exist for the service of men.

With the common-sense view goes the lack of a general philosophy; there is a general temper, an attitude, but no philosophy in Duguit's work. If there is one, it can only be described as pragmatic and utilitarian. As a science Duguit contends that law and politics have no concern with an absolute right. There is consequently no criterion of right and wrong. Though explicitly Duguit states no ideal or right, his work implies both. Social solidarity is a good in itself and for itself, and the touchstone that makes for right conduct in life. Geny's criticism that what Duguit suffers from is not the absence of a metaphysic, but an avowal of it seems to be perfectly justified.³⁷

The question arises whether a pure science of politics is possible, a science without a concern for the ends of social life and a conception of an ethically right conduct for the individual being assumed. It seems that our answer to this question must be in the negative. For, otherwise, it becomes impossible to be realistic in a true sense in studying human relations. Human behaviour is conditioned by material circumstances as well as by the power of ideals. Materialism or social determinism in the narrow sense fails as an explanation of the every-day behaviour of individuals and collectivities. In his excessive zeal for positivism Duguit appears to have disregarded one of the important necessities of any human science, the conception of a morality that is subjective and independent of circumstances and transcendental.

Duguit's fact of solidarity, on analysis, turns out to be a construction of the imagination based on obvious interdependences, that are not merely economic but cultural as well.³⁸ Duguit's assertion that social solidarity par excellence is to be found in the nation in the contemporary world is comforting, especially to us, in India who know that it is an ideal purpose that has to be realized by hard endeavours. As an ideal, its imperfections do not need elaboration. It is the exaltation of society and the annihilation of the self, the opinion of Duguit to the contrary notwithstanding. But it needs to be examined from the sociologist's point of view a little more, in view of the important deductions that Duguit draws from it. The doctrine, we should note, is taken bodily from Durkheim's sociology³⁹ and made the basis

³⁷ Geny : *Science et Technique en droit privé positif* II, p. 273.

³⁸ Cf. HSIO : *Political Phiralism*.

³⁹ E. Durkheim *De la Division du Travail*, 1893.

See also P. Sorokin : *Contemporary Sociological Theories for a summary and criticism*.

of Duguit's realistic jurisprudence. The study of history and anthropology may reveal movements of integration and progress through division of labour; but it also reveals movements of disintegration as Elliott points out.⁴⁰ Again there is an equation of progress in a general sense and civilisation with material advance which is unwarranted. Social differentiation has been not merely a cause of progress, but it has also been the cause of a Chinese immobility and social atrophy as in the case of the caste system in this country. Unless we wish to see realised the parody of the stratification of classes described in Aldous Huxley's *Brave New World* we must reject the view that social differentiation beyond a certain stage is conducive to civilisation and consequently also the deduction of a juridically stratified syndicalism.

The Rule of Law arising from the fact of society is, as has been pointed out, the basis of Duguit's jurisprudence. It is the fact of social solidarity transformed into a principle. Critics have pointed out, notably Geny, that it is inconceivable how a fact by itself generates an obligation, how the indicative becomes the imperative, except by assuming that the fact represents an ideal.

There are other and more fundamental objections to the notion of Law presented by Duguit. Duguit makes the consciousness of the mass of men in a community the maker of its real law. The issue is whether society can dispense with a definite organ of law-making and whether in fact the uninstructed mass of men are capable of the jurisprudence that is necessary to a modern community. Duguit appears here to confuse two different things, the fields of law and politics as well as morality and law. The idea of popular consciousness making the law cannot be organised in a permanent way. This was the difficulty with Rousseau's conception of the General Will. Referenda and initiatives have been possible in small communities only. Even by means of these the people have not been able to determine the principles of the entire law of a community. A law that is left to the popular consciousness to formulate must remain vague, inconsistent and the product of momentary passions. That the people do remain unfit, whatever may be done to educate them, to formulate law in the narrow and technical sense of the word, does not demand elaboration.⁴¹

The necessities of practical politics have led modern communities to place the law-making power in the hands of a Legislature with the political safeguard of periodical appeals to the people for making sure of the realisation of ends that the people desire. Legislatures make the law and do not simply declare the law. The Constitutional State that Duguit desires cannot dispense with a law-making organisation that is ultimate in so far as the declaration of the Law at least is concerned, it is to avoid the anarchy of group struggles.

⁴⁰ Elliott: *The Pragmatic Revolt in Politics*, Ch. IX.

⁴¹ Cf. Geny: *Science et Technique eu droit privé positif*, IV, pp. 172 ff.

All that the *Droit Objectif* can mean is that the law-maker should strive to realize the ideal and purposes of the people, as revealed in public opinion. Duguit himself appears to realize that this is its practical meaning.⁴² We must conclude that in modern communities a definite law-making organ is a necessity; that it makes law as a matter of fact; and its responsibility is, in the last resort, a political responsibility and cannot be juridical. Any other scheme is anarchical. To describe the responsibility to public opinion as a juridical responsibility does not improve matters or alter the plain facts.

The extraordinary resemblance of the concept of the *Droit Objectif*—which incidentally brings out its ideal character—to the subjective and metaphysical concept of the General Will cannot be overlooked. Like it is, or ought to be, sovereign, unerring, inalienable, and unifying. Duguit fancies his theory to be realistic and objective while asserting the metaphysical sophism of the other. If in Duguit's theory we replace the conception of social solidarity by the conception of freedom we can hardly distinguish the two conceptions of *Droit Objectif* and the General Will. If we recall that Duguit sees the essence of solidarity in the permanent coincidence of Individual and collective interests, —it is certainly not untrue to describe the *Droit Objectif* as a materialized version of the General Will. This persistence of the concept of the General Will shows its perennial youth. We have to see in it not the will of a "moi commune" but the identity of purpose of individuals living in society, without which a common life is impossible.

We may also note the fact that, in spite of Duguit's vehement denials, the *Droit Objectif* has also a likeness to Natural Law. It is as Charmont, Geny and Elliot point out⁴³ a restatement of the mediæval conception of Natural Law, but unfortunately without the latter's simplicity. There is an effort to prove with a good deal of logic-chopping that his theory is different from Natural Law.⁴⁴ Duguit's account of Natural Law is not accurate. His criticisms of Natural Law are thrusts at a windmill. In his social solidarity, changing and at the same time permanent, simultaneously individual and social, diverse and yet one in basic fact, we are justified in seeing an analogue to the strikingly phrased "Natural Law with a varying content" of Stammler and of most writers who have reinterpreted this famous doctrine in the twentieth century, as for example, Geny, Charmont, Morris Cohen or Laski. The *Droit Objectif* is simply the old wine in a new bottle with a new label.

⁴² *Traité I.*

⁴³ Charmont: *La Renaissance du Droit Naturel.*

Geny: *Science et Technique en droit privé positif.*

Elliott: *The Pragmatic Revolt in Politics.*

⁴⁴ *Traité I.*, pp. 208—213.

F. 3

The denial of the personality of groups and of the State is the natural consequence of a realism that considers to be real only the visible and the visible alone to be real. This appears to be the *reductio ad absurdum* of juridical positivism. Manifestly this view is inapplicable to the realm of the law.⁴⁵ Personality in law is simply the capacity for rights and obligations. It is of two kinds, moral and natural; individuals being physical persons are natural persons while collectivities not being physical entities are called moral persons. This is a convenience of juridical technique. In fact Duguit's federal syndicalism would seem to require the recognition of group personality in order that group obligations might be effectively enforced. It appears strange that Duguit should reject so convenient an instrument for enforcing the obligations of groups, when it is remembered that he sees everybody and every group invested with a function in the social workshop. The reason appears to be Duguit's confusion that any idea of personality implies in some mysterious way a real physical person endowed with mind and will.

Even in the realm of sociology it is a distortion of fact to deny the reality of groups and group life. The personality or the distinctive characteristic of an association is to be observed in the purpose animating its members. The relationships of an association, the nexus that keeps the members together in a common endeavour is real. But it is real in no physical sense. Duguit himself admits that groups are social forces whose autonomy is real and independent of the State. To deny group personality is to deny the existence of social facts that are not material and can only be explained as the result of a crude materialism.

In the theory of the State that Duguit presents we must admit that in treating of the State as administration in a predominant degree Duguit is recognizing its growing importance, and is undoubtedly right in his emphasis.⁴⁶ But the failure to distinguish the State from the Government is an error and a serious error in a theory of the Constitutional State (*Etat de Droit*). It is fundamental that we should draw a clear distinction between the State which is the expression of the community of purpose of a people to live together in political association and the Government which is the body of men exercising the authority of the State on its behalf. The reasons for the distinction are to be found in the necessity of finding a basis for limiting the power of the Government and to make it a servant and not the master, by deriving its authority from the people and to make the exercise of power by the Government a trust held on behalf of the people. The State is real in the sense that every association is real. Its

⁴⁵ The classic discussion in French is Michoud: *Theorie de la personnalite morale*; In English, Maitland *Introduction to Gierke's: The Political Theories of the Middle Ages* and Barker: *Introduction to Gierke's The Natural Law Theory of Society*.

⁴⁶ Duguit devotes his second and third volumes to an administrative analysis of the State.

reality consists in the permanent desire of the members of a society to live in political community. The permanence of this purpose is reflected in the State's permanence. But to Duguit this is metaphysics. His idea that the State is a pure abstraction and that the Government is the only reality, really makes an abstraction of a most vital social fact, namely, the desire of a society to live together. Further in Duguit's theory it is impossible to draw any line between *de jure* and *de facto* power. Every power is legitimate, because it is power and is a fact. It is difficult to see how we can erect the responsibility of authority except on the basis of a sharp distinction between the association that is the State and the Government that is its accredited agent.

In denying rights Duguit's departure from the traditional system is apparent rather than real. But even so the technique of safeguarding rights that Duguit adopts is defective and might easily prove dangerous to what it is intended to protect. One may argue that a rose smells the same whether it is called a rose or by some other name. But it seems to matter very much indeed in the present case by what name we call the conditions that are described as rights. The protection that is afforded to them is considerably weakened by calling them duties. Where it is so easy to invade rights when they are held to be sacred, it would appear to be the surest way if inviting attack to call them duties. A view that emphasizes duties necessarily exalts authority. We ought to erect, if we wish to limit authority effectively a system of natural rights. Universal natural rights have been the target of attack for a century. But surely the truth is not all on the side of the historical school in this matter. Certain fundamental rights—rights let us remember are conditions—do seem to have a universal and eternal validity. We must all live, breathe, and be happy. There seems to be no reason for believing that these vary from one people to another or from one country to another or for that matter from one age to another. The right to life cannot, for instance, be interpreted with any wide degree of variation according to circumstance. Auguste Comte and Duguit who quotes him can only serve to emphasize what Green has said so well that rights are to be found only in societies and have their counterpart in duties. No useful purpose is served by exalting the one and depressing the other. We have to achieve the golden mean between them if we are to realize social justice.

A word seems to be necessary on the Syndicalism of Duguit. It is undeniable that economic interests have a tendency to obtain political power, and perhaps the future organisation of production would to a large extent be in the hands of professional syndicates that are autonomous, public services that are self-governing, and cooperatives—witness Russian developments in the last two decades;⁴⁷ perhaps also the representation of these interests will be achieved in a second parliament. But Duguit is wrong in the belief that harmonious union (*faisceau*) would voluntarily

⁴⁷ Webbs' *Soviet Communism*.

emerge from the social differentiations that are taking place. It is certain that progress towards the maximum of efficiency in production is not inherent in this differentiation as Duguit seems to suppose. There is not, again, a correspondence between the class divisions of present-day society and the division of labour that is requisite for the optimum production. In all this Marx's analysis seems to be confirmed by facts rather than Duguit's. The class divisions constitute a reason for our seeking social cohesion and are not in themselves the expression of cohesion as Duguit argues.

Duguit's Syndicalism does not in fact represent a true pluralism. In denying the right to strike to workers in the public services which practically embrace all the important economic activities Duguit knocks out the basis of associational freedom. With his insistence on the rights of property (though as a function), national unity and social harmony and the abomination of the Class Struggle Duguit's Syndicalism is nearer to Italian Corporativism than to revolutionary Syndicalist movement of the working class. He condemns the latter and indeed all forms of Marxian socialism as criminal and abominable doctrines. One must see here a failure to work out his idea of property-function to its logical conclusion and also a failure to grasp the real significance of the working class movements of our day. The view that Governments have a monopoly of force, and that Laws have their origin alone in the people's juridical consciousness combined with the insistence on social harmony make Duguit's pluralism a very different one from the usual.

The mechanism of political responsibility that Duguit builds does not logically flow from his premises. It is a merit of Duguit that he is not the slave of logic and he has been led by practical necessities to admit into his system things contrary to its principles. The system of political responsibility is one with which the present writer finds himself in substantial agreement. Legislative supremacy ought however to be introduced or rather has to be frankly admitted. The responsibility of the legislature can only be political or at best a result of conventions. We cannot make it legal. The legality of the law is a phrase that has meaning as an ethical proposition but not as a juridical concept. We ought also discard the idea of making the Judiciary the judge of legislation unless we desire that judges should be the final arbiters of social policies. That is clearly the lesson of the functioning of the Supreme Court in the recent past. Otherwise, Duguit's construction seems to be sound.

The conclusions that merge may be summed up. Firstly the realism of Duguit is too narrow to comprehend all the facts that matter in the social sphere. Secondly, while Duguit denies that his system contains any metaphysical ideal in it, it still does contain one and his social solidarity is an ideal and not a fact, whose desirability has to be assumed without proof. What Duguit lacks, as has been admirably said by Geny, is not a

metaphysic but an avowal of it. Thirdly, a positive science of Jurisprudence cannot be based on Duguit's *Droit Objectif* and needs an ultimate legal superior competent to make law. Fourthly, his principles logically do not lead up to the positive system that he builds on their basis. Logically they lead in the opposite direction towards Fascism. Fifthly, the variety of interpretations possible of the principle of solidarity robs it of its practical utility. Lastly the political system that Duguit constructs though not the logical outcome of his principles realises the responsible State.

We cannot conclude this survey without a word on the great inspiration that Duguit's work has given to Political Science and Jurisprudence. His great work, *L'Etat, le Droit Objectif et la Loi Positive* published first in 1900 initiated a great debate on questions of Public Law in which most of the distinguished jurists of the last generation in France have participated. Traditional concepts have undergone a critical examination in the light of Duguit's work, and the result has been a more realistic, a more social and a more humane discipline of Constitutional Law. Duguit's influence on this discussion has been profound as anyone who dips even casually into the literature of Public Law in France during the last forty years can see. The simplicity of his ideas, the lucidity of his arguments, the novelty of his terminology and the vigour of his language delight one, while the polemical and debating style that he has chosen to present his thought, plunges the reader at once into the thick of a great battle of ideas on the foundations of Law and Politics. Duguit repeats in especially arresting words a lesson that needs to be repeated and always borne in mind that the Governments are human institutions whose *raison d'être* is in their service to human beings. It is in the emphasis that Duguit placed on the twin notions of Public Service and Responsibility that his true merit seems to lie. These concepts enshrine an unforgettable lesson for humanity and they have never been stated with greater force than by Duguit.

NOTE ON DUGUIT

Leon Duguit (1859—1928) was one of the most distinguished jurists and political thinkers of the last generation. He was for forty-two years a Professor and for some time the Doyen of the Faculty of Law at the University of Bordeaux. He lectured on Public Law in various countries including the United States, the Argentine, Portugal, Rumania and Egypt. His first and most celebrated work, *L'Etat, le Droit Objectif et la loi Positive* (1901) together with *L'Etat, les Gouvernants et les Agents* (1903) were the outcome of twenty years of study and research. Duguit's challenge to traditional conceptions here made initiated a great controversy on questions of public law in which have participated such distinguished scholars as Esmein, Michoud, Geny and Hauriou, Charmont, Carré de Malberg, Berthélemy and Jèze.

Indeed the literature on Public Law in France since 1900 may be regarded as the reexamination and reconstruction of traditional views based on Duguit's criticisms. L'Etat is of fundamental importance for understanding Duguit. But Duguit has been a most prolific writer and the following is a list of his principal works. *Le Droit Social, le Droit Individuel et la Transformation de L'Etat* (1908). In this work Duguit announced his adhesion to Syndicalism. *Les Transformations Generales du Droit Privé* (1911) and *Les Transformations du Droit Public* (1913). These two are companion studies which seek to prove the profound changes in private and public law with a wealth of illustrations. The latter has been translated by Professor and Mrs. Laski as *Law in the Modern State. Traité de Droit Constitutionnel* (1st Edn. 1911) 2 Vols.; (2nd Edn. 1923—1925) 5 Vols.; Duguit was able to complete the third edition of the first two volumes of this treatise. This is the most complete expression of his mature thought and the account here given is in the main based on it. *The Law and the State*, Harvard Law Review, November, 1917. This is incidentally a brilliant survey of French Political Thought in the last century German political thought from Hegel and a summary statement of Duguit's own position. *Souverainete et Liberté* (1922). In this small volume Professor Elliott sees organic nationalism in every page and a sort of apologia for Fascism. *Manuel de Droit Constitutionnel* (1907), several editions since, one of the most popular College Text-Books. Besides there are several articles in periodicals which cannot be enumerated here.

On Duguit the following works in English may be consulted: Laski: Introduction to his Translation of Duguit's work above referred to; Jethro-Brown: *The Jurisprudence of M. Duguit* in the *Law Quarterly* for 1916; Elliott: *The Pragmatic Revolt in Politics*, Chs. IX and X; Willoughby: *The Ethical Basis of Political Authority*: Ch. on the theories of M. Duguit; Laski: *In Modern Theories of Law*. For fuller bibliographies one may consult: Laski: *Law and the Modern State*, p. 247; Michoud: (Edn. of Trotabas) *Theorie de la personnalité morale*: Note on p. 52; and Roger Bonnard: *Duguit*.

THE MUSLIM POLITICAL THEORY OF REBELLION*

BY

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The Theme.

An attempt is made in this paper to state and examine briefly the Muslim political theory of Rebellion. I will not try to present the theory in all its bearings as this will form the subject of a separate study entitled, "Authority and Liberty in Islam," now under preparation. What is aimed at is just to discuss the implications of rebellion, on the part of a section of or an individual belonging to the Muslim Community, against the constituted Muslim political authority. A brief discussion of the nature of political authority in Islam is included in the paper as it is so closely connected with our own subject of inquiry.

The Sources.

In accordance with the usual practice of using the Quran, the Hadith, the Ijma and the Qiyas as the important sources for Islamic studies, I, too, have relied largely on them. Besides I have utilised the important political writings of Al-Mawardi, Al-Ghazzali and Ibn-i-Khaldun.

As far as the first source of our information is concerned, it should be clearly borne in mind that it is futile to seek in the Holy Book a systematically worked out Theory of State. The Quran, however, is neither a treatise on political philosophy nor a legal code. "Its main purpose is to awaken in man the higher consciousness of his relations with God and the universe."¹ But there is no denying the fact that it does lay down a few general principles about the source, nature and functions of political authority. Now there might be raised an objection that such broad principles do not carry us very far. But it should be remembered that the essentially dynamic outlook of the Quran permits us to interpret the Texts in such a fashion as to take full cognisance of Space-Time relationships and to meet the progressive requirements of mankind in a satisfactory fashion.

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¹ *The Reconstruction of Religious Thought in Islam* by Sir M. Iqbal, p. 157.

The task of interpretation of the Holy Quran is greatly facilitated by the second great source of Muslim Law, viz., Hadith. The Traditions of the Prophet which include both his sayings and doings serve as a remarkable commentary of the Quran and elucidate quite a number of Quranic statements. It is with the object of proving it that I have incorporated in the paper a few highly significant sayings of the Prophet.

And yet a very important source is "Ijma." Dr. Agnides defines "Ijma" as "the consensus of the Muhammadan Mujtahids of any period concerning shariah value."² Without entering into the technical details about "Ijma" it is sufficient to point out that the companions of the prophet were the first to decide all controversial and difficult points; then the leadership passed on to the followers of the prophet's companions; and finally it was taken over by the generation of the Jurists and "Hadith-teachers." This particular method of arriving at truths played a very important rôle in the history of Islam.

Finally there is "Qiyas" (Analogical reasoning) which is the fourth important source. When it was found that owing to changed conditions and local variations the above-mentioned sources could not help the Jurists in the exact determination of a particular point, they had to fall back upon "Qiyas." "Qiyas" is not abstract reasoning in the void: it has its foundations in the Quran, Hadith and Ijma. But its distinctive feature is that before pronouncing a judgment it has "Space-Time variations" as the "inarticulate major premise" of the proposition. It is the most dynamic and virile aspect of Muslim Jurisprudence and it is wrong to think that the door of "Ijthihad" is closed.³

Amongst the political thinkers from whom material has been largely drawn, mention is to be made of the names of Al-Mawardi, Ibn-i-Khaldun and Al-Ghazzali. Al-Mawardi's work, "Ordinances of Government" (Al-Ahkamus-Sultaniyah) generally accepted as the most authoritative exposition of the Sunni Islamic Political Theory,⁴ has proved immensely useful. The famous Prolegomena of Ibn-i-Khaldun (a figure who has been accepted by the orientlists as the first philosophical historian of Islam and whose contribution to modern historiography has been immense) has proved equally useful. Then comes Al-Ghazzali and I have benefited, though to a lesser extent, from his work "Kimiya-i-Saadat."

The Nature of Political Authority in Islam.

What is the source of authority in Islam? The Quran repeatedly refuses to recognise the sovereignty of human power.

² Muhammadan Theories of Finance—Part I—Introduction to Muhammadan Law by Dr. N. P. Agnides, p. 63.

³ For an able and brilliant exposition of the Principle of Ijthihad, see Sir M. Iqbal's Lecture VI entitled, "The principle of movement in the structure of Islam." (The Reconstruction of Religious Thought in Islam).

⁴ Al-Mawardi's Theory of the Khilafah by H.A.R. Gibb (Islamic Culture, Vol. XI, No. 3.)

It emphatically lays down that it is God who is the source and fountain-head of all power. "Say: O Allah! Owner of Sovereignty! Thou givest sovereignty unto whom Thou wilt, and Thou withdrawest from whom Thou wilt."⁵ All Power is supposed to be a trust in the hands of man and the sovereign is but a trustee. This doctrine of Trusteeship should not be confused with the theory of Divine Right of Kings. Whereas the former concept has acted as a great check on the powers of the Imam whose actions have been always circumscribed by the verdict of the Quran, Hadith and Ijma, the latter has proved, on the whole, a mischievous theory and served as an excuse for the tyranny of the rulers in the European History. In the words of Sir M. Iqbal, "the state, from the Islamic standpoint, is an endeavour to transform the ideal principles of equality, solidarity and freedom into Space-Time forces, an aspiration to realize them in a definite human organization. It is in this sense alone that the state in Islam is a Theocracy, not in the sense that it is headed by a representative of God on earth who can always screen his despotic will behind the supposed infallibility."⁶ The trusteeship doctrine emphasizes more the responsibilities of the sovereign than his rights and we come across, in the Quran, severe warnings against betrayal of trust. "He it is who hath placed you as Viceroys of the earth and hath exalted some of you in rank above others, that He may try you by (the test of) that which He hath given you. Lo! thy Lord is swift in prosecution."⁷

The Political Theory of Rebellion.

Now that the question of the nature of Political authority in Islam has been discussed it becomes easier to understand the *raison d'être* of rebellion (Khurooj). So long as the Imam rules in conformity with Islamic tenets, he has a claim upon the obedience of the followers. But the moment he violates the Islamic precepts, flouts the Quranic injunctions, assumes despotic rule and, in short, ceases to be an Imam-i-Adil (just ruler) he forfeits all claims to obedience. The determining factor is the nature and extent of Imam's violations. One need not take serious notice of the Imam if he fails to conform to such of the Islamic categories as are non-essential in nature. But if his attitude and action assume the form of a challenge to the very foundations of Islam and an encroachment on its fundamentals, he creates a situation which might lead to rebellion and eventually to his deposition.

The Quranic verses and the traditions of the Prophet enjoining obedience to the ruler have led some to draw faulty and one-sided conclusion. They have lost sight of the limitations, set by the Quran and the Hadith, on the powers of the rulers. There

⁵ The Meaning of the Glorious Quran—Translation by Marmaduke Pickthall, Chap. III, Verse 26.

⁶ The Reconstruction of Religious Thought in Islam by Sir M. Iqbal, p. 147.

⁷ The Meaning of the Glorious Quran—Translation by Marmaduke Pickthall, Chap VI, Verse 166.

is a tradition to the effect that whosoever pleases the ruler by means of a thing that is displeasing to the Lord, remains no more in the Islamic fold (Hakim). Another tradition foretells that the worst punishment will fall to the lot of a tyrannical ruler (Tabrani, Abu Nayeem, etc.). Imam Ghazzali compares the unjust ruler to Satan's deputy.⁸

Al-Mawardi⁹ has a long discussion of the conditions and circumstances leading to the forfeiture of the Imamatus. When the Imam does not fulfil or is incapacitated from fulfilling the duties entrusted to him he has no justification, whatsoever, to remain an Imam. Failure to fulfil the duties may arise by reason of (1) Evil conduct or heresy, (2) Infirmary of mind or body, (3) Curtailment or loss of liberty. Al-Mawardi's sane and balanced judgment stands in sharp contrast to Al-Ashari's emphasis on implicit obedience.¹⁰

We might conclude this part of our discussion with the remark that Islam does not favour obedience just for the sake of obedience. It takes into consideration the fact that the Imam safeguards the Islamic principles and, consequently, benefits accrue to the Community as a whole. Hence his claim to our obedience. But the moment he relegates the main functions of his office to the background and becomes un-Islamic in his action, there cannot be any religious or moral justification for his claim to our obedience.¹¹

Having established the necessity of "Khurooj" (Rebellion) we pass on to the question of the classification of rebels. The author of "Durul Mukhtar" has a threefold classification: (1) Those who have neither any serious allegations to make against the Imam nor do they command any power to fight out their cause. (2) Those who in spite of being rebels hold sacred the life and property of the Muslims. (3) Those who have serious allegations to make against the Imam and contend that he has violated the fundamental principles of Islam. They happen to be in possession of Power to fight out their cause. And they do not have any regard, whatsoever, for the life and property of their Muslim foes. We leave out of account the first two categories of rebels whose weakness of cause and meagre resources make their position quite unimportant. We proceed directly to examine the problems connected with rebels falling in the third category. Both on account of their strong claims and adequate power they cannot be just dismissed as a set of agitators and their case requires careful consideration.

⁸ Kimiya-i-Saadath by Imam Ghazzali—Urdu translation, p. 189.

⁹ Al-Ahkamas Sultaniyah by Al-Mawardi—Urdu translation (Osmania University publications), pp. 31-40.

¹⁰ "We maintain the error of those who hold it right to rise against the Imams whensoever there may be apparent in them a falling away from right"—Translation by D. B. MacDonald, Development of Muslim Theology, p. 298."

¹¹ "One should not obey such human orders as involve disobedience of God" (Ahmed Ibn Hanbal, Hakim, etc.).

As soon as the rebellion breaks out the Imam is not to commence fighting against the rebels. Attempt should be made to understand the nature of their grievances and to clarify their doubts and misgivings. The main idea is to minimise chances of bloodshed by using conciliatory methods, if possible. We have the famous instance of Ibn-i-Abbas proceeding towards the rebel forces to convince them of the utter hollowness of their charges against Ali and finally to bring them down. His mission was remarkably successful inasmuch as some two thousand rebels out of a total of six thousand joined Ibn-i-Abbas.¹²

But in case the rebel forces are not amenable to reason and are bent upon disregarding the Islamic ordinances, then force is to be used as a last resort. But even here we find a number of mitigating factors. To begin with only defensive action is allowed (this opinion is held by Imam Shafi and a few others). Secondly, we have a number of humane laws meant to be followed during the period of hostilities and they stand in sharp contrast to the ruthlessness and savagery of modern warfare. The lives of women and children belonging to the rebel forces are held sacred and inviolable; the captives, the wounded and refugees are not to be murdered; the property of the rebels is not to be treated as booty but is to be returned to them on the termination of hostilities when the defeated rebels promise allegiance and good conduct. The only exception is made in the case of arms which are allowed to be utilized by the Imam's forces.

What is to be the attitude of the rest of the community when a rebellion breaks out? Under normal circumstances obedience and help to the Imam is an obligation on the part of the subjects. When a section of the community tries to create dissensions in the body politic and resorts to rebellion it becomes the duty of every one to help the Imam. Soon after the death of the Prophet, a few of the tribes refused to pay the poor tax. And the first Caliph had to put down the rebellion with the help of his followers. But there might be a second case when it becomes very difficult to assess the respective value of claims put forward by the rebels and the Imam. It is here that neutrality is allowed. A third case might arise when the Caliph violates the Quranic injunctions and begins to rule in the most un-Islamic fashion. What is, then, to be the attitude of the Muslims? Here opinion is divided. Some consider that "Khurooj" is the remedy. Some advocate neutrality. A case in point is that of Yezid, the Ommeyyad ruler. Hussain and a few of his followers advocated "Khurooj" against him; while others remained neutral not because they approved of Yezid's conduct but because firstly they wanted to avoid internecine warfare among the Muslims and, secondly, knowing as they did the strong position of Yezid, they doubted very much the chances of their victory. Hence it might be said that though there is no hard and fast

¹² For further details see Ainul-Hidayah, Vol. 11, pp. 592-3 (Urdu translation of "Hidayah").

rule about the attitude to be adopted by the Muslims during a rebellion, this much is certain that implicit obedience, at all costs, is neither warranted by facts in Islamic history nor is it in keeping with the spirit of Islamic principles.

Individual Will vs. Group Will.

Let me in the end raise one very important question. Is the spirit of Islam in favour of freedom of individual will or adherence to group will? I will not try to examine the question in all its bearings but will just make a few casual and suggestive remarks. Apart from the fact that the above problem is closely connected with our own subject of enquiry, it has a special significance in modern times inasmuch as the world is torn asunder by an intolerable strife and the very fundamentals of democracy are being challenged by the totalitarian states. The concept of "Personality of the individual" is held to ridicule and derision. What, then, is the attitude of Islam? Islam does recognize "the individuality and uniqueness of man." It emphasizes the fact that human ego is free.¹³ But the value of this concept lies in considering it as a means and not as an end. All development of personality should be with the ultimate purpose of service to the "Ummath" (Community). The philosopher-poet Iqbal has brilliantly dealt with these two aspects in his "Asrar-i-Khudi" (Secrets of self) and "Ramuz-i-Bekhudi" (Mysteries of selflessness). It is with the higher objects of achieving collective welfare that all the Islamic institutions are designed and they succeed remarkably in inculcating in the followers a collective spirit. Again it is for the sake of solidarity that the Quran lays emphasis on obedience. Obedience and discipline in Islam are not just the metaphysical subtleties or idealist concepts. They are concrete realities achieving particular purposes. It is in such a background that the Quran proclaims, "O ye who believe! obey Allah and obey the messenger and those of you who are in authority."¹⁴ But if obedience fails to achieve the purposes for which it stands and leads the community to deviations from the Islamic goal, then adherence to the will of the ruler loses its significance. Thus it is clear that the Islamic theory of obedience is one of balances and checks.

There can be no better summing up of the whole problem than by quoting the famous speech of Abu Bakr, made soon after he was elected to the Caliphate. "Behold me," said the Patriarch after the multitude had sworn allegiance to him, "behold me charged with the cares of Government. I am not the best among you! I need all your advice and all your help. If I do well, support me; if I mistake counsel me. To tell truth to

¹³ For details see "The Reconstruction of Religious Thought in Islam" by Sir M. Iqbal, p. 147.

¹⁴ The Meaning of the Glorious Quran—Pickthall's translation, Chap. IV, Verse 59.

a person commissioned to rule is faithful allegiance; to conceal it is treason. In my sight the powerful and the weak are alike; and to both I wish to render justice. *As I obey God and his Prophet, obey me; if I neglect the laws of God and the Prophet, I have no more right to your obedience.*"¹⁵

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¹⁵ Quoted by Amir Ali in his "A Short History of the Saracens," pp. 21-22.

HOW WILL CONVENTIONS ARISE IN THE INDIAN CONSTITUTION? *

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I

In order to answer this all-important question, how conventions will arise in the Indian constitution, it is necessary first to explain the correct theory of the conventions of the constitution.¹

Professor Dicey, writing about conventions of the constitution in his monumental book on the *LAW OF THE CONSTITUTION*, stated that conventions are a set of rules regulating the conduct of the several members of the Sovereign power, of the Ministry, and of the officials, 'which, though they would not be noticed by any court, have in practice nearly the force of law;' for he argued that the sanction by which obedience to these conventions is enforced is the fact that 'the breach of these conventions will almost immediately bring the offender into conflict with the courts and the law of the land.'

Dicey supported his conclusions by two examples from the British constitution. The first example was that even though the rule that Parliament must assemble every year is not based upon any statutory enactment and is only a matter of convention, yet in fact Parliament is invariably called to assemble every year, for if it were not, the Government would be faced with a number of legal difficulties in its ordinary operation. "The Army Act, on which discipline of the army depends, would in the first place expire; thereupon all means of controlling the army without a breach of law would also cease. Either the army must be discharged, in which case the means of maintaining law and order would come to an end, or the army must be kept up and discipline must be maintained without legal authority for its maintenance. Then, again, though most of the taxes would still come into the Exchequer, large portions of the revenue would cease to be legally due and could not be legally collected, while every official, who acted as collector, would expose himself to actions or prosecutions. That part, moreover, of the revenue

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¹ For a more detailed analysis of why conventions are obeyed and how conventions arise, see my paper on 'Conventions of the Constitution' in *Modern Review* for January, 1936.

which came in, could not be legally applied to the purposes of the government."² Similar would be the result of a Ministry refusing to retire when it had clearly lost the confidence of the House of Commons, although in refusing to retire in such circumstances it would not be directly breaking any law but would be breaking merely a constitutional convention. Dicey, therefore, argued that 'the breach of a purely conventional rule, of a maxim utterly unknown and indeed opposed to the theory of the law, ultimately entails upon those who break it direct conflict with the undoubted law of the land. We have, then, a right to assert that the force which in the last resort compels obedience to constitutional morality is nothing else than the power of the law itself.'³

Now, if Dicey's conclusion be accepted as correct, then it would follow that there can be no real possibility of the growth of conventions in the Indian constitution, where the chief executive has been given enormous ultimate powers, under the law of the constitution itself, to act as it likes; for in such a constitutional scheme there can be no imaginable conflict with the law of the land. So long as the present constitution stands in India, for instance, it would always be legally possible for the Governor-General and the Provincial Governors to exercise certain special powers that the Act has given them. The only way to make these powers ineffective, in the context of Dicey's theory, could be by changing the Act; for any conventions that might arise under this Act with reference to these special powers of the Governor-General and the Provincial Governors could not be infallible: they need not be necessarily obeyed, for so long as the present Act stands they could not be secured by the law of the land.

But the case of the Dominions provides a clear exception to Dicey's argument. The system of responsible government in the Dominions is essentially conventional, completely unsecured by the law of the land, and yet it is as surely based to-day as any fundamental principle of the British constitution. Indeed, Dicey's theory is even otherwise quite inadequate as an explanation of facts. It does apply to a few important cases, which determine the relations between the Cabinet and the House of Commons, but it does not apply to all; and it fails to explain the problem as a whole. Firstly, it does not apply at all to the simple administrative conventions, which are obeyed quite invariably but which are not supported by law. Dicey himself, for instance, admits that 'the rule that a bill must be read a well-given number of times before it is passed is, though a well-established conventional principle, a convention which might be disregarded without bringing the Government into conflict with the law of the land.' Secondly, even in the sphere of the fundamental conventions, it does not, for instance, explain

² Dicey: *Law of the Constitution*, 8th ed., p. 443.

³ *Op. cit.*, p. 446.

the conventions that govern the relations between the United Kingdom and the Dominions. Before 1931, although the dominions were in point of law definitely subordinate to the Imperial Government in almost every way, so that any measure of the Imperial Parliament, however flagrantly interfering with the internal affairs of a Dominion, could not have caused a conflict with the ordinary law, yet it is unimaginable that the British Parliament would have ever, in normal circumstances, dared to contemplate any measure of that kind. Similarly, to-day, although legally it is open to the British Government to conclude an offensive and defensive alliance with any other country and commit all the British Dominions to such an alliance, yet it is hard to believe that the British Government would ever think of doing so.

Dicey's explanation applies to the few cases which determine the relations between the Cabinet and the House of Commons, largely because of the typically illogical manner in which the law was changed in 1689, powers of government being then divided between King and Parliament in such a way that neither by itself was able to carry on the government. Each had the power to hamper the other's activities. Naturally the result of such a scheme was a highly intertwined system of governmental authorities, each depending upon the other's co-operation for achieving smooth administration; and since conventions developed in such a scheme to make that indispensable and inevitable co-operation possible, naturally the observance of those conventions became quite obligatory, for otherwise one factor would automatically come into conflict with the other, and so with the law of the land.

But what is true of these conventions governing the Cabinet system is, from the very nature of things, not true of every other convention. Conventions do not always develop out of an illogical legal system. Their purpose is to bring the constitution into line with the progressive development of the political and social ideas of the people living under it. Such purpose would not necessarily mean that the observance of conventions depends upon the security of law: it would rather imply that the observance of conventions depends ultimately on the security of public opinion. In order that a convention may continue to be observed, what is needed is not that its breach must be accompanied by a conflict with the law of the land but that its breach must mean a conflict with the public opinion of the land.

The truth of this position was recognised by Sir William Anson, when he said that "we must not forget that the possible violation of the law is not the only reason why a Ministry should retire when it is shown to have lost the confidence of the House or of the country. Ministers are not only the servants of the King; they represent the public opinion of the United Kingdom. When they cease to impersonate public opinion, they become a mere group of personages who must stand or fall by the pru-

dence and success of their actions. They may have to deal with disorders at home or hostile manifestations abroad: they would have to meet those with the knowledge that they have not the confidence or support of the country, and their opponents at home and abroad would know it too. We arrive, then, at this point, that the King as represented by his Ministers must, by the conventions of the constitution, work in harmony with public opinion as represented by the House of Commons. The legal necessity lies only in the background: it forms an ultimate sanction, which is not often present to the minds of those who act upon it."⁴ We would only add that in the case of conventions governing the relations between the Ministry and the House of Commons there is a legal necessity, although, as Anson says, it provides only an ultimate sanction, not often present to the minds of those who act upon it, but in the case of a large majority of other conventions there is no ultimate legal sanction at all. Primarily, therefore, obedience to conventions is, in our view, due to the sanction of public opinion.

II

It is only in terms of this explanation that we can understand the course of constitutional development in the Dominions. Responsible government has been the method by which the Canadian and Australian federations, South Africa, and New Zealand have each attained to full national self-government. In each case, the Governor or the Governor-General was endowed by the Constitution Act with veto power and other responsibilities of his own. Some of the statutes did, indeed, authorise certain things to be done by the Ministers individually, but practically all important issues were ascribed either to the Governor or to the Governor-in-council. Prerogative power of the Crown was practically always left to be exercised by the Governor personally. Yet in the course of the working of the constitution, all real power has shifted from the Governor to the popularly responsible Ministers.

The underlying basis of this development has, in every case, been the broad recognition of the principle of responsible government, that for official action the Governor must under normal circumstances act upon the advice of his Ministry or of an individual minister, as the case demands. Even this principle has not always been specified in the Constitution Act. In the Dominion of Canada Act, 1867, although responsible form of government was contemplated, yet no further provision was made in the law than for a Privy Council of Canada, which in practice occupied the same position as the British Cabinet. In certain other Dominions, specific provision has occasionally been attempted, but still it is very limited. The constitution of the Cape Colony (1872) recited quite definitely as its object the

⁴ W. R. Anson: *Law and Custom of the Constitution*, 4th ed., I, 333.
F. 5

'introduction of the system of executive administration commonly called responsible government,' but nothing in the Act explains the phrase. Certain stray features of the Cabinet system of government have been given statutory recognition in some of the Australian provincial constitutions also. But broadly speaking, except for the Irish Free State where responsible government has been enacted as an essential part of the law, the system of responsible government in the Dominions has been allowed to remain in essence conventional.

And yet, in actual practice, the effects of the recognition of the principle of responsible government have been of very far-reaching consequence. From the position of subordinate colonies, the Dominions have risen to the position of autonomous and associate communities in relation to the United Kingdom. "The powers and responsibilities in the hands of Governors have not prevented the steady advance to full self-government. That is because the issue turns not so much on legal power as on responsibility. . . . Where a Ministry supported by a majority in the legislature is prepared to assume responsibility for the consequences of its acts, . . . the real discretion which the Governor has to exercise, even when he disagrees with the policy proposed, is whether law and order and good government of his province can be better maintained by refusing to act on the advice of his Ministry, when he can find no alternative Ministry which will command a majority or win an election and he would therefore have to govern autocratically, or by accepting that advice. When the Ministry represents the popular will and is carrying out a policy which commands the support of the electorate, the Governor has usually decided to act on its advice, and that is the reason why the system has always led gradually but inexorably to complete self-government." ⁵

As a consequence of this practice, it has now become a recognised principle in all the Dominions that the Governor must necessarily be guided in all matters of administration by the advice of his Ministers. The necessity of acting on Ministerial advice does not, indeed, preclude the Governor's right to discuss and advise; but if after discussion the Ministry should decline to modify its proposed line of action, there is normally no option for the Governor but to assent. Till 1926, it was presumably open to the Governor to reject advice if he could be sure of securing, in the event of the resignation of the Ministry in consequence of his action, a new Ministry which would accept responsibility *ex post facto* for his rejection of advice. In England itself such a doctrine had long died out. Its existence in the Dominions was defensible on the theory presumably that the Governor was an agent of the British Government and therefore it was incumbent upon him to make an active effort, so far as possible, to pursue a sound policy as he conceived it to be. But in 1926, over the question of Lord Byng's refusal to grant a

⁵ Lord Lothian in the *Times*, dated 6th April, 1937.

dissolution to and the consequent resignation of Mr. Mackenzie King, the Imperial Conference of 1926 stressed the position of the Governor-General as the counterpart of the King, and to emphasise this took away from him the function of agent of the British Government and presumably the right to reject Ministerial advice altogether.

The Governor's obligation to be guided by Ministerial advice further extends (i) to all prerogative rights of the Crown, which are exercisable by the Governor, and (ii) to any statutory duties, which might be imposed upon the Governor by Imperial Acts, such as the functions imposed by the Pacific Islanders' Protection Acts on the Governor-General of Australia. This point is of quite special interest to India, as we shall explain in a minute. The duty of acting, it needs to be stressed, when imposed on the Governor in the Constitution Act, is certainly a legal duty, but one of imperfect obligation. Even when a statute imposes on a Governor an express obligation as opposed to merely authorising action as is normally the case, it is clear that his action cannot be enforced by mandamus by the Courts. This was settled in two decisions by the High Court of the Commonwealth of Australia. In *R. v. Governor of South Australia* (1907), ⁶ an attempt was made to secure the issue of a mandamus to the Governor of South Australia to compel his issuing a writ for the election of a senator for the state; but the High Court ruled that it had never been held that mandamus lay to compel a Governor to issue a writ for state elections and that it was impossible to make a precedent. In *Horwitz v. Connor* (1908), ⁷ the same court ruled that no mandamus lay to the Governor in Council of Victoria to compel him to consider the claim of a convict to release under prison regulations.

So much for the internal government of the Dominions. But even in external matters, the whole relationship of the Dominions to the Government of United Kingdom has changed from subordination to equality merely by the growth of conventions. These conventions were analysed and defined by Imperial Conferences, particularly by the Conference of 1926 which defined the Dominions in relation to the United Kingdom as 'autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as the members of the British Commonwealth of Nations.' This principle of equality was merely a generalisation of constitutional conventions, although its result was to completely reverse the effects of the law. In 1931, this development was further implemented by the passing of the Statute of Westminster.

⁶ 4 C. L. R., 1497.

⁷ 6 C. L. R., 38.

III

In the new Indian constitution, that principle of responsible government, which was the underlying basis of all these developments in the Dominions, has been recognised. The Federal Structure Sub-Committee of the First Round Table Conference stated that the new constitution is based on the avowed recognition of 'the principle that, subject to certain provisions, the responsibility for the government of India will in future rest upon Indians themselves.'⁸ The Marquis of Zetland, Secretary of State for India, also recently emphasised that 'the essence of the new constitution is that initiative and responsibility for the whole government of the province, though in a form vesting in the Governor, passes to the Ministry as soon as it takes office.'⁹

Yet, there are certain features of the Indian constitutional scheme which must create clear and effective obstacles in the way of the growth of conventions, such as should raise the status of India in relation to the Government of the United Kingdom from subordination to equality. Among these obstacles, the first is of course the enormity of the powers that have been retained for the Governor-General and the Provincial Governors. A number of departments have been specifically reserved to them in complete immunity from all control of the legislatures. In the federal government, such departments are Defence, Foreign relations, Ecclesiastical affairs, and the administration of Tribal areas: in the Provinces, there are the Excluded and the Partially-Excluded areas, and perhaps also the organisation of the police. To these, we must add the retention of control over the recruitment etc. of the Indian Civil and Indian Police Services—two of the most important administrative services of India—by the Secretary of State. This reservation of departments is a definite limitation of the principle of responsible government, which in the case of the Dominions was admitted to prevail throughout the entire sphere of internal administration.

Then, there are the special responsibilities and, as a consequence thereof, the immense legislative and financial powers of the Governor-General and the Provincial Governors. These include the power to make permanent laws in supersession of the authority of the legislature, and the power to authorise the appropriation of more than half of the total revenues of India besides expenditure on matters where a special responsibility might be conceived to lie. Such powers are also a limitation of responsibility, and have never been provided for in any Dominion constitution.

Secondly, the composition of the legislatures is so adapted as to render it difficult to secure the basis of an effective Ministry,

⁸ Report of the Federal Structure Sub-Committee of the First Round Table Conference (Cmd 3778), p. 212.

⁹ House of Lords Debates, dated 8th May, 1937.

and thus to assist the Governor in asserting the great authority vested in him. In the Provincial as well as the Federal legislatures, the representatives of Muhammadans, Sikhs, Europeans, Anglo-Indians, and Indian Christians will be elected in their separate constituencies by communal electorates. Even women and scheduled castes have been specifically assigned a definite proportion of the general seats; so that the whole emphasis of the constitutional scheme has been to put a premium upon separatism and communal and social disintegration rather than on unity and integration.

In six provinces—Bengal, Bombay, the United Provinces, Madras, Bihar, and Assam—there have been erected second chambers, which 'represent a concession to the conservative feeling in the United Kingdom;' in five out of these six provinces they were not wanted. Their erection is likely to lead to deadlocks.

In the case of the Federal legislature, an additional confusing element has been added in the form of the representatives of the Indian States. Professor Keith is of the opinion¹⁰ that the British Government was determined not to give responsible government to India so long as it could not be sure that the character of that government would be conservative, and that the conservative character of the central government was ensured by (i) according to the States a little more representation than their numbers would warrant, and (ii) leaving the choice of the State representatives to the Rulers themselves. But whatever the purpose of the British Government, the truth is that the federal legislature in its final form has become a most confused affair. 'It will be destitute of organic unity, will lack the momentum of a common allegiance and national solidarity, and may resolve itself into congeries of inconsistent and even destructive sections, lacking the rudiments of leadership and teamwork and exhibiting all the characteristic features of the Federal Parliament of Austria-Hungary before the War.'

All these factors will make the growth of conventions in the Indian constitution an extremely difficult proposition. Technically, of course, there is no bar to the rise of conventions. If public opinion is sufficiently well mobilised, the Governors may find less and less reason for acting upon their powers. But the factors which we have analysed above will certainly minimise the possibility for the mobilisation of really strong and effective public opinion, at least through constitutional means inside the legislatures. The institutional structure of Indian government has not been constructed in order to facilitate the fulfilment of Indian aspirations; it has rather been framed to obstruct and delay the process of that fulfilment. Its effect will be to deepen the contours of conflict between the progressive and the conserva-

¹⁰ See Vardachariar: *Indian States in the Federation*, 1936, pp. 142-43.

tive elements in Indian society during the process of the achievement of full self-government.

IV

But what will be the process of the rise of conventions? That is the question which seems to us to demand an early and authoritative reply; for, on this question there prevails, in India, an amount of misunderstanding and confusion that is literally colossal.

Before forming ministries in the provinces where the Congress party had clear majority, the All-India Congress Committee had provided that 'the Leader of the Congress party in the legislature should be satisfied and should be able to state publicly that the Governor would not use his special powers of interference in regard to their constitutional activities.' In pursuance of this resolution, the Congress leaders in these provinces asked for such an assurance from the Governors. The Governors refused to give any such assurance, and the Congress refused to form ministries; so that there came into being a real constitutional crisis. In the discussions that followed this crisis, the Governors' refusal to give assurance was supported by certain constitutional lawyers on two pleas, both of which appear to us to be of very doubtful validity.

Firstly, it was said by Sir Tej Bahadur Sapru that 'on the legal side I have no doubt whatever that the interpretation of the Act by the Governors is right, and that they could not, so long as the Act stands on the statute book, contract themselves out of their statutory obligations and responsibilities.'

Sir Tej Bahadur's view, technically correct, was wholly irrelevant to the situation. The condition attached to the acceptance of office did not have even the remotest resemblance to a contract. Its very language excluded the idea of a contract altogether. That that was not the meaning of the proviso was also made clear in the speeches which preceded the passing of the resolution by the A.I.C.C. in Delhi. Further explaining the Congress resolution, Mahatma Gandhi also assented that what was asked for was merely 'a gentlemanly understanding' which could have been given without the least trouble.

But perhaps the idea that was uppermost in Sir Tej Bahadur Sapru's mind was not that of 'contract,' but a more ultimate one, whether it was at all possible for the Governor to consent not to exercise his discretion in matters where the Act had specifically imposed an obligation upon him to do so. It was pointed out by people who supported the Governor's action that the Governor's power to act in his discretion was limited in two ways: firstly, under sec. 54 of the Act, in so far as the Governor is required to act in his discretion he shall be under the general control of the Governor-General, who, in his turn, is under the

general control of the Secretary of State; and secondly, the Act in making a legal provision for the Governor's exercise of his discretion actually imposes a specific obligation upon him to exercise it. So that the whole question boils down to this: does the obligation of the Governor to exercise his discretion in certain matters that are specified in the constitution or his ultimate responsibility for the exercise of that discretion to the British Parliament, stand in the way of the growth of conventions regarding the exercise or the abstinence from exercise of such discretion?

If an answer to that question is to be given on the basis of the experience of the Dominions, our answer would be most clear and conclusive that neither the answerability of the Governor to Parliament or Crown nor any statutory obligation on his part to behave in a certain way can be an impediment to the growth of any conventions, provided that these conventions are not counter to the spirit of responsible government. The duty of acting imposed upon the Governor, although a legal duty, is one of imperfect obligation. We have already seen how in the Dominions not only the statutory duties imposed on the Governor by Imperial Acts but even the prerogative powers of the Crown, entrusted in all cases to the Governor personally, all have succumbed to the doctrine of responsible government, that the official actions of the Governor must under normal circumstances be taken always on the advice of the Ministry. The only power that conventions cannot presumably take away from the Governor, the only obligation that presumably is incumbent upon the Governor, so long as the Governor continues to be an agent of the British Government, is his right or perhaps the duty to reject Ministerial advice if he can secure, in the event of the resignation of a Ministry as the result of his action, a new Ministry which will accept responsibility *ex post facto* for his rejection of advice.

The second argument that was made, again by Sir Tej Bahadur Sapru, was that 'the statute does not prevent the growth of conventions, but conventions grow out of practice.'

This argument raises a rather nice question of constitutional practice. The problem, how conventions arise, has been analysed by Dr. Jennings in his book on *CABINET GOVERNMENT*. Dr. Jennings starts from the same hypothesis that 'conventions grow out of practice and their existence is determined by precedents,' but he soon discovers that that simple hypothesis is not quite satisfactory, for 'precedents, like analogies, are rarely conclusive.' Very often we come across cases in which well-established practices of over hundreds of years get suddenly overlooked or dispensed with. In order that a precedent or practice may produce a convention, then, Dr. Jennings argues, it is necessary that the practice must be normative, that is to say that the authority itself and those connected with it must recognise in acting in a particular way that it is incumbent upon them to so act. Precedents create a rule, for they are recognised as creating a rule.

From this it would follow that for the creation of a convention the most important factor would be that of its general recognition, for a precedent becomes normative only when its existence and the duty to obey it are generally recognised. But general recognition for a convention may be secured in one of two ways: it may arise by the gradual crystallisation of practice into binding rules, or it may come in the form of a formal agreement between the various factors whose mutual relations are ultimately to be guided by the convention. Practice thus would not be the only way possible for the creation of conventions. Conventions may as well and as surely arise by formal agreements between persons and authorities even before practice begins. As to how conventions arise in any particular country would be determined largely by the conditions of life and the temperament of the people of that country.

In England, for instance, where people are more compromising and less logical, believing only in tackling the most important problems and solving them rather than in working out abstract and systematic theories, conventions might generally arise by the first process. A practice there would grow up unconsciously, would be followed unflinchingly for a long time, and would finally become hardened into a principle. Persons of authority would start asserting in their writings that the practice exists, and for all practical purposes the practice will be recognised to exist as an integral rule of the constitution. The same process has taken place in some of the Dominion. But that does not mean that that is either the only or even the best means by which conventions can be secured. Amongst a people less fond of compromises than the English, conventions would often arise as the result of a formal and definite agreement. In Ireland, whatever conventions have arisen have arisen in this manner. The same is generally true of France and America.

And the difference of procedure regarding the rise of conventions is not always caused by differences of racial instincts. In the same country, sometimes, people of different temperaments prefer different methods for establishing a convention. It was in England, for instance, that in 1839, Sir Robert Peel thought it expedient before forming his Ministry to ask for a definite assurance of confidence from Queen Victoria, laying down that the evidence of this confidence was to be twofold: (a) that the Queen would dissolve Parliament and hold new elections on Peel's advice, and (b) that she would agree to changing at least a few of the Ladies of her Bedchamber on Peel's recommendation, for these Ladies belonged exclusively to the other party and Peel was afraid that they might influence the Queen's opinions against himself.

In view of all this, we cannot understand Sir Tej Bahadur Sapru's insistence upon 'practice.' Our view is that in the controversy which was occasioned by the Congress refusal to accept office without an assurance from the Governors, a right and dis-

passionate view was not taken of the nature of conventions and of the procedure of their growth. Indeed, the more we think about this matter, the more it seems to us that the likelihood in India for the growth of conventions by the procedure of formal agreement is far greater than by the procedure of slow and silent practice. Firstly, the temperament of the people is more favourable to definition and codification than to mere usage and practice. Secondly, the Government of India Act, 1935, having been framed and passed without the active cooperation of the most material section of Indian nationalist opinion, it would presumably work successfully only if some of its irksome and irritating features are modified directly by formal agreement before it is sought to be put into active operation. Thirdly, the institutional scheme set up by Act, as we noticed before, has been so framed as to allow very limited scope to public opinion being really effective inside the legislatures; so that if public opinion must at all be a decisive factor in the growth of conventions, it must have to be organised outside the legislatures, in which case it would obviously be more effective by means of formal agreements than by aiming at the establishment of slow and silent understandings.

CONSTITUTIONAL DEADLOCKS AND CONVENTIONS

BY

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The new constitution began with a constitutional deadlock in six out of eleven provinces. The deadlock was caused by the refusal of the Congress majority parties to accept office "unless they are assured by the governor that he will not use his special powers of interference or set aside their advice in regard to their constitutional activities."

Some eminent constitutionalists condemned the attitude of the Congress as unconstitutional. They held that in democracies with the system of responsible government the majority party must accept office and its refusal must be regarded improper and unconstitutional. They asserted that "conventions grow out of practice and practice means the working of the constitution and not the refusal to work it." It was their contention that "you must give a certain reasonable time to the governors and the ministers to come together, to judge of the shaping of the public opinion and to consider for themselves the soundness or unsoundness, the propriety or impropriety of a convention before you can expect anything like voluntary abstention on the part of the governors from the use of those powers, or an abstention as the request of ministers; and that is how conventions usually grow out of practice." They held that "while the Governors could not legally contract themselves out of the statutory obligations and responsibilities through positive assurances before the acceptance of office, in most cases, if not in all, conventions can grow in which the governor would feel justified in not running counter to the considered views of his ministers."

These statements deserve careful consideration as they deal with important questions whether the majority party is justified to promote constitutional deadlocks for the growth of full responsible government in the country, and if so, when and under what circumstances. Constitutionalists who were opposed to the congress policy seemed to believe that conventions were but peaceful growth, result of mutual goodwill and understanding between the majority party and the constitutional head of the government, the king or governor.

A careful study of the constitutional history of the British commonwealth will, however, reveal that constitutional deadlocks, deliberately engineered by the majority party, played by no means an insignificant part in the growth of constitutional conventions and responsible government. In Great Britain many

of the conventions, which determine the mode in which the king is to exercise the crown's discretionary or prerogative powers, are understandings arrived at between the king and the leaders of the majority party or responsible ministers after constitutional conflicts and deadlocks and subsequently habitually observed, though often with reluctance, by the king. Some constitutional deadlocks were no doubt due to mistakes and illegal acts of the king, but some were deliberately caused by the majority party with a view to extending the sphere of responsible government and limiting the interference of the king in the administration of the country. In fact, even such conventions as grew peacefully or accidentally in the reign of one monarch are observed by other monarchs for fear of constitutional deadlocks. But for this, George III would have repudiated a number of conventions which grew up in the reigns of George I and George II, and Queen Victoria would not have cared to appoint always the leader of the majority party as the prime minister. George III wished to play the role of a "patriot king," and not that of a constitutional monarch. He detested constitutional conventions and throughout his life manœuvred and conspired against fundamental principles of responsible government. Queen Victoria disliked Peel and Gladstone and accepted them as her chief advisers, with considerable remorse. She disapproved, struggled against, and grew very angry at, Peel's demand to change the ladies of her bed-chamber and the interminable reforms of Gladstone. Throughout her reign she protested and complained against constitutional conventions, and submitted to them with reluctance and even ignored them, whenever possible. What else if not the fear of constitutional deadlock led William IV and George V to promise Grey and Asquith respectively to create a large number of peers and advise moderation to the opposition in the House of Lords on measures, which were backed by the nation but detested by monarchs? The fear of constitutional deadlock was to a large extent responsible for the peaceful abdication of Edward VIII. In short, conventions have no legal basis, and moral sanctions are weak by themselves. Constitutional deadlock is the real political sanction behind conventions. They are sustained by the determination of the majority party to refuse to cooperate with the king in the administration of the country, if the latter fail to observe them faithfully. Thus, in Great Britain the system of responsible government is not wholly the result of peaceful growth of customs and conventions. It exists by constitutional deadlocks, actual or potential. In fact constitutional deadlocks contributed much to the growth of responsible government throughout the British Empire.

Constitutional deadlocks, aimed at promoting the growth of responsible government, must not necessarily follow the acceptance of office. They may as well precede it. Their occasion is determined by the character of the issue and the attitude of the people. When an issue is general in nature, is to affect the working of the administration from the very beginning and is likely to be supported by the bulk of the nation, it can best be

decided before the acceptance of office. Such a step will decidedly be more honest, dignified and proper than to kick up a row just after the acceptance of office. Confusion of issues is thereby avoided. Constitutional issues can be discussed and decided on their own merits without being affected by the measure that provided the occasion for the crisis. Constitutional deadlocks before the acceptance of office cannot be held unconstitutional on the ground that majority party must accept office. The majority party can without any constitutional impropriety refuse office under constitutional and legal restrictions imposed upon a nation against its will, and is fully justified to be clear if the constitution permits it facilities to carry on its programme unhampered by persons in no way responsible to the electorate. In democracies with the system of full responsible government the majority party is expected ordinarily to assume office, but it does not accept office unconditionally. It always accepts office on an explicit or implicit assurance that its constitutional activities shall not be interfered with. If explicit assurance regarding non-interference is generally not secured prior to the acceptance of office it is because the rule is well established and habitually observed. But in cases of doubt the explicit assurances of noninterference and necessary constitutional cooperation may be demanded from the constitutional head by the majority party without any constitutional impropriety. Assurances before the acceptance of office are not unknown to the constitutional history of the world. Even in Great Britain on occasions the majority party consented to form the cabinet on the definite assurance of the king. For example, Gray in 1831 and Asquith in 1910 formed cabinets after the King assured them that sufficient number of peers would be created in case the constitutional measures proposed by them and passed by the House of Commons were subsequently rejected by the House of Lords. In fact, the growth of full responsible government was impossible in many countries including Great Britain if the majority party had considered itself constitutionally bound to hold office irrespective of the assurance of the king regarding his non-interference in the administration of the country.

Constitutional deadlocks prior to the acceptance of office cannot be criticised on the ground that "conventions grow out of practice and practice means the working of the constitution and not the refusal to work it." Conventions of the constitution are "customs or understandings," as to the mode in which the several members of the political authority should each exercise their discretionary authority (see Dicey: *Law of the Constitution*, Chap. XIV). Customs can surely grow out of practice and hence, after the acceptance of office, but an understanding can easily be arrived at before the acceptance of office. A convention may start with a prior constitutional assurance or understanding and there is no reason why it should not have constitutional validity as a convention. Conventions can hardly grow out of practice in cases where they are not legally possible through positive

understanding prior to the acceptance of office. Customs are as much barred by the explicit provisions of the constitutional law as the positive understanding and assurances are. Conventions can be made through understanding prior to the acceptance of office, is historically proved by the result of the controversy between Queen Victoria and Lord Peel over the ladies of her bed-chamber.

The road to full responsible government is strewn with conflicts and deadlocks. Minor adjustments in a political system may be made quietly, but political power is seldom, if ever, parted with peacefully. Full responsible government can never be secured through sweat reasonableness and voluntary abstention. Peaceful liquidation of Imperialism is a dream unless it is undermined by other forces. Imperialism must stick to power as long as it can. Imperialism knows not the logic of sweet reasonableness. It only yields to the logic of strength and determination. In India under Montague-Chelmsford reforms faithful cooperation and sweet reasonableness of ministers did not contribute a single constitutional convention of any importance. Even what was promised was not practised. In spite of the recommendations of the Joint Select Committee of Parliament no serious attempt was made to evolve out of practice conventions of joint responsibility of ministers or joint deliberation between ministers and executive councillors. The new constitution grants to the legislatures and ministers only a limited responsibility. A substantial part of the political authority is reserved for the governor and governor-general. In the words of Prof. Keith, "If the governors of the provinces were seriously to act on their special responsibilities, it is certain that responsible government would never emerge." (Keith: *A Constitutional History of India*, p. 473.) Safeguards and reserved powers are deliberately designed to limit the sphere of responsibility and it is idle to hope their early termination through voluntary abstinence for the sake of the growth of responsible government. All are agreed that in India due to bureaucratic and imperialist influences rules and practices have always lagged much behind the spirit of the constitution. Narrowest possible interpretation is given to statutory provisions and progressive conventions are discouraged. Under such circumstances, peaceful growth of conventions with respect to the exercise of discretionary and reserved powers of the governor is a remote possibility. The strength and determination of majority parties are needed to uphold responsible government in India. Sweet reasonableness will be too weak to sustain, much less to promote, the authority of ministers. The dread of constitutional deadlock is needed to persuade the governor to be discreet in the use of his reserved powers, and the British Government to consent to constitutional conventions with respects to their exercise. To decriy constitutional deadlock is to cripple constitutionalism, to deprive the latter of its only effective weapon.

Though the constitutional deadlock of 1937 was essentially political and constitutional in its nature, many tried to examine

it and apportion the blame between the parties concerned on purely legal grounds. This raises an important question whether constitutional deadlocks in India must be confined within spheres allowed by the constitutional law of India or may extend to principles of responsible government irrespective of statutory provisions. In countries where there is full responsible government, new conventions are but adjustments in the political system to changed circumstances. In such cases the growth of new conventions is comparatively peaceful and the constitutional deadlock is rare. There the dread of constitutional deadlock is needed only to uphold the established system of full responsible government and so the popular party limits its activities within the established system. But in countries where the scope of popular rights and responsible government is limited by autocratic control and the constitution does not embody popular will, the popular party cannot bind itself to the law of the established constitution to the extent it is repugnant to the fundamental principles of responsible government. It must effectively protest against autocratic control and work for the establishment of full responsible government. It cannot deny itself the process of constitutional deadlock for extending popular rights and the scope of responsible government. Constitutional deadlocks are justified on all such issues as are in conformity with the fundamental principles of responsible government.

In India, the dread of constitutional deadlock is not so effective as it is in Great Britain because under the new constitution the governor is fully empowered to resolve the deadlock in his own favour, and if necessary, even to suspend the constitution and to assume such powers of provincial administration as he may deem fit.

INDIAN SPEAKERS AND PARTY POLITICS*

BY

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I

The attitude of the Speaker (or President) of a Legislative Chamber towards Party Politics has been a subject of much heated controversy. It has generally been regarded as one of those constitutional questions where some sort of convention might legitimately be adopted for present practice and future guidance.

It is the purpose of this paper, within its short compass, (1) to study the character of the Speaker's office, (2) to analyse the conventions in this behalf in two leading democracies of the West, (3) to argue that conventions cannot be adopted in toto from other countries without introducing an element of unreality in the constitutional development of this country, and lastly (4) to emphasise the existence already of a convention on this point in this country which is the only satisfactory solution of the problem.

II

It is the Speaker's function to regulate the proceedings in his Chamber. In doing it he does not act entirely on his own sense of right and wrong. There is an elaborate code of rules of procedure framed by the general consent of the House, supplemented by precedents from past rulings, to help him. The Speaker's duty largely is to interpret and apply these rules to particular cases as they arise during the deliberations of the Chamber. In this, his work resembles that of a judge. But there are important differences between the two offices.

The Speaker, unlike the judge, owes his membership of the Chamber to election by his constituents to represent them in the legislature. He is elected, in the first instance, not so much for his judicial insight or legal acumen as for his political opinions which happen to be shared by many of his electors. In countries with a developed party organization, his first election is almost always fought on the ticket of a party with whose programme he is in agreement and whose disciplinary rules he agrees to obey. Even if he is elected as an Independent candidate, he promises to stand by certain principles and to further a particular programme.

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He thus first comes to the Chamber essentially as a politician and makes no secret of his political sympathies.

Again, unlike the judge's, the Speaker's function is not confined merely to giving decisions according to rules. He has also to facilitate the realisation of those assumptions which are fundamental to the political framework of which the legislature is a vital part. In a responsibly governed democratic country, for instance, he has so to regulate the proceedings as to lead to the realisation of the sovereignty of the people through majority rule where the minority is not denied due chance of influencing the decisions of the majority. He must use his discretion with that aim in view. He has to see that ultimately the majority has its way with the question at issue. The powers of the Speaker of recognising members, of choosing amendments, of appointing committees and nominating chairmen, of certifying bills, of casting his vote in case of a tie, of suspending standing orders, of curbing irrelevance and other disorders, have all to be used for this wider purpose. Deliberation is certainly not an end in itself.

In so acting the Speaker is more than a judge. The impartiality of the Speaker, therefore, falls in a different category from the impartiality of a judge. The latter's impartiality consists in the absence of any favourable bias or prejudice as between the parties to a dispute. The former's impartiality has to be qualified by those wider purposes which must always be served. If in these circumstances, the Speaker incurs the displeasure of some minority members, his position of authority still remains unaffected, because the majority is bound to support the Speaker in his decision.

Clearly, then, even the most impartial Speaker can be impartial only to a degree. If he were to act in a narrowly judicial capacity he would be incapable of giving the deliberation its due significance in the political structure. The Speaker in a democratic country has no right to flout the will of the electorate—the ultimate sovereign—, just as he has no right to flout the democratic principle of allowing legitimate criticism from the Opposition. The judicial function of the Speaker is inseparable from the political. And if in the constitution of any Chamber the Speaker's duties have, in practice, a predominantly judicial appearance, the reason for that must be sought in certain other circumstances which make it possible for the legislature to realise its basic assumptions without the Speaker's intervention.

But that clearly is a matter where practice is bound to differ from country to country. What is important for the purpose of the analysis here outlined is the fact that the office of the Speaker is not of a narrowly judicial nature, that the Speaker exercises his discretion for a far wider purpose than does the judge, and that many of the powers of the Speaker are of an administrative

character entailing the use of initiative which is absent in the work of the judiciary. Above all the background of the Speaker's office as well as the purposes it, in effect, serves are definitely political. If, as experience everywhere has proved, it is difficult even for professional judges to see things with any eyes except their own, so much more difficult must it be for the Speaker to attain to that impartiality of outlook which has at best only a conceptual existence.

III

The character of the Speaker's office as outlined above, however, manifests itself in different ways in actual practice. Conventions have grown round the Speakership which differ so widely from country to country as to blur the essential identity of the nature and purpose of that office. Yet on closer analysis they appear to supply the most convenient mode of ensuring the proper discharge of the Speaker's function in the political conditions obtaining in each country.

In the case of the Speaker of the British House of Commons there is a long-established convention which precludes him from taking any part in political affairs. The moment he is elected to the Chair he ceases to have any concern with party warfare. His political isolation is so complete that he cannot become a member of a political club even for social purposes. In the House where his authority is highly respected, his neutrality in party politics is taken so much for granted that he is regarded as being "as near as can be in a human being, the Rules and Practice of the House come to life without interposition of his own view."¹

Yet the trend of recent political development in Great Britain is far from making it possible for the Speaker to remain outside the pale of partisanship for long. The rise of the Labour party to political power since the beginning of the present century and the passing of the Parliament Act of 1911 have increased the burden on the Speaker's shoulders. Occasions may arise when neutrality may well result in favouring one as against the other party, howsoever indirectly and unconsciously that may happen. Again, since the Parliament Act, 1911, the Speaker has been empowered to certify a Public Bill as Money Bill, which certification is final and by which the Lords cease to have any power over its provisions. Money Bills are, it is true, defined in the Act but not in such detail as to obviate the possibility of conflict. In case of such conflict, it is the Speaker whose word is final and decisive. By refusing to grant the necessary certificate the Speaker can exercise a veto over the majority of the House leading to a grave constitutional crisis. The function of interpreting the Act, though similar to that of a judge, is pregnant with great political issues. That the possibility of a critical situa-

¹ *Finer, The Theory and Practice of Modern Government*, p. 782.
F. 7

tion clearly exists can be seen from the admission² of Lord Ullswater, ex-Speaker of the House of Commons from 1905 to 1921, that the Finance Bill of 1909 which was the immediate cause of the Parliament Act, could not be certified as a Money Bill under the Parliament Act of 1911! The fact that the Labour Party did contest the Speaker's constituency at the last General Election (Nov. 1935) contrary to accepted usage is symptomatic of the changed circumstances. The convention about the Speaker's non-party office was respected so long as it was necessary for the maintenance of certain conditions regarded as fundamental for the time being.

Contrasted with the Speakership of the British House of Commons is that of the American House of Representatives. "Both in its essence and form this office may be said to have been a direct heir of the colonial assemblies, for the colonial Speaker was almost uniformly a political leader, an active politician, one who had 'the push and the energy necessary to accomplish certain definite purposes!'"³ Impartiality is not and is not expected to be a quality of the American Speaker. The Speaker's position is one of great influence which is invariably employed in the interests of his party. Unlike the British Speaker, he retains his party label after election to the Chair, and belonging as he does always to the majority party, acts as one of its leaders. Before 1911, the Speaker had the powers of appointing Committees including the important Committee on Rules which virtually dictated the order of business of the House. The Speaker was *ex officio* Chairman of this Committee and with its two majority members, he practically ruled the House. The Speaker had, and has, also the right to "recognise" a member so that, in practice, no one who was not in the good books of the Speaker could address the House. Then in 1911 came the revolt which took away many of the powers enjoyed by the Speaker and vested them in the whole House. But the essential character of the Speakership remained unaffected. "He is still one of the very small knot of Congressional leaders who treat with the President for passage of 'administration' measures. He is still consulted by, and has great sway with, his party 'Steering' Committee and the Floor Leader of the majority party. He is still a major factor in deciding assignments to Committees and the priority of business, because he is one of the most eminent, usually the most eminent, of his party; that, indeed, is why he was elected Speaker."⁴

Why does convention make the American Speaker such a pronounced partisan in contrast to the largely non-party Speakership of the British House? The answer to this question is to be found in the American application of the doctrine of the Separation of Powers, by which the Executive is debarred from direct participation in the proceedings of the Legislature. The

² Lord Ullswater, *A Speaker's Commentaries*, Vol. II, p. 103.

³ Chiu, *The Speaker of the House of Representatives since 1896*, p. 19.

⁴ Finer, *op. cit.*, p. 789.

Executive, therefore, cannot lead the Assembly, as can the Cabinet in Great Britain. Due to the prominent position of the Speaker in the House and due to his election by the majority party, the leadership of the House found its way to the Speakership. It was only thus that the House could contribute to the successful functioning of the American democracy. The Speaker has come to be regarded as the Head and Leader of the Legislature just as the President is the Head and Leader of the Executive. The gap between the two is not infrequently bridged by personal negotiation, the party system making it possible for both the President and the majority in the House to have the same political complexion (though sometimes this may not happen due to the different terms for which the two are elected).

Under this system the Speaker may sometimes seem to oppress the minority in order to promote the interests of the majority party. The reason why this situation is acquiesced in is the possibility of fulfilment under it of the wider purpose for which the legislature exists. The loss to thorough deliberation is compensated for by the gain to the smooth working of the democratic principle as embodied in the Constitution. But it must not be supposed that the Speaker's conduct does always result in the oppression of the minority. For the minority to-day may turn itself into the majority to-morrow and have the same power over the party which happens to be in a majority to-day. This possibility necessarily acts as a check on the abuse of his power by the Speaker, or by the majority party generally, and restricts the Speaker's discretionary authority within mutually acceptable limits.

The British convention also is based on the peculiar conditions obtaining over a long time in that country. There were till the rise of the Labour Party, only two parties contesting for power. Between them there was no fundamental difference of opinion as to the maintenance of the existing social structure. The point at issue was largely the leadership of the country in pursuing policies which differed only in detail from one another's. As late as the nineteenth century one had the spectacle of Conservative and Liberal politicians vying with one another for extending the franchise and improving the living conditions of the labouring classes. So long as this state of affairs continued, the Speaker's duty was confined merely to maintaining order in the deliberations in the House. It was only thus that he could facilitate the realisation of the English brand of democratic government. But if one were to go sufficiently backwards into British Constitutional History one would at once see that in its struggle with Royal irresponsibility the Speaker had always led the House of Commons. To-day, again, the emergence of acute class conflict, the widening of the gulf that separates the leading political parties, and the inadequacy of old traditions, all militate against the neutrality of the Speaker. Future development is bound to press hard on a convention which for centuries has been regarded as the *sine qua non* of the Speakership of the House of Commons.

IV

From the above discussion of British and American conventions it is clear that the particular practice in regard to the Speakership of the lower Legislative Chamber is founded on conditions which are deeply rooted in the political life of the country. The position of the Presidents of the Upper Chambers of the two countries is even more peculiar. The President of the British House of Lords is actually a member of the Cabinet, while the president of the American Senate is primarily elected to be the Vice-President of the Republic with the function also of succeeding to the Presidency, should it fall vacant by death or incapacity, during the term of the President. It is true that the powers of the Chairman of the Upper Chamber are, in either case, far short of the powers wielded by the Speaker of the Lower House. But that only strengthens the point that there is no room for rigid dogma in the working of political institutions.

The historical conditions which go to shape the current needs and problems of two countries are not always likely to be identical or even similar. Every community must find its own methods of meeting them—methods which are most suited to its peculiar circumstances. Political institutions, much less the ancillary conventions growing about those institutions, are not easily transportable commodities. The Americans were but kinsmen of the British, steeped deeply into their institutions and sharing a common heritage with them. And yet on foreign soil they were unable to hold on for long with their British institutions, because their familiarity and early community with them could not square with the actual experience they encountered.

To insist in the face of these facts on the *adoption* of this or that convention for practice in this country on the ground that it was found useful in some other totally different conditions is entirely to misread the lesson of history. Such a course is bound to be futile and unreal—futile because it cannot work in actual practice; unreal because it ignores the conditions of the problem it is intended to solve.

In the first place, the constitutions of both the countries we have considered are founded on assumptions which are broadly accepted by the principal players on the political stage, and by the mass of people in whose name they act. Those assumptions, secondly, have arisen out of the historical experience which the people in those countries have encountered. Thirdly, the legislature there is armed with adequate power to make its decisions effective in facing the needs created by that experience. The function of the Speaker, whether circumstances require him to be the largely impartial moderator like the British Speaker or the active partisan like his American brother, is to facilitate the use of that power in conformity with the purposes which it is expected to serve.

Even the most superficial observer of the political life and institutions of India will be struck by the absence of any of these

conditions here. The legislatures are the creations of an alien authority only insufficiently acquainted or concerned with, and not in the least a party to, the experience and aspirations of the people. The power necessary for realising the legitimate desires of the people are withheld from the legislative bodies. The principle of majority rule is not everywhere conceded, the Central executive having always been notoriously irresponsible to the representatives of the people in the Central legislature. The franchise extends only to a small minority of the population, so that even the elected assemblies are but partially representative of those whom they are supposed to represent. In short, between the constitutional framework and the life lived by the people from day to day there is a wide gulf.

As might be expected, there has been continuous agitation for narrowing that gulf now for at least over fifty years. Whenever the leaders of this national movement, whatever their particular label, have accepted the constitutional machinery provided, they have regarded it only as a stepping-stone to reach the ultimate goal. They have never so far settled down to any particular arrangement in the sense in which the Americans, for instance, have settled down to the Constitution of 1787 which in spite of later developments is still fundamental to their political structure. Much less is there that unbroken continuity of the English Constitution based, in essence, on the Revolution Settlement of 1688—1701.

V

In the peculiarities of the Indian situation, the Speaker's function assumes an aspect different from that of the British and American examples. The Speaker of a Legislative Assembly in India has indeed to regulate the proceedings of the House according to the rules of procedure. He, like the Chairman of any deliberative body, has to be fair to all sections of the House so that they may be able to make their due contribution to the discussion. But in using his discretion he has also to uphold the assumptions on which the legislative machinery is worked. These assumptions are bound to be different from those in a self-governing democratic country. The underlying purpose of the legislature in a country like India is to strengthen the position and facilitate the march of the people of this country towards the realisation of that political framework in which the people can best be themselves. The legislature is as much a machinery for using what little power it possesses constructively, as for striving to obtain the legitimate residuum of authority which is not conceded to it. It is in making available the procedure of the legislature for this double object⁵ that an Indian Speaker has to employ his discretionary authority.

⁵ Cf. Mahatma Gandhi, the *Harijan* of July 16, 1938, on 'Speakers and Politics,' in the course of which article is the following remark: "All the problems that affect the body politic including communal unity can be solved if the Assembly

the ex-Speaker-Minister is the Leader of the Opposition in the Bombay Assembly.

The truth is that an Indian Speaker cannot remain aloof from the political struggle that is going on around him. Both inside as well as outside the House the Speaker is necessarily involved in politics. Especially when his Speakership might prove to be a short period of peace between two strenuous campaigns for self-government, it is hard for him to be cut away from the general current of public affairs. Whatever he might say or do is not in the least likely to conceal that fact from the members of the legislature and of the general public many of whom share his feelings.

VI

Since the introduction of Provincial Autonomy under the Government of India Act, 1935, the situation has indeed undergone some change, at any rate in the provinces. There is now no official bloc in the Provincial Assembly, and the dyarchical Executive has been replaced by a Ministry responsible to the Legislature. All ministers are members of the Legislature, the Prime Minister being the leader of the Assembly as in the House of Commons. Even then, the Governor of the Province has wide discretionary authority in the exercise of which he is responsible not to the Provincial Legislature but to the Secretary of State for India through the Governor-General.

In consequence of these changes the Speaker's position within the House has altered. The acceptance of majority rule, the conduct of Government business in the hands of the leader of a popular majority in the House, and the theoretical possibility of the Opposition some day forming the Government, have enhanced the judicial character of the Speaker's office. Within the House he must be, by word and in deed, impartial to all members whether of the Government party or of the Opposition.

That is not to say that the Speaker can be more impartial than his own experience allows him. That experience is always bound to supply him with the 'inarticulate major premiss' in arriving at the decision he gives. When among those incumbents in that office in the Provinces there are persons who have suffered hardships in the past in the national cause, and when repetition of those conditions is not still beyond the possibility of occurrence, the view of the Speaker is bound to be coloured by the views that he has strongly held as a private individual or as a member of an organization. To say, as it has been said⁸ that the Speaker should be a person who does not hold strong views on anything, or that he should be chosen from those who belong to no party in particular, prior to his election to the Chair, is to deprive the House of the services of many of the most competent members.

⁸ Proceedings of the U.P. Legislative Assembly, Vol. IV, Nos. 4 & 5.

And in the modern legislature which has to dispose of a large volume of important and complicated business an incompetent Speaker would only add to the confusion.

Nor can the suggestion that the Speakers should refrain from any political activity⁹ outside the House in order to enhance his authority within it be seriously regarded. For in spite of the introduction of Provincial Autonomy nothing has yet happened which can be said materially to have changed the old assumptions on which the Indian Constitution is worked. To ask a man of ability, as the Speaker must necessarily be, to commit what amounts to political suicide so that the minority in the legislature should think more highly of his impartiality than they do, is to assume that we have finally settled down to the Government of India Act, 1935. Even if the Speaker were to agree to such an arrangement, as some provincial Speakers are reported to have done, he cannot still escape the charge of partiality from a minority member in his conduct of the House through a controversial measure like the recent Trade Disputes Bill in the Bombay Legislative Assembly.

When, therefore, the U. P. Legislative Assembly on March 5, 1938, passed a resolution¹⁰ allowing the Speaker to take part in political affairs outside the House in his discretion, it did not introduce an innovation but acted on a convention which had already been established in this country. So long as the Indian constitution is not backed by the irresistible sanctions which come of self-determination, that convention about the Speaker's Office is bound to remain the only satisfactory solution of this problem.

⁹ *Ibid.*

¹⁰ "This House is of opinion that any honourable member who is elected as its Speaker would not be handicapped in his public activities in consequence of his election as Speaker, and that he should be free to take part in political affairs outside the House in his discretion."

THE COST OF ADMINISTRATION IN THE PUNJAB

BY

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Public monies are disbursed in our province by the Indian Government, the Punjab Government, local authorities, many semi-governmental and even independent agencies. In this paper I shall deal with the expenditure of the Punjab Government only.

Provincial autonomy in the Punjab was launched under unsatisfactory financial arrangements. The Mont-Ford reforms had handed over to the Provinces all "nation-building" services which had hitherto been either insufficiently developed or neglected altogether, and, therefore, needed large resources. Actually, however, the financial provisions made were very inadequate as the taxation allotted to the Provinces was inelastic and more or less stationary. The Provincial expenditure, under the Reformed Constitution, in response to the popular will, expanded much faster than the revenue in the Provinces and thus resulted in deficits.

The constitution of 1935 does not materially alter the position. Sir Otto Niemayer's award perpetuated, with minor modifications, the system prescribed in 1919. Land revenue, the most important of all the Provincial resources, seems to be on the downward trend, which is bound to increase if our heavily indebted peasantry is relieved. Stamp revenue has already shown a sharp decline owing to decrease in litigation due to various causes in operation to-day, in all the Provinces. The income from excise has so far been stationary in our Province but is fast dwindling away in some others. If prohibition becomes universal in India—and there is no reason why it should not—the income from this source would naturally be reduced to zero. Further, Sir Otto Niemayer has not given us as much of the share of the national revenue as we deserve. We are given but a paltry share in the proceeds from income-tax—a tax most capable of expansion.

This is not all. The Government of India Act, 1935, imposes a certain frame of economy from which we cannot get away. For instance, whether we like it or not, we must maintain a large number of highly paid officers with "protected" rights. In the interest of economy or of efficiency we cannot touch them. Indeed, a big handicap is imposed on the Provincial finance as the emoluments of these officers are far above our national standards and are a great burden at a time when we need funds for the expansion of our beneficial activity.

This was the position in which the Unionist Government came to power in the Punjab in April 1937. The choice of the Finance Minister was the best Sir Sikandar Hayat could have made for his cabinet. As an economist of international repute and an administrator of proved ability, Mr. Manohar Lal has been the mainstay of the financial stability of the present Government. The Punjab now, with the exception of Madras, budgets for the largest percentage of the total expenditure to the nation-building services. Even compared with Madras, the Punjab Government spends much more per head of the population. The total expenditure on beneficent departments in Bombay is smaller, but the population of the Presidency also being smaller, per capita expenditure there is higher than in our Province.

"Judged by comparable statistical test, the Punjab today" said the Finance Minister in his budget speech last year "easily leads in the matter of nation-building activity." And this has been so, in spite of acute famine notably in Hissar and Rohtak and Karnal districts, which caused deterioration in our finances during 1938-39 and 1939-40 of no less than 1 crore 10 lakhs—66 lakhs in direct expenditure on relief and 45 lakhs in loss of land revenue and water rate.

The Government expenditure in the Punjab can be divided into four main categories:

1. Debt Services.
2. Civil Administration.
3. Irrigation.
4. Beneficent Services.

For want of space I shall not touch on the expenditure on public debt interest. The first section of expenditure I wish to deal with is that relating to civil administration, which exhausts 29 per cent of our total disbursements.

We possess an elaborate system of Civil Service, of Courts of Justice, of Jails and Prisons and of Police. Our services have been considered to be more efficient, and more honest than even in some of the European countries. They have worked hard and well and with the recent change in their perspective and spirit their contribution is bound to be greater and more valuable. But an analysis of the salaries of the Government employees would show that while a vast majority of them are very low paid, a small minority, the "Gazetted Officers" in the Province, draw salaries far above the level of the average. The social and financial implication of all this is obvious. The clerk who has to toil from morning till evening is paid a bare subsistence wage, whereas his officer exhausts a large part of the budget of his department. The Governor in the Punjab draws a salary of Rs. 1,00,000 per annum with an additional Rs. 1,40,000 as the expenses of his establishment, etc. This is higher than that given to a Governor in any one of the colonies in the British Empire. Our Chief

Justice draws Rs. 5,000 per month, which is more than the salary of the Chief Justice of the United States. The Punjab cabinet costs the Province more than the Polish cabinet costs Poland. The greatest and the richest eastern country Japan pays a salary of Rs. 622 per mensem to the Prime Minister and Rs. 440 per mensem to each one of the remaining Ministers. The Governor-General of Korea draws Rs. 440 p. m. Canada, the richest of the British Dominions, pays Rs. 2,300 p.m. to the Ministers. Even the Secretary of State for India draws Rs. 5,555 p. m. The contrast between the salaries here and elsewhere becomes more patent when account is taken of national income, population, standard of living, and the level of taxation in these countries.

With the infusion of democratic principles, this problem has become more acute than ever before. Very low salaries are condemned on the ground of morality and health. One must have enough to eat and live decently in order to be efficient and at the same time above temptation, the chief source of corruption. High salaries, on the other hand, are condemned both on economic and equitable considerations, and their wisdom, necessity and justice are being questioned. For the advent of a full grown democracy these survivals of a system which is now being replaced must be cleared. Not only the "Congress Provinces" but also in Sind the ministries have set a praiseworthy example of self-sacrifice, the repercussions of which have been felt in the Punjab and Bengal.

It is not, of course, surprising that the high scale of salaries is acquiesced in by those who receive them. A good few of them believe in the "Economy of High Wages" and honestly suggest that their exceptional incomes are due to their special ability and merit. There are others who have got so used to sharing the advantage that they would not care to give it up. With them the acquiescence is of self-interest if not of habit. But there is an healthy reflective minority which would welcome a wholesale reduction of salaries to correspond to our national economy.

In the Punjab the salaries bill, combined with the various allowances amounts to seven crores out of a total expenditure of 12 crores. The pensions bill, which represents our past extravagance has increased from 17 lakhs in 1921 to 42 lakhs in 1938-39. According to a statement supplied by the Finance Secretary in the Punjab Legislative Council in 1933, 30 per cent of the total salaries bill of the Government Servants was drawn by officials getting salaries ranging between Rs. 417 and Rs. 8,000 p. m. If we also take into account the travelling and other allowances paid to the superior officials their share of the total expenditure would be much higher.

But, as pointed out before, the Punjab Government to-day is helpless in many ways and cannot reduce the emoluments of the present incumbents in the "protected" services, nor even lay down a lower scale of pay for the fresh entrants into these services. I am tempted to give an example, that of the Divisional Commissioners:

COMMISSIONERS

Public opinion has always been in favour of abolishing commissioners. They have no useful function to perform and are merely 'post-offices' or forwarding agencies with certain functions of supervision. This is a system of 'check upon check' developed to an extent which experience has shown to be neither necessary nor desirable. The cost is heavy. Madras has no commissioners. The Assam Government recently recommended the reduction of their number from two to one. The Burma Fiscal Committee in its second Interim Report of 1938 recommended their reduction from 7 to 2. It also recommended the abolition of one out of two posts of the Financial Commissions. It is rumoured that the U. P. Government has placed the case for abolition of such posts so strongly before the Secretary of State that their abolition in that province may come within the range of practical politics in the near future. In the Punjab their number has in recent years been increased. This duplication and over-elaboration of the machinery is certainly uneconomical. The abolition of these Divisional Offices would save for the Punjab Rs. 4 lakhs per annum.

POLICE

A large percentage of our expenditure is incurred on the police. The sum of Rs. 1,26,85,000 per annum is certainly a very large sum for a province like ours, although it compares favourably with the expenditure on police in many other provinces.

The determination of the amount necessary for the maintenance of law and order, at a time when economy is so desirable and the demands of the beneficent department are becoming every day more and more urgent cannot but present a peculiarly difficult problem to the responsible authorities. With the growth of crime and the frequency of communal riots the Government has an obvious justification for the maintenance of a strong and efficient police force in the Province.

It must be admitted frankly that protection and security are the necessary conditions for economic welfare. The protective function of the State will always remain its most important function. It may become partly or wholly latent, but exist it must.

It is regrettable, however, that protection necessary though it is, does not directly contribute towards wealth producing power. Such expenditure is after all unproductive. What Lord Minto said of the Military expenditure in India is true even to a greater degree of the police expenditure in the Indian provinces. "Every shilling" he said, "that is taken for unnecessary Military expenditure is so much withdrawn from these vast sums which it is our duty to spend for the moral and material improvement of the people."

From the point of view of 'National Income' adverse results have been produced thereon by the diminution of the

total savings, on the one hand and by taxation on the other, which heavy as it is, must necessarily have checked production.

The Punjab Budget for 1937-38 showed a decrease in the expenditure on police but as the Finance Minister in his Budget Speech admitted, there actually might have been an increase but for a refund of over 4 lakhs that the Government recovered from the Indian Railway Board for the cost of the "Order Police."

The Budget Estimate for the second year of Provincial Autonomy again registered a slight increase in expenditure.

Now, can the expenditure on the Police be reduced without serious detriment to the standard of efficiency of the service? The answer is two-fold: Firstly, one feels sure that the organisation of the service is too elaborate and too big, and far in excess of our needs. The Deputy Superintendents of Police, for instance, may be altogether done away with without any danger to the peace and order of our province.

The expenditure on the service, however primary in its nature must not be disproportionate to that on the others. In so far as this unproductive expenditure on the police hinders the economic progress of the Province, by starving the nation-building departments, it decidedly contributes towards the growth of crime. For, is not crime directly related to the problem of poverty? If the problem of unemployment, which besets every village and besets the whole of the province, is to be grappled with, more and more money should be released for our economic uplift.

Secondly, the superior ranks in the service, still being almost the entire monopoly of the Europeans, could be made much less costly without damage to efficiency, by Indianization, and reduction in pay.

Out of 109 senior appointments only 24 are held by Indians (including 6 promoted from among the D.S.P.'s). During the last 10 years 31 of the 39 new appointments went to Europeans, and the overseas' pay alone paid to the 85 Europeans in the police amounts to over 1½ lakhs per year.

IRRIGATION.

One of the greatest achievements of Government enterprise in the Punjab is the Canal System which irrigates 47% of the cultivated area in the province. Irrigation yields 5 crores of annual revenue to the Government, and 39 crores worth of crops to the cultivator. With the completion of the Haveli Project the total investment of the Government on the Canals has amounted to about 40 crores—a big figure indeed, but still less than a year's gross return from it. Thal and Bhakra projects recently taken in hand at an estimated cost of Rs. 20 to 24 crores will bring many millions of acres under cultivation.

The capital and recurring expenditure on the canals has naturally formed a big item in our accounts, the latter, notwith-

standing some economy, amounts to Rs. 3½ crores in the current year. It is not surprising to note that this item has increased almost every year with the extension of the canal system. But taking everything into consideration, our irrigation system is one of the costliest in the world. Being a very paying department it has been generously treated by the authorities. It is an over-staffed and a highly expensive organisation.

Egypt is one of the greatest of irrigation countries in the world, where during the last 10 years about 25 crores of capital expenditure has been incurred. The Egyptian Director of Irrigation is paid Rs. 1,722/- as against Rs. 3,000/- paid to each one of the three Chief Engineers in the Punjab. In Egypt there are only 14 posts carrying over Rs. 1,370/- p.m. subject to a reduction of 7½% as contribution towards pension. The Punjab employs 3 officers at Rs. 3,000/- or over, 9 more at Rs. 2,000/- or over and at least 22 more at Rs. 1,370/- or over p.m.

There seems to be a great room for economy in the Punjab Irrigation Department, in Maintenance and Repairs in Tools and Plants, and above all in the Establishment charges. The last item alone costs on certain canals as much as Rs. 1/15½ per acre—an astoundingly high figure, even of allowance is made for the climatic and physical conditions of the areas served. While the three Chief Engineers are at least one too many, the fifteen Superintending Engineers, are admittedly superfluous and dispensable. Like the Divisional Commissioners they are an expensive luxury we can ill afford to have. And of the army of 79 Executive Engineers, 3 Assistant Executive Engineers and 82 Provincial Service Engineers of Class II, some at least may be retrenched by a reorganisation of the canal divisions. With the abolition of the distinction between Class I and Class II of the Service an appreciable economy may be effected.

The largest economy, however, would only accrue if the Irrigation and Roads and Building Departments could be amalgamated into one. Some of the best experts in the province have assured me that such an amalgamation is not only feasible but also desirable for the sake of efficiency and economy. The opposition from the vested interests is understandable as the amalgamation would result in a radical retrenchment in the cadre as also in the reduction in the number of the higher posts. The specialization that is required for the branches is unduly exaggerated and should not stand in the way of amalgamation. In Bihar, Orissa and the C. P. such an amalgamation has been approved. The Burma Fiscal Commission as well as the Sind Reorganisation Committee, in their respective interim reports last year suggested this. In Sind it was calculated that retrenchment and reduction in pay should save annually for the province Rs. 8,77,000/- out of a total of Rs. 39,08,000/ a saving of 22%.

So much for irrigation. "Beneficent" services, amongst themselves, are responsible for 28% of the total expenditure in

the province. The total spent today is 344 lakhs that is 44 lakhs more than in 1936-37 and surpasses the record years of 1928-29. An increase of Rs. 3.44 lakhs in the budgeted provision has been made "in a year of grave scarcity when direct and indirect expenditure on famine amounts to Rs. 55 lakhs.

MEDICAL

The Punjab budgeted Rs. 54,97,000/- for Medical Relief in 1939-40; this is higher per capita expenditure—than in any other major province in India. Since the introduction of provincial autonomy this expenditure has gone up by over 5½ lakhs.

Besides maintaining a first class Medical College the Province runs a Dental College, one Medical School, a Mental Hospital, 51 Public Hospitals, 30 Police Hospitals and 77 Canal Dispensaries. For the rural areas there are 364 dispensaries, besides a few subsidized ones. The State thus provides a hospital or dispensary for every 12,000 inhabitants in the towns and 32,000 in the rural areas. For the insane the provision is very inadequate.

Although the Government may well claim credit for the progress of Medical relief in the Province, as in fact we are ahead of other provinces in this respect, the fact remains that a great deal has yet to be accomplished in this respect. The revival of Sir Fazil-I-Hussain's scheme of provincialising tehsil and district headquarters hospitals, and the Government's new scheme of opening subsidized rural dispensaries of which 358 have already been opened, are steps in the right direction. This year's budget provides for the provincialisation of one women's and 3 tehsil hospitals. But at the present rate of progress a considerable period must elapse before the ideal is achieved.

Although we are told that more money cannot be spared, it remains an undeniable fact that there is a great scope for economy in the administration of the Medical Department. The system of police hospitals, Canal dispensaries is wasteful and closing down would give the Government an appreciable amount for effective relief work and better medical aid. Further, the municipalities should be made to spend a higher portion of their revenue in this direction as a condition precedent to grants-in-aid by the Government. The average expenditure of the municipalities in this respect so far is 6½% of their total income. Lahore spends just over a lakh out of the 26 lakhs collected annually.

But these trimmings and dressings alone would not do. The directional and superior staff of the Medical Department must be subjected to necessary cuts and reductions. The salaries and allowances of the 36 I.M.S. officers in the Punjab alone, would be enough to maintain at least 700 rural dispensaries for the protection of the teeming masses from the terrible diseases and maladies prevalent in every district. As it is the average pay of a P.C.M.S. Civil Surgeon is high enough (Rs. 720/-) but an

I.M.S. Civil Surgeon is paid higher still, *i.e.* at the average rate of Rs. 1860/- besides the high fees that his position enables him to earn.

PUBLIC HEALTH DEPARTMENT

The Public Health Department is of rather recent origin in the Punjab and its principal functions still remain the collection of vital statistics. The Director of Public Health has a large army of 48 officers, almost everyone of them an expert in his line.

But "the number of villages, which can be considered as possessing minimum sanitary requirements of a healthy village is still small," says the director in a recent annual report. He adds, "the standard of sanitation in Municipal towns remains lamentably low." Under-nourishment combined with overcrowding under most unhealthy conditions has played havoc with our nation. Indeed, if the death and infant mortality rate in the Punjab is lower than in most other provinces in India, it is nearly three times as high as in Holland and more than twice that of England. The average expectation of life is less to-day than it was in 1881.

It is encouraging to note that the Punjab Government has increased the budget of the Department from 11 lakhs in 1936-37 to about Rs. 16 lakhs in 1937-38, including Rs. 5 lakhs for sanitary grants. Out of the special development fund Rs. 1½ lakhs is being spent on water supply and rural areas. But our progress at this rate should take decades to reach each one of the 35,000 villages, few of which possess even a sanitary well.

The maternity and child welfare arrangements have received very inadequate attention. In one of the districts, in no way different from the average, I find that the total amount set apart last year for maternity and child welfare was Rs. 2,700. This paltry sum included contributions from the Provincial Funds as well as from the District Board, and the one Municipal Committee in that district, and the Red Cross Society. The whole area with a population running into many lakhs is served by two trained *dais*, and one Lady Health Visitor. One of the obvious reasons for the high rate of infant mortality in the Punjab is that every 2½ lakhs of our females in the villages have only one trained *dai* to attend to.

The Department of Public Health is being built from the top and has undoubtedly become top-heavy. Out of the 49 officers 43 draw over Rs. 500 per month, exclusive of allowances, and thus exhaust a large portion of our resources. Competent and highly qualified though they are, they do not give us our money's worth. We have not as yet reached a stage when we could utilize the services of experts in this field. The activities of our Public Health Department are still of the kind which could be performed by Sanitary Inspectors, and yet most of the districts

possess one Health Officer and usually one Sanitary Inspector only. Retrenchment of the higher staff should give us more money for the expansion of the Department.

EDUCATION

By far the largest amount of the total expenditure allotted for the beneficent services is spent by education (Rs. 1,65,17,000). We are spending nearly 12 annas per head of the population. For want of space I do not wish to go into the details of expenditure. I would merely point out that secondary and higher education account for a much higher proportion of expenditure than is given to primary education. Recent attention paid by our Education Minister to the Primary and female education in the Punjab, is a step in the right direction. On the testimony of foreign education experts we can claim to be ahead of other provinces both in respect of method and provision for education. But our problem of illiteracy is a colossal one and nothing short of an herculean effort can solve it. I would suggest the appointment of a committee to consider the question afresh.

Let us now examine some of the economic departments.

THE HYDRO-ELECTRIC DEPARTMENT

I will not probe deep into this department. I must, however, say that the total annual earnings of the department do not even now cover the running expenses, not to speak of the interest on capital investment. The project has the distinction of having been erected and of being run at a cost which breaks world records. Being a commercial department there ought to be a thorough and a searching enquiry into its accounts. One must, however, add to the credit of the department, that it has given a great impetus to industry in the Punjab.

FOREST

The story of top-heaviness continues in the Forest Department. The Chief Conservator of Forests frankly admitted before the retrenchment Committee of 1931 that the staff was greatly in excess of his needs. He suggested a reduction of 11 I.F.S. and 9 P.F.S. Officers. Little has been done in this respect so far. On the other hand, none out of the long list of officers in the department to-day draws less than Rs. 500/- p.m. The expenditure of the department is 96% of the revenue compared to 88% in Bengal, 62% in the U.P. and about 52% in Sind. This is a very unsatisfactory state of affairs in a commercial department. The forests of Burma are exploited at an expenditure of 42% of the gross revenue, and the Burma Fiscal Committee considered this figure too high. I wonder what they would think of our figures. The expenditure in Siam is 19% of the gross revenue. In Ceylon it is not much more. In this Crown Colony, the head of the Forest Department is paid Rs. 1300 as against Rs. 2750 excluding overseas pay paid to the Chief Conservator of Forests in the Punjab. The office of the

Chief Conservator of Forests may in fact be abolished now that the separation of the N. W. F. P. has left us with only 2 conservators. Bengal with an area twice as large as ours has 2 Conservators of Forests but no Chief Conservator of Forests. The Punjab has one Chief Conservator of Forests, 2 Conservators of Forests and two assistants to the Chief Conservator of Forests.

There is further a great need for reorganisation of "divisions" in the interest of economy. But unfortunately most of the officers are 'protected' under the Government of India Act of 1935 and cannot be touched by the Provincial Government.

INDUSTRIES

The department has grown only since its transference to popular control in 1920. Starting with an expenditure of 3½ lakhs in 1920-21, we now spend over 20 lakhs. The department has done in its own way and within the resources available much in the direction of industrial uplift, but they have not been able to touch more than the fringe of the problem. We need more expenditure on the establishment of heavy industry, on the encouragement of middle-sized industry and on development of cottage industry. Amid famine conditions, poverty and unemployment in many districts we need a 'planned economy' and for that a suitable statistical laboratory and an organisation for the collection of reliable data is necessary. We are potentially perhaps the richest of all Indian Provinces, peopled with 26 millions of the most industrious stock with most fertile land and with extremely good climate. We need greater expenditure on industrial development than 5 pice that the Government spends annually per head of our population. I cannot go into details but I am tempted to touch one allied problem. Precious little is spent on scientific research in the Punjab. Compared with any other form of investment, science in the modern society is capable of yielding a return much higher. Recently certain research associations in England at an expenditure of less than £400,000 in all have made possible a saving of well over £3,000,000 per year—a return of 800% per annum. The English Food Investigation Board at a cost of £44,000 have effected an annual economy of £350,000. Our expenditure on scientific research represents only a fraction of our Budget. We have some of the finest types of Research scholars, who get but few opportunities either to serve the province or to develop their faculties. We need more funds and a Scientific Research Board to explore the possibilities of further development.

AGRICULTURE AND VETERINARY DEPARTMENT

Last but not least comes agriculture which gives employment to 20 millions in the Punjab and this forms the mainstay of our province. The Budget for the department has gradually grown and is now greater than in any other Indian province,

from the point of view of per capita expenditure on agriculture. Only in 1921 the U. P. and Bombay spent more than the Punjab, now we spend more than either of them. In fact the agricultural budgets of all other provinces except the Punjab have risen little above the 1921 level. The absolute figures for the Punjab to-day are exceeded though very slightly by the U.P. but as the learned Finance Minister pointed out last year, the Punjab Government expenditure on agriculture, veterinary and co-operative departments together exceeds that of any other provincial Government in India. The Punjab expenditure on agriculture whether taken separately or with veterinary and cooperative departments is by far the largest of all the provinces relatively to their total provincial expenditure, to population and to cultivated area. The department runs among other institutions, a successful Agricultural College at Lyallpur. It claims amongst other things the introduction of American cotton in the Punjab which alone has increased the earnings of our peasantry by 1½ crores.

But the fact remains that even to-day we are spending on agriculture only 4 annas per head of our population compared to over 8 annas on police and 7 annas on general administration. The rural debt of the Punjab has mounted to the colossal figure of Rs. 145 crores and the whole system will have to be overhauled before we can wipe off the debt. For all this we need more money and more men.

The Agricultural Credit Department of the Reserve Bank of India in a recent Report said, "Our second conclusion is that the peasant proprietor cannot keep out of debt unless he is exceptionally industrial and frugal or has a second string to his bow."

Hence the programme of Rural Reconstruction should be carried out at a greater pace. The present method is costly without being effective. Surely, we do not need such an expensive organisation merely to teach the people first principles of hygiene and sanitation.

Further we need to develop a tradition of closer co-operation between the various departments. For instance, the Public Health and the Education authorities must co-operate to solve the problem of nutrition for children. The departments of Industries and Agriculture must join hand with the university in opening new avenues of employment.

Obviously, "so narrow and inelastic" said Mr. Manohar Lal, in his last Budget speech, "are the Finances of a Province in India that the imperious need of conserving resources cannot be ignored for an instant without serious consequences." The Report of the Retrenchment and Resources Committee, appointed in the Punjab, is eagerly awaited in the hope that an effective plan of reorganisation and retrenchment would be placed before the Government.

PROVINCIAL FINANCES UNDER AUTONOMY

BY

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With the dawn of Provincial Autonomy, the financial position of our Provincial Governments have undergone a substantial change. Even under the Government of India Act (1919), the Provinces had their own separate revenues and they made their own budgets; but their financial authority was saddled in many ways, especially in regard to borrowing. The Government of India raised money for them and re-lent it at rates varying according to the purpose of the loan; that Government also acted as their banker and kept their cash balances. All this changed on April 1, 1937. The financial authority of the Provinces is now nearly as complete as can be under a Federal constitution. They now raise their own loans¹ and keep their own cash balances, and in all this they take the advice of the Reserve Bank of India, who is now their banker. The Provincial Governments have taken up this new responsibility in right earnest, and in two of the Provinces the Premiers—two of the ablest men in the country—have themselves taken up the Finance portfolio; in others too, men of great ability and experience have been selected for Finance. It is perhaps too early to make a proper estimate of the financial policies of the various Provinces. All that is attempted here is but a preliminary survey of the salient features.

A NEW ECONOMIC POLICY

The new Provincial Governments have shown great activity during the first two years of their tenure. Economic amelioration has been their chief preoccupation, and this was particularly marked in the Provinces where the Congress party came into power. Debt and drink were the two principal evils that they immediately proceeded to tackle. Measures for the mitigation of rural debt had already been initiated in most Provinces, and positive measures of rural improvement had also been initiated especially in the United Provinces, Bengal and Bombay. With the inauguration of Provincial Autonomy, measures of rural uplift received a great fillip. Hitherto, debt was tackled chiefly by following the conciliation method that was first instituted by the Government of the Central Provinces. With a stronger Government in office in all Provinces, it was found possible to apply more drastic remedies. Madras led the way with a bold scheme

¹ For borrowing outside the country, the formal consent of the Government of India is necessary. Similar consent is also necessary when borrowing is resorted to by a Government which has not repaid its debt to the Central Government.

for the scaling down of agricultural debts and certain other Provinces followed suit. Not only are the new governments trying to eradicate crying evils; they are also endeavouring to promote the economic welfare of the masses by positive measures. Thus the Government of the United Provinces launched a comprehensive scheme of rural improvement involving the appointment of several hundreds of paid rural workers for an intensive uplift campaign. A Rural Development Bill is also under contemplation in that province. Bombay has adopted a new scheme of rural development by which a paid worker will be appointed for a compact group of villages to assist in the work of Panchayats and co-operative societies. Madras has passed a comprehensive Public Health Act and is proceeding to place rural credit on a secure basis. In other Provinces also, grants have been made for the supply of drinking water in the villages, for the improvement of public health and for the encouragement of cottage industries. Many of the provinces have instituted funds earmarked for certain specific purposes connected with rural improvement with a view to placing their ameliorative schemes on a firm basis not subject to the vicissitudes to which financial policy is liable in this country. Among the efforts at planned expenditure are the protected water-supply fund of Madras, the village development fund of Orissa, the special development of Bombay and the road fund of the United Provinces. Nor are the provinces under non-Congress ministries lagging behind. In the Punjab a Rural Development Fund has been instituted amounting to Rs. 61 lakhs, and in Bengal, in spite of financial difficulties expenditure on nation-building services has increased.

In the campaign against drink, however, only the Provinces under Congress Governments have taken drastic action. In nearly all of them a policy of prohibition has been adopted and in four of them it has made real headway. Madras was the first Province to place a district containing 2½ million persons (Salem) under prohibition; Bihar, Bombay, the United Provinces and the Central Provinces followed. While most of the provinces are pushing on prohibition in rural areas, Bombay has introduced it in the towns and that Province is now proceeding to bring the populous city of Bombay under prohibition.

FINANCIAL POSITION

The ameliorative schemes mentioned above did not involve very great expenditure but prohibition is most expensive venture especially in Provinces like Madras and Bombay where the excise of drink and drugs contributes a large part of the provincial revenues. Thus, while the provincial excise brought in only Rs. 1.33 crores in 1935-36 in Bengal, it produced Rs. 4 crores in Madras, Rs. 3.33 crores in Bombay, and Rs. 1.2 crores in Bihar. It forms roughly 11% of the total provincial revenue in Bengal, 30% in Bombay and 25% in Madras and Bihar. Madras has already relinquished a revenue of about Rs. 60 lakhs,

Bombay gave up only Rs. 30 lakhs in the first year, but is now proceeding to abandon a further Rs. 150 lakhs, leaving only Rs. 140 lakhs of provincial excise revenue. Thus prohibition has made inroads into the public revenues of the provinces. But the loss of revenue is not the only burden on the budget arising from the prohibition policy. In many areas much money will have to be spent on additional police. It may be that the elimination of alcoholic drinks will eventually lead to an increase of economic welfare and therefore of taxable capacity which the Provinces will ultimately be able to tap, but this will take a fairly long time. The immediate result is a large loss of revenue and the prohibition policy therefore amounts to a 'self-denying ordinance.'

Nor is this all. Land revenue, which has so far been the mainstay of the provincial fisc, is a highly inelastic source of revenue and land cannot be expected to shoulder any more burdens. On the other hand, there is a general expectation that the revenue burden, at least on the smaller landholders, will be reduced. The first act of the new Governments in most Provinces was to give land revenue remissions; in Assam 33½% of the old demand was remitted, and in Madras, a remission of Rs. 75 lakhs has been granted. In Bombay the remissions were given only to the smaller landholders, and this is as it should be. Thus land revenue will not be able to bear the added burdens on the provincial governments; on the other hand, the revenue under this item may even fall.

THE NEED FOR NEW RESOURCES

In these circumstances, the Provinces found it necessary to look for aid in other directions. They first turned to retrenchment. There is perhaps some scope for further economy in provincial expenditure; but it would require a thorough reorganisation and rationalisation of the administrative system. They found this difficult, and therefore they turned to a cut in salaries. There again, they found themselves helpless in modifying the salaries and allowances of the superior services. All that they could do was to cut down the salaries of the provincial and subordinate services under their control. Some Provinces are trying to get over this difficulty by imposing an employment tax. In other Provinces, the salary cut is still under contemplation. A graded cut in the salaries of the provincial services was proposed in Madras, but eventually it took the form of a cut in the salaries of new entrants and persons promoted to posts carrying salaries above Rs. 100 per mensem, and the resulting savings will accrue only gradually.

As the scope for retrenchment was found limited, most Provincial Governments found it necessary to resort to fresh taxation. Various taxes have been considered. Succession duties on land taxation and of agricultural incomes are now provincial subjects, but most Provinces seem to fight shy of them. Bombay,

Bihar, and Assam are, however, proposing to tax agricultural incomes. The United Provinces Government proposes to levy a graded employment tax, Bengal an ungraded employment tax and Bombay a property tax (confined to Bombay City). In some Provinces taxes on entertainments, marriages and crossword puzzles are under contemplation, but these are minor items. The most important source proposed is the sales tax which has assumed many forms. In Bombay a sales tax on tobacco sold in urban areas and on cigarettes had already been levied; a sales tax on cloth is now proposed. Madras will soon impose a sales tax on tobacco on a licence basis. Even before the dawn of autonomy, Bengal had levied a tax on the sale of electricity, and a similar tax has since been levied in Bombay, Sind and Madras. The Governments of the Central Provinces and Madras have levied a sales tax on petrol and lubricating oils. Madras has decided to impose a general sales (or turn-over) tax on sales of all goods (with certain exceptions).

CONSTITUTIONAL IMPEDIMENTS

This has brought about a clash between the Central Government and the Provinces. It is true that taxes on the sale of goods form one of the sources of revenue allotted to the Provincial Governments under the Government of India, 1935, but sales taxes tap nearly the same source as excise which is a central head of revenue. When the Central Provinces passed the sale of Motor Spirits and Lubricants Taxation Act, 1938, the Central Government made a reference to the Federal Court under Section 213 of the Act as to the legality of this Act. The contention of the Central Government was that a sales tax in respect of goods produced in India, at whatever stage it might be levied, came within the scope of item 45 of the Federal Legislative List (excises) and that the Provincial Legislature could not invoke its power under item 48 of the Provincial Legislative List (taxes on the sale of goods). The Government of the Central Provinces contended that by force of Section 100 of the Act, item 45 of the Federal Legislative List must yield place to item 48 of the Provincial List. Six other Provincial Governments which were then contemplating the introduction of similar taxes supported the case of the Central Provinces Government. It was argued on behalf of the Provinces that an excise is a tax levied immediately on production and at any stage up to the time of the first sale but not thereafter. The Government of India, however, contended that an excise could be levied at any stage including the final sale before consumption, and that the provincial tax in question was an invasion of item 45 of the Central List. In December 1939, the Federal Court unanimously held that the Act of the Central Provinces Legislature imposing a sales tax on petrol and lubricating oils was not *ultra vires*. Whether this is a final settlement of the matter is not certain, but most Provinces have proceeded to levy sales taxes in one form or another. It is

feared that the employment tax proposed in the United Provinces will also create similar difficulties. Various Chambers of Commerce in the country have memorialized H.E. the Viceroy against this tax and it is possible that a reference will be made to the Federal Court.

The judgment of the Federal Court has created various misgivings. It has established something like a concurrent power in the sphere of internal indirect taxation. No doubt, the Chief Justice of the Federal Court has emphasised the need for mutual forbearance in this matter, and this on two important grounds. He feared that the simultaneous exercise of the Centre's right to levy excises and the Provinces' right to levy sales taxes might raise the price of the article taxed to a height at which consumption would be seriously curtailed. He also reminded the Provinces that in the absence of mutual forbearance the ability of the Centre to continue devolutions, and to make new devolutions, to them under Section 140 of the act would be jeopardised. As had already been shown it is essential in the best interests of India that the Central Government should have adequate revenues. As time advances and India's political status rises, the Central Government's need for resources will naturally increase. Not only the growing complexities of defence but also the equally pressing need for co-ordinating the nation-building services will add to the financial needs of the Centre, especially when Federation begins to function.

BORROWING POLICY

The Provincial Governments have made fairly good use of the new power to raise loans. Economic uplift involves large expenditure, and part of it must be met from borrowing; and there is no lack of schemes which are sufficiently remunerative. Most provinces have raised loans, and with possibly one exception the funds were used for strictly remunerative purposes. The money market reacted favourably to these loans and the provinces were able to borrow at rates of interest which only powerful nations can command to-day. In some provinces, the funds needed are for undertaking hydro-electric schemes and under public utilities which in time will not only liquidate the loans but will also create new assets of great national value. Such schemes are essential for industrial and agricultural development, and for increasing employment in the country. But the progress of such schemes is slow; one hopes that the pace will be quickened.

Several provinces have also raised short-term loans by issuing treasury bills. This mode of borrowing has become necessary owing to the slowness in the collection of taxes. Especially in India, tax-payers wait for the last day and hour to pay their dues. But the Government needs money from the beginning of the financial year for paying salaries and meeting other needs. Hitherto, the Central Government supplied the funds for day-

to-day needs, but this ceased with the introduction of Provincial Autonomy. Hence the resort to treasury bills—a device which is rather modern even in Europe and which found its way into India during the war. The treasury bills issued by the Provincial Governments were well received and the transactions were economically carried out, thanks to the seasoned advice of the Reserve Bank. The bills are usually for three months. Madras tried six months' bills, but later fell into line by issuing three months' bills.

CONCLUSION

The success of Provincial Autonomy depends on the progress of economic uplift. The increase of expenditure in the nation-building departments (education, medical aid, public health, agriculture and veterinary, industries, co-operation, and scientific departments) since 1937-38 may be seen from the table below:—

Expenditure on nation-building departments in the Provinces

	Population (1931)	Expenditure in 1937-38	Expenditure in 1939-40	Percentage increase or decrease	Percentage of total ex- penditure
	millions	(000,000)	(000,000)	%	%
Madras	44.5	4.52	4.67	+3.3	28.65
Bombay	20.8	2.54	3.29	+29.5	25.65
Bengal	50.1	2.65	3.35	+26.4	22.94
United Provinces	48.4	3.16	3.99	+26.6	29.20
Punjab	23.6	3.09	3.44	+11.3	28.83
Central Provinces	15.5	.95	1.02	+7.4	21.18
Bihar	32.4	1.31	1.49	+13.8	28.39
Orissa	8.3	.42	.47	+11.8	23.49
Assam	8.6	.69	.73	+5.8	24.44
Sind	3.9	.50	.55	+9.6	14.64
N.-W.F.P.	2.4	.35	.40	+14.5	21.75

Evidently the progress of nation-building services is nothing phenomenal. The progress has to be quickened a great deal if the leeway is to be made up. This, therefore, is the central goal before the country.

A NOTE ON LOCAL FINANCE IN RURAL AREAS OF SOUTH INDIA*

BY

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Under the Madras Local Boards Act of 1920, Section 74 B District Boards are empowered to levy:

1. a land cess, being a tax on the annual rent value of lands,
2. a professional tax,
3. a house tax.

With the previous sanction of the Local Government and the Government of India, a District Board may also levy a pilgrim tax.

Section 78: The land-cess is levied on the annual rent value of all occupied lands on whatever tenure held and shall consist of a tax of one anna and a half in the rupee of the annual rent value of all such lands in the district.

Section 79: The annual rent value is calculated in the following manner: (I) In the case of lands held direct from Government on ryotwari tenure or on lease or licence and also in the case of lands situated in the district of Malabar on whatever tenure held, the assessment, lease amount, royalty is taken to be the annual rent value.

(II) In the case of inam lands or lands held wholly or partially free from assessment, the full assessment which such lands would bear if they were not inam, together with any water-rate which may be payable for their irrigation, is to be taken as the annual rent value.

LAND CESS

Land cess is at present imposed on owners. There is no necessity for shifting the burden to the occupier or lessee, for in actual practice, lease-deeds fix a rent based both on the revenue and cess payable by the owner to the Provincial Government and the District Board. Only when periodical settlements of land-revenues raise the land revenue, the income of Local Board from the cess is increased. This type of increase in revenue is

* A paper read at the First Indian Political Science Conference, Benares, December 1938.

not possible in Zemindari tracts, where the rent due from the Zemindar, has once and for all been settled. Further powers of enhancing land cess, should not be given to local bodies, since this would interfere with provincial revenue administration and adversely affect provincial finances. The crux of the problem lies in the fact that land revenue is entirely a source of provincial revenue and that there is considerable opposition to further increase of land revenue. Remodelling of the land tax, would seem to me, theoretically to be a condition precedent to the financial solvency of district boards. This in turn, would necessitate a redistribution of revenues between the central and Provincial Governments—a task at which a number of experts have been engaged in recent years, with results, which yet remain to be seen. The only practicable way out of the difficulty at present, would lie in the immediate devising and execution of a system of grants-in-aid made by the Provincial Governments, in aid of local bodies. It is necessary to readjust the existing classification of national and local services from time to time and the whole subject requires re-examination especially under the heads of Public Health, Education and Communications. The recently issued Madras Public Health Bill is symptomatic of this new consciousness in the case of the Madras Provincial Government.

Some of the observations of the Madras Financial Relations Committee (paras 32 to 45 of the Report) regarding grants-in-aid would seem to call for some revision. There must be a certain elasticity in the distribution of such grants and the peculiar or special need of each local body must be borne in mind. This is the trend of development in Australia and Britain today.¹ It might be argued that such a system—if it can be called a system at all—would be uncertain in operation because of its complexity and might often lead to the 'nursing' of certain localities at the expense of other localities. But it must be remembered that at present the Madras Government has considerable powers over local bodies, though of a negative sort; the doctrine of the Financial Relations Committee was that no grants were to be sanctioned, except on a clear understanding that the Government are at liberty to reduce or withdraw them, if the services for which they were intended, were not efficiently administered.

The real trouble in local taxation is not so much that the number of taxes is inadequate. The existing profession and house taxes are not properly assessed and collected. (*Vide* the Report of the Indian Taxation Enquiry Committee, Vol. I.) Arrears in local taxation have been traced to (1) lack of interest on the part of Councillors, (2) lack of courage on the part of local staff, (3) failure to use coercive processes and impose penalties for late payments. The Indian Taxation Enquiry Committee recommend-

¹ A number of factors, such as age, sex, occupational distribution of the population are taken into consideration for fixing the amount of grant.

ed long ago, provincial control of the machinery of assessment and collection. When as in the case of the cess the tax is collected by the provincial revenue establishment there is no question of arrears. The root of the trouble is, that many of the district boards, even after the recent bifurcation, operate over too large an area and the efficiency of their own tax-collecting staff is not equal to the task. As all students of comparative local finance are aware, the tendency in administration even in the case of countries like the U.S.A., is towards centralisation of assessment and collection of local taxes. The Indian Taxation Enquiry Committee very properly recommended the abolition of tolls levied by local bodies on motor vehicles and their replacement by provincial taxation, to be distributed by a road board in favour of local bodies.

If local revenue is to be increased at all from taxation, it may well be done by surcharges or additions to income-tax and not by further increasing the burden on land in the form of an enhanced cess. Conditions in rural parts do not facilitate the introduction of a local income-tax as we have in Germany and some other countries on the continent. The Indian income-tax in its very nature cannot be locally assessed and collected at present. The only new tax I can think of for union areas, that is to say for groups of villages constituted under union panchayats, is the taxation of the unearned increment of land; the possibility of this tax was long ago explored by the Madras Financial Relations Committee, but that Committee could not see their way to recommend the same by a majority. A tax on transfers of property such as we have in the Madras City Municipals Act is easily collected and may be introduced in the case of Union Board areas also. It is likely to prove productive at least in the case of the prosperous union areas.

Panchayats.—We may observe at the outset that in Madras where the old indigenous village system has not completely broken down, obstacles are experienced by the panchayats. It is significant that in Bengal where the old indigenous system had more or less completely broken down, the new statutory self-governing institutions are more wide-spread. Powers of control over the panchayats are shared in Madras between the Provincial Governments and the district boards. But as Drummond points out 'district boards have in general shown themselves averse from decentralisation.' It may be said however that nowhere in Madras is a panchayat unable for lack of statutory powers to carry out substantial improvements. In Madras the panchayats have 21 potential sources the most important being 1/3 of the land cess, which the district board is bound to pay over to them. As in Britain where county councils are unwilling to facilitate the creation of new county bodies, similarly the District Boards here are reluctant to facilitate the creation of panchayats. But even now the villager's patriotism centres in his village; it is difficult to pump up enthusiasm towards some artificial units like district boards.

There are, however, certain obstacles to the successful working of panchayats: (1) lack of willingness to sink personal quarrels, and (2) lack of willingness to levy taxes. The taxing powers vested in these bodies are comprehensive enough; but unfortunately they are seldom exercised. This is the more surprising during the present period of contraction of individual and social charity in many places and the noticeable decay of the old institutions administering poor relief—the village temple and the village chowlttry. In his evidence before the Indian Taxation Enquiry Committee the present Dewan of Kashmir pointed out 'that the narrower the limits of the tax jurisdiction, the more clearly are the benefits of the expenditure of a tax realised and the greater therefore is the willingness of the people to submit to further taxation. Evasion he said is at once detected in villages unlike in towns.' But even now there are two alternatives that the ordinary villager has in mind—more amenities in his village or exemption from taxation or reduction in taxation. The essential productiveness of local public expenditure must be brought home to the minds of the rich villager. It is rather strange that the Hon'ble the Premier in Madras (in his speech inaugurating the celebrations of the Education Week at the Madras Christian College) instead of deploring the present antipathy or reluctance to additional taxation in the case of even the richer members of our Society put forward and developed the thesis that we must be content with C class administration on the basis of C class taxation. I submit our motto should be A class administration on the basis of A class taxation.

Our defects in rural local finance are largely due to the haphazard growth of our tax system and to the historical course of the evolution of local self-governing institutions in rural areas. They are late-comers in the system of Indian administration. All enquiries from the time of the Indian Taxation Enquiry Committee to Sir Otto Niemeyer have revealed the fact that many classes of our population escape from the payment of their share of taxation. As already pointed out the machinery for collection under the Madras Panchayats Act is simple and cheap. The village-headman himself collects the taxes under certain definite rules. The creation of new Panchayats, however, is largely depending on panchayat officers, who have often to convince villagers that on balance the advantages of local public expenditure outweigh the disadvantages of local taxation. As most of the rural local bodies are even now conservative in their outlook I have refrained from discussing at length the various methods of financing public utilities open to enterprising local bodies. The fee income of many of our rural local bodies compared with west European countries is primitive. Here again the main impetus must come from the provincial government whose business it should be to make suitable grants to enterprising local bodies from out of the loans that they themselves float in the money market.

Such a Rooseveltian policy would have a two-fold effect. On the one hand, the Provincial Government would be solving, to a

certain extent, the problem of educated unemployment; on the other hand, several localities which do not possess the indispensable requirements of efficient and civilized life today—drainage, protected water-supply, hospitals, schools, etc.,—would be equipped with such facilities (*vide* my paper on "Public Works as a Means of Prosperity" in the Indian Economic Conference Number 1933).

REORGANISATION OF RURAL LOCAL SELF- GOVERNMENT IN THE CENTRAL PROVINCES AND BERAR

BY

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DESCRIPTION OF LOCAL SELF-GOVERNMENT IN THE CENTRAL PROVINCES AND BERAR

Under the existing system the local self-governing institutions include Municipalities, District Councils, Local Boards (which may be either independent or subordinate to the District Council) and Village Panchayats. They are thus not of a uniform type, all with the same functions to perform. There is a hierarchy of local bodies which vary in the number of lesser bodies they have dependent upon them. Municipalities, District Councils and Independent Local Boards completely cover the map of the Central Provinces and Berar. Municipalities are complete in themselves; all the normal services needed in urban areas are entrusted to their committees and there are no subordinate units. The District Councils and Independent Local Boards possess powers to render services needed in rural areas. But the District Councils do not exercise all these powers themselves; they have to share their power with subordinate units, namely, Local Boards; and, in certain places within their jurisdiction, District Councils and Independent Local Boards share their powers with other subordinate units, namely, Village Panchayats.

The local authorities for each local government area are committees largely elected by local population and partly nominated by the Provincial Government or by its agents. Except the village Mukaddam who is *ex-officio* a Panch, there is no nominated element in the Panchayat; in the Local Board the nominated members constitute one-fourth of the total number of members; in the District Council, whose elected members are elected by Local Boards, the nominated members constitute one-sixth of the total number. In the Municipality the proportion of nominated members is one-fifth. Each of these authorities elects its own chairman.

The electorate for a Panchayat is composed of all persons residing or owning or holding property; that for a Local Board, of persons holding land in proprietary right, tenants paying a minimum annual rent varying from Rs. 10 to Rs. 25, persons

possessing a minimum annual non-agricultural income of Rs. 250 in C.P. and Rs. 300 in Berar, and persons paying a special school rate; and that for a Municipality, of persons with a minimum annual income of Rs. 120 in C.P. and Rs. 240 in Berar, persons paying municipal taxes, owners of houses of an annual letting value of Rs. 60 and women who are literate.¹ The L.S.G. Committee in 1935, recommended that the electoral rolls of the Provincial Legislatures should be adopted for Local Bodies, which would increase the proportion of the electorate to the total population from 16.3 to 17 per cent in urban areas and from 3 to 9 per cent in rural areas.

Officials act under the directions of the Local Bodies. They are appointed and dismissible by them; but in the case of Secretaries and other important officials the appointment, salary, and dismissal is subject to the previous approval of the Government. The L.S.G. Committee remarked, "One of the most disquieting features in the working of Local Bodies in recent years has been the growth of party factionism which has been carried to extremes in some cases in disregard of the public interest and the recognised canons of sound administration. The employees of these bodies have often been victims of such party factions and have been harassed or ill-treated."

The functions of the District Councils or the Independent Local Boards are different from those of the Municipalities, due to the difference in the needs of rural and urban areas. Some functions are common, namely, management of pounds, construction and maintenance of roads, vaccination, education, water-supply, prevention of infectious diseases, and destruction or detention of ownerless dogs. But the system of rural Local Self-Government has no counterpart of the following functions entrusted to the Municipality: lighting and cleaning of public streets, cleaning of public places, disposing of night-soil and rubbish, removing obstructions and projections in public streets, and construction and maintenance of latrines, urinals, drains and sewers. Village Panchayats, however, look after conservancy. A Local Board may undertake the functions entrusted to the District Councils. A Village Panchayat has administrative duties and may, if it wishes, have judicial powers to try petty criminal and civil cases. Its administrative duties include conservancy, water-supply, roads, slaughter-houses and rest-houses, and 'any other work or measure of public utility.' The L.S.G. Committee, in their Report in 1935, remark, "The Panchayats have shown a persistent disinclination for undertaking administrative duties." (P. 33.)

The Municipalities have the powers of taxation which are usually given to those in other British Indian provinces, and their income from the taxes is supplemented by that from Municipal

¹ The figures of the minimum amounts are taken from Appendix C to the Report of the Local Self-Government Committee, 1935.

property, and grants and contributions mainly from the Government. A District Council gets, through its powers of taxation, income from (1) a cess at the rate of six and a quarter per cent on land revenue from landholders, (2) an additional cess which it may impose by two-thirds majority, at a rate not exceeding six and a quarter per cent on land revenue, (3) a special school rate which it may impose by a majority of two-thirds on residents of a particular area, (4) fees or tolls which it may impose in any public market, and (5) fees which it may charge for licences for maintaining private markets. In addition to income from this source, it gets (1) such rents and profits accruing from Nazul property in the area as may be directed to be paid to it by the Government, and (2) contributions, mainly from the Provincial Government. From the 'District fund' so formed the Local Boards get their income, to be spent on matters they have undertaken to administer. A Village Panchayat may, by a majority of two-thirds of its members and with the approval of the District Council, impose taxes or fees on houses, buildings, lands, vehicles, pack animals, porters bringing goods for sale, persons exposing goods for sale in a public place, sales of animals, use of sarais and slaughter-houses, water-rate, private latrines, and licences to bookers, commission agents, weighmen or measurers. Besides these taxes and fees the Panchayat fund includes income from fines and fees for civil and criminal cases and contributions, mainly from the Government and the local authorities.

A Local Board may undertake the administration of matters which are permitted to be administered by the District Council. A Local Board must submit to the District Council annually, an estimate for the coming year and an account for the past year, and a report of its work. Its expenditure must not exceed the limits prescribed by the District Council. The District Council may, by a majority of two-thirds, reverse any resolution of a Local Board. The District Council is empowered to provide for the performance of a duty, in default of a Local Board, out of the funds allotted to the Board.

The Deputy Commissioner has powers to examine the proceedings, the property and the documents of the Municipalities, District Councils, and Local Boards. He can suspend the execution of any order or resolution of theirs if he considers this likely to cause annoyance or breach of peace. The Provincial Government may provide for the execution of any work falling within the sphere of local bodies, if he thinks it necessary for the service or the safety of the public, and compel the local body concerned to pay the expenses. The Government may do the same if a local body has made default in performing any of its duties. Lastly, if a local body is incompetent or persistently negligent in the performance of its duties, or abuses its powers to a grave extent, the Government may dissolve it and order a fresh election; and if the new body proves to be no better, the Government may supersede it for a specified period.

The Government may appoint inspecting officers for purposes connected with the work of the District Councils. Certain Government officials are entitled to attend meetings of the Municipal Committee.

The population of the Central Provinces and Berar within the District Council and the Municipal areas is 15,080,778. Within the District Council areas the population is 13,674,726, and within the Municipal areas, 1,405,652.

The number of Panchayats is 945; the number of Panchayats doing administrative work, however, is 598.

The number of Local Boards is 83, of which eight have a population under 100,000 and four over 300,000. The areas vary roughly from 300 to 2,000 square miles. (The areas of three Boards are above 2,000 square miles).

The number of District Councils is 25, most of them with populations varying from 380,000 to 1,300,000. The areas vary roughly from 1,500 to about 7,000 square miles. Two of these (twenty-five) are Independent Local Boards.

The number of Municipalities is 75. The largest of them has a population of 215,165. About 30 of the Municipalities have populations less than 10,000, three of them having less than 5,000.

THE PROBLEM OF REORGANISATION OF RURAL LOCAL SELF-GOVERNMENT IN THE CENTRAL PROVINCES AND BERAR

The problem of organisation of local self-government is essentially twofold. On the one hand, it is necessary to select for them beneficent functions which, for their efficient fulfilment, require the cooperation of local people, or which are the peculiar concern of local people and are not universal in character. On the other hand, constitutions of local bodies are to be so devised that they should voice local opinion and at the same time facilitate the efficient discharge of the functions assigned to them. Three other considerations may be mentioned: local government areas should not be so large as to be inconvenient to manage; yet they should be large enough to secure utmost economy of administration; and they should be wealthy enough to yield revenue sufficient for local administration.

The Government of India's resolution of 1918 laid down as "the first and foremost principle" that "the object of local Self-Government is to train the people in the management of their own local affairs" and the C. P. Local Self-Government Committee, 1935, says that this is the basic principle underlying the present system in this province. For

over 15 years we have been having this "training of the people," during which "political education of this sort, in the main," took "precedence of considerations of departmental efficiency." It is now time that the order of these considerations be reversed, and that political education be looked upon as only an incidental advantage. With the introduction of Provincial Autonomy the situation has changed. The franchise for Provincial Legislature for the C. P. and Berar is actually wider than that for local bodies, and the people are already receiving political education in the sphere of provincial functions. A popular government, in order to maintain its popularity in the present economic circumstances, can do either of the two things: it can either noticeably reduce taxation on the poorer classes, or it can expand beneficial activities of the State to a noticeable extent. The second course appears to be the wiser, though it would involve a greater burden on the rich and would grant no immediate relief to the poor. New experiments, often requiring the cooperation of local bodies, will be judged by the people by their success, and as success depends on efficiency, efficiency of provincial departments as well as of local bodies ought to be the first consideration of new Governments. Even assuming that no new schemes involving local co-operation are undertaken, people are likely to hold the Government indirectly responsible for allowing such lack of efficiency as may be existing in local bodies.

It is difficult to foresee the permanent changes that are likely to occur in the scope of governmental activities. Governments will receive the blessings of the electorates if, in the course of a few years, there is a perceptible improvement in the most urgent requisites of well-being, namely, food, clothes, shelter, and health and sanitation. The problem of food and clothes is the economic problem involving conflicts of interests as well as of ideologies. The Congress Government of C. P. and Berar has adopted the spread of cottage industries in the villages as its object in the economic sphere, and its experiment in education, namely, the combination of the Vidya Mandir and the Wardha Schemes, indicates this object. Problems of proper housing, both in urban and rural areas, adequate provision of medical aid, and town-planning throughout the province ought to receive its attention.

In selecting activities suitable for rural Local Self-Government, the peculiar conditions of the province require consideration. Firstly, the great poverty of the people may prevent localities from undertaking expensive activities. Secondly, the prevailing ignorance in the rural areas may necessitate qualified men from outside being engaged for rural services, and this would raise problems requiring Government intervention to such an extent that centralisation may prove the only solution. Thirdly, "the growth of party factiousness which has been carried to extremes in some cases in disregard of the public interest and the recognised canons of sound administration," noticed by the C. P. Local Self-Government Committee, makes it unwise to entrust local bodies

with functions carrying powers to do harm to individuals. It is unthinkable, for instance, to entrust the local bodies with control over the police, as is done in many Western countries. The smaller the local body one may expect, the more virulent must be the form of this party factiousness.

Rural local bodies are required to be of two types: those performing services for each of the small towns and villages, and those serving the common needs of wider areas. Whether the bodies of the second type should have control over those of the first is a separate question.

Reviewing the Provincial Legislative list in the Government of India Act, 1935, the following appear to be the activities suited to the two types of rural Local Bodies:

Functions	Whether suited to I or II type	Whether general regulations and control should be imposed by the Government
Justice in petty civil and criminal cases, which might prove costly if sought in regular courts due to expenses of travelling.	I	Yes
* Lands in the possession of His Majesty...	I	No.
* Compulsory acquisition of land ...	I	Yes.
Libraries	II	No.
Cleaning of streets etc., conservancy, construction of latrines and drains and sewers.	I	No.
Hospitals	II	Yes.
Dispensaries	I & II	Yes.
Vaccination and prevention of epidemic diseases.	II	Yes.
Registration of births and deaths ...	I	Yes.
* Burials and burial and cremation grounds	I	No.
* Lighting of streets	I	No.
Education	I & II	Yes.
* Housing and town planning	II	Yes.
Roads, bridges, and ferries	I & II	Yes.
Water-supply	I	No.
Small irrigation works, like tanks ...	II	No.

Protection against pests and prevention of plant diseases.	II	No.
Improvement of stock and prevention of animal diseases.	II	No.
Veterinary dispensaries	II	No.
*Pounds and the prevention of cattle trespass.	I	No.
*Land improvement	I & II	Yes.
*Agricultural loans	I & II	Yes.
Agricultural shows and exhibitions ...	II	Yes.
*Fisheries	I	No.
Markets and fairs	I & II	No.
Inns and innkeepers	I & II	No.
*Development of industries	I	Yes.
*Inspection of weights and measures ...	I & II	Yes.
*Relief of the poor	I	No.
*Charities and temples	I	Yes.
Taxes on lands, buildings, and hearths ...	I & II	Yes.
Taxes on professions and trades	I & II	Yes.
Taxes on animals and boats	I & II	Yes.
Cesses on entry of goods for sale	I & II	Yes.

Those functions marked with an asterisk are not found in the list of functions of the District Council or the Village Panchayat, though they seem to be suitable for them. Establishment of pounds appears in the District Council list, but not in the Panchayat list. Government lands and the power to acquire land should be made over to Panchayats, subject to Government control, in order to provide better houses and useful institutions like schools, halls and playgrounds. Small towns and villages need to be actively working for the Government's plans of agricultural and industrial development, and these functions, under the control of the Government, ought to be included in the list of those of the local bodies. Housing and town-planning are no less needed in rural areas than in large towns, as a mere glance at a village shows.

In England "the principal functions of a parish council are the maintenance of footpaths and rights of way They can also provide recreation grounds, street lighting burial grounds, libraries, etc." In Prussia the rural communes, of which more than two-thirds had less than 500 inhabitants had in 1921 powers "connected chiefly with street cleaning, repair

of minor roads, drainage, poor relief, protection against fire and, sometimes, education." In one Canadian province a rural municipality has power, *inter alia*, "to grant aid to the sick, to assist in the erection and maintenance of hospitals, to control cemeteries, to impose fines for light weight and short measure . . . to prevent prairie fires, to license hawkers and pedlars . . . to grant aid to agricultural societies construct roads and bridges." These are the functions performed by the smallest local bodies, comparable to Indian villages, in some of the advanced countries.²

The number of Village Panchayats is about 950, of which about 600³ were doing administrative work. The population covered by them is not stated in the Report of their working in 1937; but making a liberal estimate of 4000 per Panchayat, it may be assumed that they serve a population of 2,400,000. The total population within the District Council areas is 13,674,726. This means that they cover less than 1/5 of this population, and that about 11,000,000 of the population is outside the Panchayats. This is the position 15 years after the passing of the C. P. Village Panchayat Act. At this rate it will take another 60 years for the Panchayats to cover the whole rural area; and it may take still longer, considering that in 1936-37 their total number increased only by 17.⁴ On the whole, then, the growth of the Panchayats is disappointing, in spite of the remarks of one Deputy Commissioner that their future "is hopeful and their usefulness has been established beyond question."⁵ Those who hoped that the ancient tradition of powerful Panchayats would help their revival only if constitutional provision were made for them should have known by now that changed circumstances are working against the revival. Perhaps an important force against the Panchayats is the Malguzari system of land tenure; for the majority of the Panchayats are in Berar Division which may be partly due to the Rayatwari system. It is alleged that for some time the District Officers were not in sympathy with the idea of the Panchayats.⁶ But probably the fundamental reason is that the modern development in the means of communication has destroyed the old self-sufficiency of the village and the interests of its inhabitants are not ultimately identical, as they were in the days of its isolation. This fact does not encourage the formation of Panchayats; on the other hand, it encourages defiance of village opinion. The new Village Panchayat, if it is to be strong, should derive its strength from the provincial government, and fulfil its function in the provincial scheme.

² The figures are taken from the Reports on the working of District Councils for 1936-37 and on the working of Municipalities for 1935-36. The total population of C. P. and Berar, according to the Census of 1931, is 15,507,723.

³ See Harris: *Local Government in Many Lands*.

⁴ Report of the working of the Village Panchayats in C. P. and Berar for the year ending 1937.

⁵ *Ibid.*

⁶ Hirurkar, N. P.: *Village Local Self-Government in British India*, p. 12.

That 4/5th of the rural area should be doing without the services rendered by the Panchayats, and that even the remaining 1/5th should be served half-heartedly—"The panchayats have shown a persistent disinclination for undertaking administrative duties," say the C. P. Local Self-Government Committee—is highly unsatisfactory. It is essential that these functions should be performed; and where Panchayats are not established, agencies of the Provincial Government should perform them. Even where Panchayats are established the Government should itself impose taxation which the Panchayats are now permitted to do, in view of their 'disinclination to incur the odium of imposing taxation' which was brought to the notice of the committee; although the collection of taxes may be left to the Panchayats.

Regarding the relations of the Panchayats with the District Councils the committee recommend that certain functions should be made compulsory for the Panchayats and that the District Councils should transfer to them 10 per cent of the cesses, and some other sources of income, recovered from the Panchayat areas. The committee apparently overlooked the danger that this would create opposition from the District Councils to the establishment of the Panchayats, as was the case in Bihar and Orissa in 1925-26.⁷ They also recommend the supervision of the District Councils over the Panchayat Budgets. It is futile to expect vigilant supervision from the District Councils. A bolder policy is needed in this connection. On the one hand, the functions of the Panchayats should be increased, as suggested elsewhere in this paper, and on the other hand control over them by the Government should be direct, and as firm as that over the District Councils or the Municipalities.

This would involve the erection of an administrative machinery costing annually, at the most, Rs. 50 lakhs. The scheme may be introduced gradually; at the end of ten years it may be completed. Considering that the scheme would benefit agricultural areas, it would neither be unfair nor burdensome if the required sum is raised from a tax on agricultural incomes; but the financial implications of this proposal require to be examined.⁸ In every tahsil there should be posted an officer of the rank of a senior Extra Assistant Commissioner, who may be called Inspector of Village Services. He should be assisted by Deputy Inspectors of Village Services, of the rank of a Tahsildar, varying from one to four in each Tahsil according to the area. Every village, or group of villages, with a population above 300 should have a village fund and a village area to be served out of the fund; and in each village or group of villages with population exceeding 900 the Government should appoint a

⁷ Bihar and Orissa Report, 1925-26, referred to in Hirurkar: *Village Local Self-Government in British India*, p. 15.

⁸ In addition, it may be possible to approach the Government of India to introduce legislation for a special tax on incomes from money-lending in villages, and to hand over the net proceeds to the Provincial Government.

Servant of the Village, 'Gram-Sevak,' educated up to High School Certificate standard, on a salary of Rs. 30 to 50 per month. (In calculating the figure of Rs. 50 lakhs it is assumed that on the average each Gramsevak would be serving 1,500 of the population.) The Deputy Inspectors should appoint collectors of village taxes according to rates determined by the Inspector. They should also supervise the village services and the expenditure of village funds until the formation of, and in the absence of, the Village Panchayats. As Panchayats are formed, the services of the Gramsevaks should be transferred to them, their salaries largely paid out of Government grants for the purpose, and their tenure of service secured by Government control. The Gramsevaks should act as Secretaries. The functions enumerated elsewhere as suitable for Panchayats should be made obligatory, though smaller villages may be exempted from some of them by an order from the Inspector. The Inspector should exercise all the powers of control over the Panchayats as are exercised by the Deputy Commissioner and the Provincial Government over the Municipalities. He should exercise these powers freely, disregarding the advice contained in the Government of India's Resolution of 1918 that local bodies "should not be subjected to unnecessary control, but should learn by making mistakes and profiting by them."

As the L.S.G. Committee has suggested, the District Councils should transfer to the Village Panchayats 10 per cent of the cesses recovered from their area. This would seriously reduce the funds of the District Council; but a suggestion may be made that the cess might be imposed on landholders in the urban areas which undoubtedly receive some benefit from the activities of the District Council.

Under the scheme outlined above, which may be called Village Service Scheme, the progress of the Panchayat movement may be rapid. And even if this hope is not fulfilled, there will be a powerful machinery serving the needs of the villages, which is, after all, the object of the Panchayats. This gigantic machinery will not only bring greater returns to the labours of the Agricultural and Cooperative Departments, but through its means Ambitions projects might be worked out. An Ayurvedic pharmacy might be worked by the Government in the vicinity of a forest, from which cheap medicines might reach all corners. Ayurvedic diploma-holders might be engaged by groups of Panchayats to administer them. Distribution of fodder, manure seeds, timber, cotton for weaving may be similarly organised. Economic planning would be greatly facilitated. These are but few instances.

REFORM OF THE COVENANT OF THE LEAGUE OF NATIONS*

BY

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The question of League reform arose, in anticipation, in the commission which drafted the Covenant at Paris in 1919 or even in the pre-conference days of 1918-19. The presence of article XXVI in the Covenant is clear evidence that the framers of the document expected reform to prove both necessary and desirable. The question of League reform has, however, been precipitated today by the failure to carry out effectively the provisions of the Covenant relating to maintenance of peace and security, in the face of Italy's attack on, and conquest of Ethiopia. A similar failure in connection with the Japanese conquest of Manchuria and China has accentuated the problem. The League Assembly on July 4, 1936, invited proposals for reform. In response, several proposals have been made by various governments, unofficial sources, etc. This leads us to an inquiry concerning the nature of these proposals. What proposals are being made, by whom or by what people or governments, and what opposition is being brought forward and by whom?

In surveying the proposals now being made for reform of the League, it is well to group these projects according to the order of their importance and also according to the chief issues to which they apply. There are four or five fundamental issues involved in the current discussion of League reform and at least as many secondary ones—although opinions will, very naturally, differ concerning the relative importance of certain items. The principal issues underlying the proposals for League reform are:—

- (1) Regionalism *versus* Universalism.
- (2) Coercion *versus* Voluntarism.
- (3) Status Quo *versus* Revision.
- (4) Oligarchy *versus* Equalitarianism.

The first consists of a conflict of views between the concept of restricted, local, regional leagues or arrangements and the concept of universal, world-wide, all-inclusive League. This problem

* A paper read at the First Indian Political Science Conference, Benares, December, 1938.

might be stated in terms merely of the Great Powers, and the U.S.A. and Japan seemed to favour this approach, when they enunciated the Monroe Doctrine and the Japanese Monroe Doctrine. The issue of regionalism is susceptible of modification in degree. In its extreme form regionalism becomes bilateralism, or a concept of the regulation of international affairs solely by pairs of neighbouring states. It is obvious that regionalism in practice means a death-blow to the system of collective security and permanent peace. It means more or less a system of defensive alliances of the pre-war type, based upon the principle of balance of power which may precipitate war at any time. The only alternative, then, is to devise a system of League organisation which will be universal in character. The refusal of the U.S.A. to join the League, has in fact been the chief obstacle in making the League universal and effective.

The second issue, coercion *versus* voluntarism, involves a contract between a League with at least some degree of coercive power or sanctions, and a League depending entirely upon free compliance of its member-states with their international obligations. Even the proponents of the coercive school do not advocate the use of League coercion beyond certain vital matters such as peace and security. Finally, voluntarism, like regionalism, becomes, in its extreme form, something rather different from its normal self; it becomes what we might call immediatism or refusal to make international arrangements, even voluntary ones, for any long period of time, or indeed, to make any fixed agreements at all. The failure of the League so far has been due mainly to voluntarism and lack of any coercive authority. Any reform must take this factor into consideration.

The third issue is really an issue between order and progress, or between static and dynamic justice, or perhaps between serving the haves as against catering to the have-nots. The issue is formulated mainly with reference to territorial possessions but extends immediately to questions of population and economic resources. It involves the question of revision of the peace treaties of 1919-20, and even the question of revision of the covenant articles relating to revision (Articles XIX and XXVI). There are also those who advocate, and rightly so, the separation of the League covenant from the peace treaties, as part of the process of revising the situation created in 1919-20, although this proposal raises still other and deeper questions. Unless these questions are solved satisfactorily on principles of justice and equity, there can be no stable world peace or world organisation capable of maintaining collective security and peace. It is urgent, therefore, that this group of problems should be properly solved before the reform of the covenant is undertaken.

At present those who advocate universalism also demand voluntarism, revision and equalitarianism and these are opposed by those who advocate regionalism, coercion, status quo and oligarchy. Thus are presented here some of the fundamental

problems of human social organisation, or perhaps the fundamental problem in several of its manifestations in the international field.

Following these basic issues, reform is proposed in League organisation or action along the following lines:—

1. Improving League action for peace by devising (a) better machinery for conciliation and adjudication, (b) for complete outlawry of war, and (c) disarmament;
2. Improving League administrative action in minorities' protection and mandates' supervision; and
3. Improving League legislative procedure by (a) giving greater scope for majority action, (b) speeding up or eliminating the ratification process, and (c) codification of International Law.

To summarise the discussion, there are those who would abandon the effort to secure a universal League, restrict the present League to Europe and even set up within the European League still more limited regional arrangements. They maintain, for example, that security may be organised and sanctions applied only on such a basis, and not at all on a world-wide scale. This view has now some degree of allegiance from nearly all the states, still adhering to the idea of sanctions (France, Chile, U.S.S.R., Great Britain, etc.). The argument put forward here is that restricted but effective arrangements are of much more value than universal but unreliable agreements. At this point, the argument of states advocating sanctions coincides with Germany's demand for local, bilateral agreements and the recent conclusion of the Munich agreement or Four Power Pact is the practical result of this policy. The advocates of regionalism would, however, admit that other League action, covering social problems of all kinds, could remain on a world basis, and thus favour a sort of super-league to correlate the activities of the regional combinations. The universalists, by contrast, want at all costs to bring Japan, Germany, Italy and Brazil back into the League, and secure the entrance of the U.S.A. To achieve this end, they would cut out sanctions and make further sacrifices.

The advocates of the status quo (France and the Little Entente) have dominated the League since its establishment in a sense, and have brought that institution to its present critical pass. The revisionists include not merely the states which lost territory or other rights and privileges in 1919-20 (Germany, Hungary etc.), but certain neutrals or other states which hold that revision is essential to successful reorganisation of the League (Ireland, Italy). They would argue the inevitability and value of change in social institutions, the impossibility of peace without justice and so on. They would separate the Covenant from the peace treaties, develop the effective operation of Article XIX and

facilitate the amendment of the Covenant under Art. XXVI. The policy-determining, and law-making functions of the League have been allowed to remain embryonic and dormant from the beginning; unless they can be stimulated into active life, specially the revision process, the League cannot survive. Something must be done along these lines, however dangerous.

Improving League peace action means making Art. XI more effective, perhaps by removing any necessity for unanimity in the adoption of recommendations and by more extensive use of commissions of inquiry. Complete outlawing of war means disarmament on the one hand, and harmonising the Covenant and the Briand-Kellog Pact begun in 1930, and closing the famous gap in Art. XV, permitting war under certain conditions.

Conclusion. It is evident that the international community cannot get on without an organisation such as the League of Nations, however badly it may have failed in establishing collective security. Rather its failure stresses the need for reform. Perfecting the existing League, not destroying it, is the aim of reform by most thinking men. But reform to be effective must be undertaken without delay, as the postponement of this question may kill the existing League and strengthen the school of power politics. An effort must be made to strengthen rather than weaken the League. Even those who would eliminate coercion and place all action on a voluntary basis would do so in order to strengthen the League. This they would do in part by securing universal support for the League and greater fidelity to League obligations, in part by obtaining a greater degree of satisfaction all round by revision equality.

It is also evident that the League cannot be deprived of all coercive power without fatally weakening it, and that progress must be sought in perfecting the sanctions and security system, and that on a universal basis. Perhaps this end cannot be attained now, and meanwhile improvement in international relations should be sought by revision and other similar methods. No great change in the League structure is needed. Increase in League membership and perhaps some change in council structure (better representation for Asia, India and smaller Powers) are needed. With respect to the social services additional machinery concerning the distribution of raw materials is badly needed. It is undeniable that the social services have already done valuable work and even the critics of the League system do not contemplate abandonment of this aspect of the League work.

What is needed at the moment is developing the operation of Art. XIX and seeking territorial revision in Europe and the colonial world. Without settling these issues, no reform of the League is possible which can establish collective security. Some effort is already being made to regionalise League action in regard to sanctions and security as may be evidenced by the recent conclusion of the Four Power Pact. But ultimately collective

security which is dependent upon disarmament cannot be secured on anything but a world-wide scale. The possibility of resuming efforts toward disarmament will remain the test of success in all other fields of activity. And everything depends on the success of disarmament. Unless this is secured, collective security will remain a mere shibboleth.

The history of human government and centuries of experiment in the art of political organisation and control show unmistakably that the League cannot, any more than other political institutions, survive without some sort of coercive power and the question is, Will the nations, large and small, entrust the League with this power? If they do, there is hope for the system of collective security and the future of civilisation. If not, despair and chaos will be the result.

DEVELOPMENTS IN LAW, CONSTITUTION AND ADMINISTRATION, PERIODICAL SURVEYS

I

PARLIAMENTARY GOVERNMENT IN THE PUNJAB: A FEW ASPECTS

BY

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April 1, 1937 saw the Punjab under the ministry led by Sir Sikandar Hyat Khan and supported by a solid block of 100 Unionists, 16 Sikh Nationalists, and 12 National Progressives. Just then it consisted of 4 Unionist, 1 National Progressive and 1 Sikh Nationalist ministers. It was officially described as a Coalition Ministry at the start. But the position of the National Progressive and the Sikh Nationalist Ministers in the Cabinet really depended upon the Instrument of Instructions to the Governor which the Unionist Party interpreted as demanding necessarily the presence of a Sikh and a non-Unionist Hindu minister in the Cabinet. The Unionists had a thumping majority in the Provincial Assembly; naturally the coalition was not necessary for securing the support of a majority of votes for the party in power.

There were several claimants for ministership from among the Hindus, and it is interesting to note that the Minister selected had fought the election as an Independent and signed the National Progressive (Hindu) ticket sometime after his election. It is necessary to emphasize these facts because the Ministry has now ceased to describe itself as a coalition and has frankly come out as Unionist without those resignations and the reappointments of members considered necessary even in France where such changes usually occur.

The Government was soon widened to include a large number of assistant ministers here divided into two classes, Parliamentary Secretaries and Parliamentary Private Secretaries. Their functions as well as their status have been matters of great curiosity which neither the Government nor the Speaker has been able to satisfy fully. They have asked questions of the Government, encroached upon the time of the opposition by moving Resolutions and introducing Bills on non-official days, and sponsored what were described as non-official motions. As some of them are

practising lawyers, it would be interesting to know what the High Court thinks of these *salaried* Public Servants.

The official opposition in the Punjab is the Congress. It is occasionally reinforced by the *Ahrars* and the *Akalis*. The position of the Unionist Party is, however, so strong, the small Opposition is so much divided in its counsels, that the Punjab Government can always easily look forward with security as well as pleasure to such Divisions as may be demanded.

Parliamentary life in the Punjab is one round of points of order. Hardly had the members met in their first session when the attack began. Some permanent official had blundered in gazetting new rules of business as *made* by the Governor instead of declaring that the old rules as modified by the Governor would remain in operation till the Assembly made its own rules. Since then points of order have poured in, thick and fast. If other sources of raising them fail, the abundant crop of adjournment motions, in which the Punjab M. L. A.'s take a keen delight, provides a sure supply. This has produced several interesting results. More than once the remarks made by the Prime Minister have been expunged from the Proceedings. The Deputy Leader of the Opposition has been named and expelled from the house. The sittings have several times been adjourned after rowdy scenes and at least once the Chair's (Deputy Speaker's) orders have been defied. At one time the Government tried to introduce surreptitiously a Sergeant into the Assembly but the Opposition was able to make so much of it that he made no further appearances thereat. But the defiance of the Deputy Speaker's orders of expulsion by members resulted in the passage of a bill authorizing the appointment of a sergeant in the last session despite the strong protests from the Opposition. That brought up the question of the lawful remedies against a manifestly wrong decision of the Chair to the surface. The Opposition discovered that the only remedy allowed under the Act was the tabling of a motion demanding the removal of the Chair (the Deputy Speaker) from office and towards the end of the last session it succeeded in tabling such a motion.

That brings us to another aspect of Parliamentary life in the Punjab. When the Assembly busied itself in making its Rules of Business, despite the strong protests of the Opposition, the Unionist Government used its sledge-hammer majority for the purpose of making it almost impossible for the Opposition, as it then existed in the Punjab, to get the leave of the house for moving motions of no confidence in the Ministers. This it did by the provision that leave would be granted only when 50 members would rise in their seats signifying their support of the motion. Motions for adjournment of the house can be moved under the same condition. The strength of the official opposition at that time was less than fifty. Neither the old rules nor the adopted rules, contained any such provision. It is doubtful

if any other provincial legislature requires the support of more than the bare quorum for permission to discuss such motions.

Parliamentary life in the Punjab signalized itself by two very curious rulings given by the Speaker. In one case when the Deputy Speaker was presiding on a non-official day, he omitted to ask the formal question whether the house gave an Honourable Member the permission to introduce his bill and passed on to the next item presumably implying that the member had that permission. It was a thin house, the Government benches were busy consuming tea, the member in-charge of the bill had moved the first reading and had not been challenged. When the Front Government Bench, fortified by a substantial tea, returned to the house, someone brought this omission to the notice of the Speaker who was then presiding. The Speaker stayed the proceedings of the house and put the formal question on a motion which was not then before the house which again was different in composition from what it was when it had first discussed the motion. Of course the Government majority now refused the Hon'ble Member permission to introduce his measure!

On another occasion following some disturbance, the Speaker adjourned the House only to discover after leaving the chamber that he had not named the period for which the house stood adjourned. Back he walked into the chamber and resumed the proceedings as if nothing had happened even though the opposition benches were almost entirely empty on account of his previous ruling!

II MINISTERS AND THE LAW OF SEDITION IN INDIA

BY

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Bengal.

It has been rightly said that a written constitution grows "in three ways: by usage, by judicial interpretation, and by formal amendment." We propose to refer in this brief note to an important development in the present constitution of Bengal by judicial interpretation: We mean the two recent decisions—or rather, strictly speaking, the expressions of opinion after a judicial deliberation—of the Calcutta High Court, regarding the constitutional position of Ministers in a Governor's Province, in relation to the law of sedition in India as laid down by Section 124 A of the Indian Penal Code (taken along with Section 17 of the said Code).

Section 124 A of the Indian Penal Code has laid down:—

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment, etc. . . ."

And according to Section 17 of the same Code, the word "Government" "denotes the person or persons authorized by law to administer executive government in any part of British India."

Now the question is whether the Council of Ministers in a Province as contemplated by Section 50 of the Government of India Act, 1935, are "persons authorized by law to administer executive government" in the province, or whether they may be deemed as "officers subordinate" to its Governor within the meaning of Section 49(1) of the said Act.

While delivering, in the exercise of its criminal appellate jurisdiction, its judgment in what is known as the *Dhirendra*

Nath Sen and another,¹ *Appellants v. Emperor case*,² the Calcutta High Court³ had expressed the following *obiter dictum*⁴ on 19th July, 1938:

"Under the Government of India Act, 1935, the Ministers of a Province are not persons authorised by law to administer executive Government, nor are they officers subordinate to the Governor whose charge it is to administer executive Government. Accordingly, exciting hatred, contempt or disaffection against a Ministry is not sedition within the meaning of Sec. 124 A of the Indian Penal Code."

Later on, two references were made to the High Court by the Chief Presidency Magistrate and the Additional Chief Presidency Magistrate of Calcutta, in which the latter sought⁵ the authoritative decision of the Court on a question of law, in connexion with two cases of sedition under Section 124A of the Indian Penal Code, pending before them.⁶ The specific points on which the decision of the Court was sought by the Magistrate were⁷—

- (a) whether "the Ministers of Bengal were subordinate officers to His Excellency the Governor within the meaning of section 49 of the Government of India Act of 1935";
- (b) whether "the Council of Ministers should be considered as 'Government established by law'"; and
- (c) whether "a provincial Ministry could be said to form a part of the executive government of the province in the sense of Section 17 I.P.C."

In delivering the judgment of the Court,⁸ the Chief Justice has recently declared⁹ that the answer to all these three questions is "No." His Lordship has been reported¹⁰ to have referred in

¹ The editor, and the printer and publisher of a Calcutta paper called *Hindusthan Standard*. They had been convicted by the Chief Presidency Magistrate of Calcutta of sedition under section 124 A, I.P.C., in respect of an article published in the issue of that paper, dated 26th November, 1937 (Town Edition).

—Vide *The Calcutta Weekly Notes*, Vol. XLII, 1937-38, No. 39, dated 22nd August, 1938.

² Criminal Appeal No. 161 of 1938, against the judgment of the Chief Presidency Magistrate referred to in the previous footnote. *Ibid.*

³ Mr. Justice Bartley and Mr. Justice Khundkar. *Ibid.*

⁴ *Ibid.*

⁵ See *The Statesman* of May 24th and 25th, 1939, Dak Edition.

⁶ Against Hemendra Prosad Ghosh and Sashi Bhushan Dutt, the editor, and the printer and publisher respectively of the Bengali daily *Dainik Basumati* (Calcutta).

⁷ See *The Statesman* and *Hindusthan Standard* of 8th June, 1939, Town Edition.

⁸ The Chief Justice, Mr Justice Nasim Ali and Mr Justice Rau. *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

this connexion to Sections 49, 50, 51(1), 53, 59(1) and 59(3) of the Government of India Act, 1935, and also to the definition of the word "Government" as given in Section 17 of the Indian Penal Code, and to have remarked *in essence* as follows:

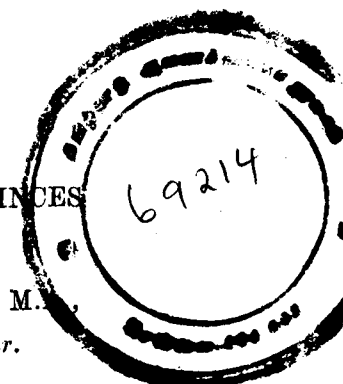
'There is no specific provision in the Government of India Act, 1935, or in any other Statute or Act, vesting the Ministry with executive functions. On the other hand, such functions "shall" in the words of Section 49 of the Act be exercised by the Governor either directly or through officers subordinate to him. The use of the word "aid" in Section 50 of the Act does not, in His Lordship's view, vest the Ministers with any right to exercise authority since such a construction will be contrary to the clear provisions in Section 49. Nor can the Rules for the transaction of the business of the Government of Bengal made under the Act override or alter in law those clear provisions. Again, the Instrument of Instructions, which cannot be and does not purport to be in contradiction of the Act, clearly contemplates the Governor as exercising the power conferred on him (save where in certain specified instances he acts alone), "guided by the advice of his Ministers." The Instrument of Instructions contemplates the Governor and not the Ministers exercising the executive authority. The position appears to be that unless the Ministry can be held to consist of officers subordinate to the Governor within the meaning of Section 49 of the Act, it cannot exercise executive functions. In His Lordship's view, Ministers chosen from the elected representatives of the people of the province for the purpose of carrying into effect, if possible and within the prescribed limits, their wishes and acting as advisers to the Governor, cannot be described as "officers subordinate to the Governor," within the meaning of the Act. It follows, therefore, that although in popular language the Ministers may be referred to as "Government," they are not "Government" within the meaning of Sections 17 and 124A of the Indian Penal Code. Whatever may happen in practice, *the Ministers are in law the Governor's advisers*. For these reasons His Lordship is of the opinion that the answer to all the three questions put to the Court is "No."

Thus the Calcutta High Court has defined the present legal position of the Ministry in Bengal. It is hardly necessary to add that this definition is of great constitutional importance.

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III THE CENTRAL PROVINCES

BY
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During the six months under review (January—June 1939), there was only one session of the Legislative Assembly. Although it was a Budget session, it was crowded with a number of legislative measures which could not be introduced earlier as the usual winter session had not been held this year.

Dr. Rao's eligibility.

An interesting discussion took place when a member questioned the eligibility of Dr. E. Raghavendra Rao (then Adviser-designate to the Secretary of State for India) to sit in the Assembly on the ground of his appointment. Dr. Rao attended the session on one day for five minutes to mark his presence. The contention was that Dr. Rao should be disqualified to sit in the Assembly under Section 69 (i) (a) of the Government of India Act, 1935, as he would be holding an office of profit under the Crown. The supporters of Dr. Rao objected to the question being asked in his absence, and (when the objection was disallowed) contended that the Section under discussion related to "an office of profit under the Crown in India" while Dr. Rao would be holding office in England and his salary would be a charge on the British Exchequer. They further submitted that at the time of the discussion, the appointment had only been announced, not actually held. Those who urged for disqualification pointed out that the "Crown" in India and the "Crown" in England were not two different things, that the appointment was for India if not in India and that it was as good as having been accepted. The Speaker, however, held that there was no positive ground shown on which it could be held that Dr. Rao had incurred the disqualification under the aforesaid Section and that he was therefore entitled to continue to sit in the House.

Provisional Consent for Adjournment Motion.

Another interesting point regarding the privileges of a Member arose in connection with the New Assembly Rules. Under Rule 99, a member wishing to move an adjournment motion has first to obtain the provisional consent of the Speaker at least an hour before the sitting begins. This given, the member concerned has to ask for leave of the House to move the motion. Notwithstanding the fact that the Speaker has given the provisional consent, he may, after hearing the members who object

102

D. K. GARDE

to the motion being moved, disallow the motion. If the provisional consent is not given, then the motion cannot come before the House. Thus the mover of an adjournment motion has to cross two barriers before he is able to table his motion.

In several cases, the Speaker refused to give his provisional consent. A point of order was raised if the intending mover was entitled to know the reasons for the refusal *on the floor of the House*.

The Speaker gave a ruling that, by the very implication of his refusal to give provisional consent, he was forbidden to state any reasons. If the provisional consent was refused, it meant that, in the opinion of the Speaker, the subject was such as could not come before the House in any shape or form. If the Speaker gave reasons he would be required to bring part or whole of the adjournment motion before the House, in order to show what factors weighed with him in withholding his provisional consent, and thus defeat the very object of the rule relating to the provisional consent.

Does Walk-out Mean Disrespect to the Speaker ?

On several occasions during this session, a walk-out was staged by certain members. On one occasion, the leader of the Muslim League Party (which had resorted to a walk-out on the previous day) found it necessary to explain that their intention was not to show disrespect to the Chair, but that it was merely a protest against the Government's attitude of persistent indifference to their interests.

New Taxation Measures.

A remarkable feature of this session, as pointed out already, consisted in the numerous taxation bills hurriedly passed into law. The object of levying additional taxes was twofold: to finance new schemes of development and to make good the loss resulting from prohibition. Among these measures may be cited the *Stamp (Amendment) Act* [seeking to enhance the rates of stamp duties on the lines of similar legislation enacted in Bihar whose conditions are most comparable to ours], the *Motor Vehicles Act* (enhancing the registration fees for private motor cars), the *Motor Lubricants Act* (enhancing the tax levied on the sale of motor spirits and lubricants by 3%), the *Factories (Amendment) Act* (levying fees on the inspection of factories) and, last but not the least, the *Tobacco Act*. These measures will be in force for one year and are expected to augment the provincial revenue by about 10 lakhs.

Non-Financial Legislation.

Among the other bills passed into law are the *Prisoners Bill* [permitting a parole of ten days to certain well-behaved persons],

the *Prohibition (Amendment) Bill* [prohibiting liquor advertisements in the province], the *Local Self-Government (Amendment) Bill* [placing certain servants of local bodies such as secretaries of District Councils and Local Boards, District Engineers and Supervisors, Overseers and Sub-overseers, Educational Inspecting Officers, etc., in the category of "public servants"], the *Primary Education (Amendment) Bill* [giving the right of initiative to Government as well as local bodies to expedite the introduction of Compulsory Primary Education] and the *Debt Relief Bill* [replacing Debt Conciliation Boards, which had inadequate powers to deal with recalcitrants and depended on the consent of the creditors, by courts.]

Two other bills which were passed into law deserve special mention: the *Money-lenders (Supplementary) Bill* and the *Municipalities (Amendment) Bill*.

The *C. P. Money-lenders (Second Amendment) Act* which sought to relieve the burden of debt from the shoulders of poor cultivators could not be of practical use to the latter as the Nagpur High Court had held that it was not retrospective in operation (*i.e.*, it could not be applied to cases arising before 19th March, 1937) as it did not explicitly mention this fact. The *Money-lenders Bill, 1939*, therefore laid it down that the aforesaid Act should be deemed to be in force from April 1935, thus extending the benefit of its provisions to a longer period.

A revolutionary measure in Local Self-Government.

The *Municipalities (Amendment) Bill* is doubtless an unprecedented and revolutionary measure. It provides for the direct election of the President of the Municipalities by the general body of voters (on the lines of the American City Manager). The President thus elected is to nominate his two Vice-Presidents. Another revolutionary feature is that a vote of no-confidence by a simple majority of the Municipal Members is enough to remove the President (hitherto it required a two-thirds majority). In the event of a no-confidence motion being carried, the President, in order to check malicious propaganda resulting from personal animosities, is entitled to demand from the Provincial Government a dissolution of the Municipal Committee. This would deter the latter from practising frivolous pranks; but it might result in guerilla warfare: instead of bringing a direct vote of censure against the President, the members may try obstructionist tactics and make it impossible for him to work. In such a case, the President has been shown a way out of the impasse. He may resign and seek re-election. If re-elected, he is entitled to demand, as of right, a dissolution of the Municipal Committee.

This bill, while on the anvil, was subjected to severe criticism. It is not safe to rely on direct election when the mass of voters are ignorant and illiterate. To leave a directly elected President to the mercy of a vote of no-confidence by a simple majority of

or nearly the same level of social efficiency; and argues that although the age of expansion on the vertical plane has gone for good, the expansion on the horizontal plane is as active, is indeed more active to-day than ever before, and continues to provoke furious struggles.

And this brings Dr. Bonn to the main problem. Although "the picture of a world divided between saturated and non-saturated Powers which confront one another, more or less angrily, is scarcely accurate," a large group of states being largely content and having no ambition either to establish or to maintain an empire; yet the division between the 'have' and 'have-not' powers exists. Can territorial discrepancies between these two sets of powers be equalised by some peaceful means, as for example, economic co-operation, ultimately leading to some sort of federation, at first only between contiguous groups with a common background and then enlarging itself so as to include perhaps the whole world? Or must these territorial inequalities between the various Powers inevitably lead to a violent period of territorial redistribution, breaking up old empires and forming new ones on their ruins?

"The choice," says Dr. Bonn, "lies between conquest and federation; or rather between compulsory and voluntary federation," for the ultimate solution must be found in federation. It is true that peaceful federation depends on far-reaching like-mindedness between possible partners. Societies representing antagonistic economic principles can seldom be brought into a single federation; and to-day the European world is emphatically divided into the Socialist and the Fascist economic blocs, animated by divergent economic ideals and pursuing opposite political ends, with the result that although 'Pan-Europa' is a pale shadow, 'Mittel-Europa' is a concrete policy. But the important thing is to realise that the day of a federated Central Europe is bound to soon come; and what really matters is the choice of the means by which it shall be achieved. "Federations have been set up by aggressive conquerors after they had forced the owners of rich provinces into an unwilling partnership, in order to draw tributes from their taxes and profits from the exploitation of their wealth. Or they have been established by voluntary incorporation, under which regional and racial rights were scrupulously respected." The means by which federation would ultimately come will decide the future of the old continent.

Such is the argument of Dr. Bonn's fascinating survey of the rise and fall of empires. We must add that it is a most welcome publication, coming when it does. It is as timely as it is brilliant. There are certainly passages in the argument to which it is possible to take exception; but the argument as a whole has been stated with undoubted ability and skill, and deserves to be widely read in this country.

BOOL CHAND.

Municipal Members is improper and will tend to beset the path of Municipal administration with numerous obstacles. A dissolution may not always be the proper remedy, nor will its threat necessarily act as a wholesome check on the vagaries of the Municipal Committee, for the simple reason that there is no well-developed party organisation in local bodies. As for the President's resignation and re-election, it is a long purse, not ability, which will often decide the issue. Lastly, what will be the position of the two Vice-Presidents? Will they also resign with the President and bank on re-nomination at his hands? And if one or both of them have to be removed, will it necessitate a vote of no-confidence even on an otherwise tolerable President?

Most of these objections were raised; an attempt was also made to stay the legislation by circulating the measure for eliciting public opinion—but to no purpose. The bill was rushed through, as the session came to a close, with the sure and solid support of a clear majority. It will be interesting to study how far it succeeds in actual working.

Non-Official Bills.

Among the non-official bills passed into law, the one which deserves special mention seeks to amend the Legal Practitioners' Act by circumscribing the provisions regarding the suspension or dismissal of legal practitioners to *professional misconduct* only. It will be remembered that several legal practitioners were served with notices for participating in the Civil Disobedience Movement during 1930-31. This amendment will give adequate protection to those who participate in politics.

Limits of Party Discipline.

One of the interesting points that arose but remained undecided during the period under review related to the extent to which a Party could exact submission from its Members. Mr. T. J. Kedar, a prominent member of the Congress Assembly Party, subjected the Congress Ministry to a severe attack on the floor of the House during the general discussion on the budget. This gave rise to a proposal in the party to take disciplinary action against him as he was expected not to do or say anything that would place the Ministry in an embarrassing position. Mr. Kedar's contention was that a Party Member is subject to its decisions only so far as voting is concerned, and that he has every right to express his views on the floor of the House, especially on matters which were not previously submitted for approval in a Party meeting. Hence, in doing so, a Party Member should not be charged with disloyalty or indiscipline.

REVIEWS

THE CRUMBLING OF EMPIRE, THE DISINTEGRATION OF WORLD ECONOMY —by M. J. Bonn (Allen & Unwin, 1938). 15 shillings.

The argument of this fascinating book is that after centuries of struggle for empire and colonisation there is in operation to-day a reverse process, which Dr. Bonn calls by the name of 'counter-colonisation.'

This process actually started, in the author's view, as early as the Declaration of Independence by America. The scramble among the Powers for the remaining unclaimed parts of the earth in the last quarter of the nineteenth century had blinded peoples' eyes to the fact that the age of colonisation was over. But as a matter of fact, the opportunities for colonial expansion had already greatly contracted; and anyhow, the real value of colonies had greatly diminished on the failure of the Mercantile system of colonial administration. The 'Rising of Nations,' moreover, was not confined merely to those overseas countries which were held in subjection by foreign masters; but the foundations of sovereignty were shaking in practically every composite European state. Thus, after the War three great vanquished empires crumbled under the impact of the forces of disintegrating nationalism, which proceeded to attack victors and neutrals alike.

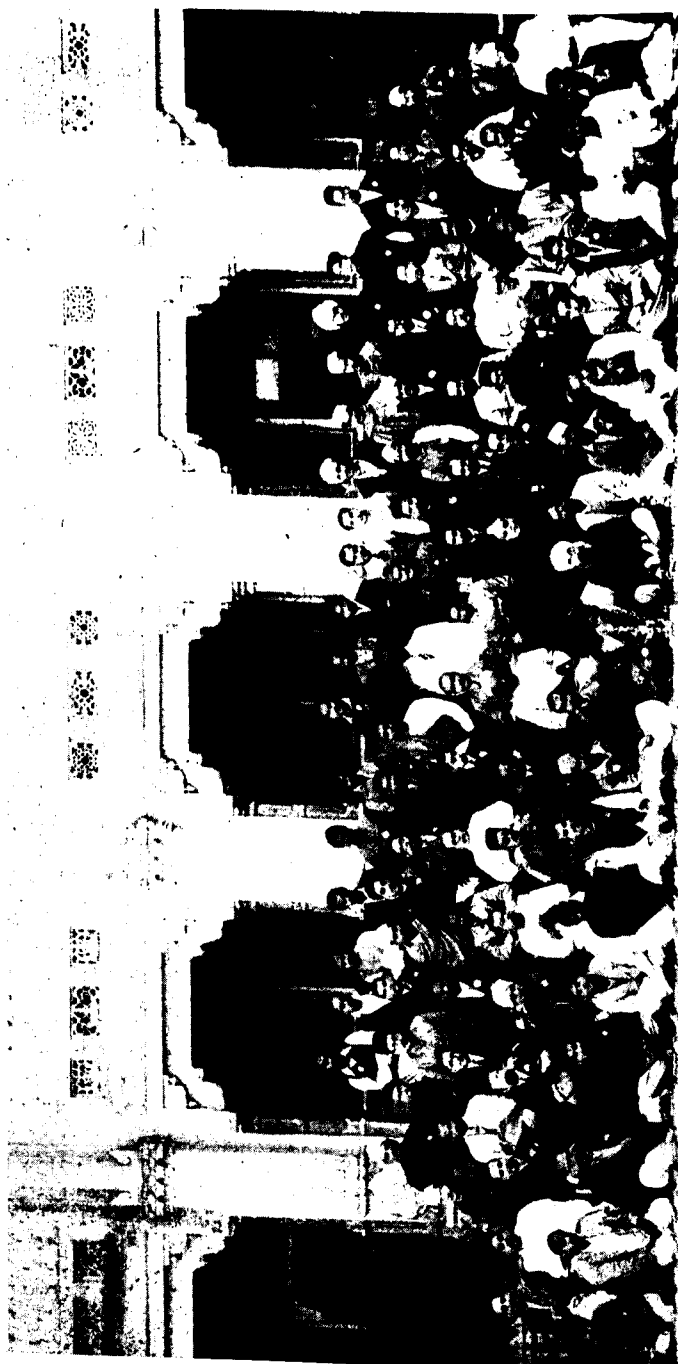
The process of counter-colonisation is strengthened, the author argues, by "the belated efforts of hungry Powers at empire-making." Thus, "the pressure of the Jews in Germany and Poland, which accelerated the influx into Palestine, has fanned an Arab revolt in that country, while Italy is backing a Pan-Arabic movement against her more fortunate rivals." Discussing the three 'Have-not' countries, Japan, Italy, and Germany, Dr. Bonn says that Japan in her war on China is trying to make up her manifest failure in colonisation by conquest on a colossal scale, the success of which may entail 'the final collapse of Western imperialist rule east of Singapore;' Italy by her conquest of Abyssinia wanted to show the world at large that they were the scions of the mighty Roman race; and Germany is hoping to become "the centrepiece of middle European federation." It is of interest to note that this sentence was written before the German march into Austria.

All this analysis leads to the conclusion that while the age of colonisation is gone and the age of counter-colonisation has set in, there is yet a species of expansion increasingly noticeable in the world. Dr. Bonn, indeed, proceeds to make a distinction between vertical expansion, which comprehends the conquest of more or less backward societies by the advanced European countries, and the horizontal expansion, by which he means the conquest or incorporation of countries that have reached the same

THE FIRST INDIAN POLITICAL SCIENCE CONFERENCE
BENARES HINDU UNIVERSITY

22ND, 23RD & 24TH DECEMBER

1938



THE FIRST INDIAN POLITICAL SCIENCE CONFERENCE

BY

PROFESSOR GURMUKH NIHAL SINGH,
Benares Hindu University.

I

The First Indian Political Science Conference was held at the Benares Hindu University on the 22nd, 23rd and 24th December, 1938, on the kind invitation of Pt. Madan Mohan Malaviya, the Vice-Chancellor of the University, and under the general presidency of the Hon'ble Pt. G. B. Pant, the Prime Minister of the United Provinces.

The need for starting the Indian Political Science Association, and, under its auspices, an annual conference, had been felt for a long time but the actual decision to do so was made at Lahore, in the house of Principal G. D. Sondhi, in May 1938. A Provisional Committee was formed consisting of Messrs. A. R. Wadia (Mysore), Beni Prasad (Allahabad), Benoy Kumar Sarkar (Calcutta), D. N. Banerjee (Dacca), E. Asirvatham (Madras), G. D. Sondhi (Punjab), M. Habib (Aligarh), M. Venkatarangaiya (Andhra), Narendra Deva (Kashi Vidyapith), P. A. Wadia (Bombay), V. S. Ram (Lucknow), Y. Prasad (Agra) and Gurmukh Nihal Singh (Benares), with the last-named as Convenor. A circular letter was issued at the end of August 1938, inviting the cooperation of professors and public men and of others interested in the scientific study of public affairs and problems of political theory and of administration. The response was immediate and gratifying and as a consequence it became possible to hold the Conference in December, 1938.

II

The First Indian Political Science Conference was inaugurated at the Benares Hindu University in a huge pandal on the 22nd December, 1938, at 11 A.M., by Pt. Madan Mohan Malaviya. There was a large and distinguished gathering to witness the opening consisting of the Hon'ble the Minister of Education, U.P., several M.L.A.'s, Professors of the University and members of the local gentry besides the delegates from the Indian Universities. With the exception of Annamalai, Osmania and Travancore Universities all the other Indian Universities were well represented.

The President, the Hon'ble Pt. G. B. Pant, inspected the Guard of Honour furnished by the U.T.C. and took the Salute before entering the Conference Pandal. The proceedings began

with the singing of the *Bande Matram* song. The Chairman of the Reception Committee, Pt. Madan Mohan Malaviya, welcomed the President and the delegates and spoke briefly of the urgent political problems facing the country which required careful study and thinking on the part of Political scientists and savants. He concluded by expressing his firm and fervent faith in the early achievement of complete national freedom. The Hon'ble the Premier next delivered the Presidential Address, *ex-tempore*, in which he referred to the unsatisfactory state of political theory and preached the ideal of the Service State. The opening session concluded with a vote of thanks to the President by the Secretary.

After a group photo the delegates were entertained at a public lunch given by the Reception Committee. The delegates then left for Sarnath in buses and there saw the archaeological excavations of the old Buddhist monastery, the great Central Temple of the Buddhists built recently and the museum containing the finds from the site. The delegates were conducted over the site in two parties under the charge of Drs. Altekar and Tripathi of the Department of Ancient Indian History and Culture of the University. After the visit to the temple and the museum there was an At-Home on the beautiful lawns of the Museum given by the Reception Committee.

At 5-30 p.m. was held a public debate under the auspices of the University Political Science Association on the subject of "Socialist vs. Bourgeois Democratic Revolution in India" in which notable contributions were made by Professors Venkatarangaiya (Andhra) and A. R. Wadia (Mysore). Dr. E. Asirvatham then spoke on Democracy and the first day's programme concluded with a public lecture by the Hon'ble the Premier of the U. P.

III

The next day's programme began at 8-30 A.M. with the General Business Meeting, under the chairmanship of Dr. Tara Chand (Allahabad), in which the Indian Political Science Association was formally instituted, a short constitution of the Association provisionally adopted and the following Executive Committee unanimously elected:—President—Dr. P. N. Bannerjee (Calcutta); Vice-Presidents—Drs. Beni Prasad (Allahabad) and V. S. Ram (Lucknow); Treasurer and Secretary—Mr. Gurmukh Nihal Singh (Benares); Members—Messrs Venkatarangaiya (Andhra); Shanti Narayan Varma (Agra); A. A. Puri (Aligarh); S. Srinivasachari (Annamalai); D. G. Karve (Bombay); D. N. Bannerjee (Dacca); Bool Chand (Delhi); E. Asirvatham (Madras); A. R. Wadia (Mysore); A. Sen (Nagpur); Abdul Qadir (Osmania) and Mr. R. K. Saran (Patna).

The invitation of the Punjab University for the next session was gratefully accepted and Principal G. D. Sondhi was elected Local Secretary, with a seat on the Executive Committee.

The Business Meeting also constituted the Editorial Board of the Association Journal and passed resolutions requesting the Central and Provincial Governments to supply Government reports free of cost to the Indian Universities and to include Political Science among the subjects prescribed for competitive examinations. Among other resolutions was one conveying thanks to the Government of the United Provinces for its grant of Rs. 300 towards meeting the expenses of the Conference.

IV

The Provisional Committee had met on the afternoon of the 22nd December at Sarnath and had decided to divide the work of the Conference into three sessions, each to be presided over by Dr. Beni Prasad (Allahabad), Dr. V. S. Ram (Lucknow) and Dr. P. N. Bannerjee (Calcutta) respectively. The first session was to deal with problems of Political Theory; the second with International Affairs and Questions relating to the projected Indian Federation; and the third with Problems relating to the Provincial Governments in India.

The first session began on the 23rd December at 10-30 A.M. with Dr. Beni Prasad in the Chair. There were altogether 14 papers for this session out of which three "The Nature of Sovereignty" by Mr. Menon (Lucknow); "Demo-Despotocracy" by Dr. Benoy Kumar Sarkar (Calcutta); and "Muslim Political Theory of Rebellion" by Mr. Abdul Qadir (Osmania) were taken as read owing to the absence of their authors. Mr. D. N. Bannerjee (Dacca) then gave the salient points of his paper on "A Plea for Austin." In the discussion that followed Drs. Asirvatham (Madras), Tara Chand (Allahabad), B. M. Sharma (Lucknow) and J. N. Khosla (Punjab) participated. Next Mr. Krishna Rao (Mysore) gave a summary of his paper on "Pluralism" followed by Dr. Asirvatham (Madras) who summarised his paper on "A Vindication of Idealism." There was considerable discussion on the two papers of Mr. M. Sultan (Lucknow) "Islamic Political Philosophy and Communism" and Dr. P. S. Muhar (Lucknow) "Political Philosophy of Sir Muhammad Iqbal" in which Dr. A. A. Puri (Aligarh), Mr. Sri Ram Sharma (Lahore) and Mr. R. L. Sethi (Lahore) took part. Dr. Tara Chand (Allahabad) then spoke on the Present Predicament of Political Theory and Mr. S. V. Puntambekar (Benares) summarised his paper on the "Rôle of Myths in Political Thought." Messrs Khosla (Punjab), R. K. Saran (Patna) and Gurmukh N. Singh (Benares) participated in the discussion that followed. For want of time the two papers on Democracy were postponed and the session concluded at 1 P.M.

The second session of the Conference began at 2 P.M. after lunch provided by the Reception Committee. Dr. V. S. Ram (Lucknow) who presided summarised his paper on "The Future of the League of Nations" followed by Dr. B. M. Sharma

(Lucknow) who read extracts from his paper on "The Organisation of International Peace Through Technical Cooperation between Nations." Next Dr. C. N. Menon (Benares) summarised his paper on "Indians in Ceylon." There was no discussion on these three papers except the remarks made by the Hon'ble Mr. P. N. Sapro (Allahabad) on the position of Indians in Australia. The paper of Mr. K. K. Bhattacharya (Allahabad) on "Paramountcy" followed by that of Mr. Krishna Rao (Mysore) on the same subject, however, aroused a good deal of discussion in which the Hon'ble Mr. P. N. Sapro and Mr. Gurmukh N. Singh (Benares) participated. Next Mr. K. K. Bhattacharya (Allahabad) gave short summaries of his two papers on "Reforms in Indian States" and "Indian States: Their Legal Status and Sovereignty." Mr. Gurmukh N. Singh (Benares) next summarised his two papers on "The Genesis of the Indian Federation" and "The Nature of the Projected Indian Federation" and in the discussion that followed Mr. B. N. Bannerjee (Calcutta), Mr. Venkatarangaiya (Andhra), the Hon'ble Mr. P. N. Sapro and Dr. Gyan Chand (Patna) took part. The session came to an end at 4 p.m.

Between 4 and 5 p.m. there was the Vice-Chancellor's At-Home to the Delegates of the Conference which was attended by a large number of members of the staff of the University. At 5 p.m. Dr. Puri (Aligarh) gave a public lecture on "The Contribution of Islam to Indian Culture" which was presided over by the Hon'ble Mr. P. N. Sapro.

The delegates were entertained at Dinner by the staff and students of the Engineering College, who were celebrating their Annual College Day.

V

On the 24th December, the programme began at 8 a.m. with a boat trip on the sacred Ganges and a visit to the famous ghats and temples of Benares.

The third session of the Conference commenced at 12 noon under the presidentship of Dr. P. N. Bannerjee (Calcutta). The following papers were taken as read:—Dr. Bool Chand (Delhi) "How will Conventions arise in the Indian Constitution?"; Mr. Avasthi (Nagpur) "Khare Episode"; Mr. Dip Chand Varma (Lakhaoti) "Provincial Governments and Party Organisation"; Mr. P. J. Jagirdar (Wardha) "Reorganisation of Rural Local Self-Government in the C. P. and Berar"; Mr. S. K. Sharma (Lucknow) "The Chairman in the District Boards of the U. P."; Mr. K. M. Muniswami (Annamalai) "Local Finance in Rural Areas of South India"; Mr. H. Krishna Rao (Mysore) "The Problem of Franchise in India"; Dr. B. K. Madan (Lahore) "Some Financial Aspects of Provincial Autonomy"; Mr. P. S. Narayan Prasad (Poona) "Fiscal Reforms in the Provinces: A

Plea for Cooperation"; and Messrs Narayanswami and Ramkrishna Aiyya (Annamalai): "Prohibition."

The work of the session began by the summarising of the following four papers by their respective authors:—"Lessons of the Constitutional Crisis" by Mr. K. V. Punniyah (Andhra); "Constitutional Development in the Provinces through Conventions" by Mr. N. N. Ghosh (Allahabad); "Constitutional Deadlocks and Conventions" by Mr. M. B. Lal (Benares); and "Recent Rulings in the Bengal Legislature" by Mr. B. N. Bannerjee (Calcutta).

Next Mr. Gulshan Rai (Lahore) and Mr. Sri Ram Sharma (Lahore) summarised their papers on "Provincial Governments and Party Organisation" and "Provincial Governments and their Relation with Parties" respectively and in the discussion which followed Dr. Khosla (Punjab), Mr. T. D. Bedi, I.C.S. (Hissar), Dr. B. M. Sharma (Lucknow), Mr. S. V. Puntambekar (Benares) and Dr. Gyan Chand (Patna) took part. There was no discussion on the papers on Local Self-Government which were summarised by their respective authors. Summaries were given by Mr. Venkatarangaiya (Andhra) "The Reorganisation of Local Self-Government"; Mr. S. K. Lahiri (Calcutta) "The Future of Local Self-Government" and Mr. Mukut Behari Lal (Benares) "The Reorganisation of Municipal Services." There was, however, a good deal of lively discussion on the papers of Mr. S. V. Kogekar (Poona) "Indian Speakers and Party Politics" and Mr. Gurmukh N. Singh (Benares) "The Speaker and his participation in Politics" in which Messrs K. K. Bhattacharya (Allahabad), the Hon'ble Mr. P. N. Sapro, Dr. Beni Prasad (Allahabad), Mr. Sri Ram Sharma (Lahore), Dr. Gyan Chand (Patna) and Mr. M. B. Lal (Benares) joined.

VI

At 3-30 p.m. the last session concluded and a short sitting of the general Business Meeting was held in which the Provisional Committee was formally dissolved and a vote of thanks to the Secretary and his colleagues, including the volunteers, and to the Vice-Chancellor of the University was passed.

At 4 p.m. an At-Home was given to the Delegates to the Conference by Rai Govind Chandra, M.A., M.L.A., which was largely attended by the local gentry and the professors of the University. The At Home was followed by a public lecture by Professor A. R. Wadia (Mysore) which was presided over by Mr. N. Srinivasan (Andhra). They had both submitted papers on Democracy—entitled "The Dilemma of Democracy" and "Democracy Today" respectively—which could not be taken up for discussion on the 23rd morning for want of time. Their views "On Democracy" were appreciated by the audience and the Conference ended by a vote of thanks proposed by the Secre-

tary to the lecturer and chairman of the evening and to the delegates who had come from long distances to join.

Several of the delegates left by the evening trains but those who were able to stay were entertained to a variety show by the students of the Engineering College held in connection with the celebrations of their Annual College Day.

VII

The Presidential Address and a few selected papers are being published in the Journal. I regret that arrangements could not be made to print all the papers.

The Second Conference will be held at Lahore on the 2nd, 3rd and 4th January, 1940, a fuller notice of which is printed elsewhere in this issue.



CHAIRMAN OF THE RECEPTION
COMMITTEE IN HIS AT HOME
TO THE DELEGATES OF
THE CONFERENCE.



CONFERENCE SESSION.



CONFERENCE DELEGATES
AT LUNCH.



OPENING OF THE CONFERENCE
WITH BANDE MATARAM SONG.

PRESIDENTIAL ADDRESS

BY

PANDIT G. B. PANT.

The following is the presidential address of the Hon'ble Pandit Govind Ballabh Pant, Prime Minister, United Provinces, delivered at the All-India Political Science Conference held in the Benares Hindu University on December 22, 1938:—

I am grateful to the organisers of this conference for having invited me to meet you here at the inaugural function this morning. I was conscious of my limitations and I made it plain to them not to expect anything from me, yet they thought that my presence would at least enable the delegates to bring into relief the difference between a politician and a student of political science, and in order to expose the ignorance of the former and the learning of the latter, they thought that I would be a good contrast. I am here to serve that purpose and I hope I will serve it effectively and well.

It is really embarrassing to speak to experts on subjects in which they have specialised. Politicians are neither lacking in impudence nor in adventure, but they are not a match for experts. Therefore, in spite of their unfailing failings they sometimes have to act up to the principle which gives preference to prudence. But I had to submit, and I am here for whatever use you can make of me.

Psychological Moment.

I find that since I agreed to attend this conference, my position has become still more responsible. I do not protest because my entreaties would have been equally fruitless, whether you invited me to inaugurate the conference or whether you asked me to preside over it. It is for you to carry on your deliberations, to reach results and to teach us, the politicians, some lessons. I have come here, I think, more with a desire and in the hope that I will learn, and perhaps I may have to unlearn, some lessons. So, I think, with this word of caution I can now advance and make a few observations.

This conference has assembled here at, what I regard, a psychological moment. Whether looked at from the national or from an international point of view, this is just the appropriate time for those who are in a position to examine the postulates on which political science rests or is supposed to rest. I myself, as I will indicate later, do not see any pillars on which political science can claim to have its foundation or its basis. Perhaps it is a misnomer to call political science a science by it-

self, and a conference which has to deal with problems that are supposed to fall within the purview of political science is primarily one, I assume, for examining the political position and for examining the monstrosities that are being committed in the name and under the garb of political science and for, I hope, finding proper, wholesome and effective remedies for the political ills of the day.

Changing Times.

I said that it was a very opportune moment for a conference of this type. All that philosophers and statesmen held as of eternal value in the past is now being thrown into the melting pot. The old order is crumbling and one sees that the values which dominated human conscience in the past are now being turned upside down. One finds that the postulates which were believed to be the basic foundation of political principles are themselves being thrown to the dunghill. In the circumstances, it is desirable that the students of political science should ponder, reflect and find out appropriate remedies.

Apart from that, India is going to attain its full nationhood very soon. I am one of those who believe that independence is coming and nobody can impede us in our march towards our goal. I heard the very pathetic and inspiring speech of Pandit Malaviyaji just now. It is a pity to a young man sitting by his side when he sees him pouring out his grief, his feeling of disappointment for the delay and his anxiety to march ahead fast and rapid, as quickly as human brain, ingenuity and resources can enable us to march. I felt for the time being that the chair was not a place for a man like me, or even any one of us, but at the same time I felt that the dream which he had cherished all his life is going to manifest itself in a concrete shape very soon. (Hear, hear.) I hold and I am confident that no power on earth can to-day stand in the way of our full self-realisation. I think it is in our hands, it is before us; only we have to create order out of disorder amongst ourselves. Once we do that, no outside authority can stifle our growth or hamper us in any way on our march onward.

Method of Approach to Problems.

I think it is time that the professors and teachers should apply their mind to concrete problems in order to prepare ourselves for what we have to do after the day of redemption, which, as I believe, is close by.

But what should be our approach towards political problems? How are we to separate the substance from the dross, and what is the real factor in what is known as political science? That seems to be the fundamental problem to which, I believe, the conference will at the outset apply itself.

In reality nobody can think of political science as a science in the same way as chemistry, biology, psychology or mathematics, is a science, because it has to deal with the complex problems of human life and we cannot deal with human affairs on a static basis. The basis of society is dynamic and change is the order of the day. Apart from that the data on which certain conclusions are based at a certain stage are themselves exploded by the time you come to apply them to the real facts.

So, I think, it is worth while considering what is the real scientific element in political science. What is it that we can regard as eternal? What is it that we must guard against?

Divine Theory.

If you look at historical developments in the political field, there was a time when the state was identified with religion and that was supposed to be its vital principle. The king was the representative of God. We had to respect the one and obey the other not because one or the other represented any ideals of collective wisdom, but because God had ordained like that and it was our duty to do so.

But when we advanced further we found that religion and politics had little to do with each other and in fact that is the main tragedy of the present situation. In our country we are still mixing religion with politics and we have not yet learnt to differentiate between politics and religion. But we have to confess that there was a time when religion was supposed to be a vital element in a state and the king was to be guided by its precepts and the laws were to be based on religion.

That was the first stage, if I may say so, and yet people at that time would have asserted with perhaps complete confidence and certainly with emphasis that that was the fundamental principle of political science, that the state was a creation of spiritual forces and that man should obey the law not because it was intended to fulfil its destinies, but because it carried out the will of God as reflected in its scriptures. But that has been exploded and nobody except a few believe in that principle today.

Later on, we had other stages. We had the ideal state and what was associated with it and that too was thrown overboard, because in affairs of life these things have to be studied not only subjectively but also objectively. The ideal state is an utopia; it may be of Aristotle or of Plato; but so far as realities go, the ideal state, which was interpreted in more ways than one, was soon found to be not a real process of any science whatsoever.

Later on, we saw another stage when individualism became the order of the day. 'Laissez faire' as much in economics as in politics was to be the guiding principle. Touch me not and do not touch others, the devil will take care of himself. That

seemed to be the principle. They thought that they were going to see the last era in political science; yet that was based on data which had now been found to be utterly unsound. In fact, the principle of competition has given place to the principle of co-operation. Nobody now holds that growth of population is bound to outstrip the growth of commodity. Nature is magnificent; its munificence is unlimited. So that we may have any number of people and, with the aid of science and technical processes, we can produce commodities which will be enough to make everyone happy, and yet enable us to leave something for those who come after us.

Human Heritage being Destroyed.

In the circumstances the very basis on which individualism existed disappeared and we find now that that anchor-sheet has vanished and political science has left off the old doctrine. We do not know what it is now. We have the League of Nations; we have collective security. But I should like to emphasise upon those who have come here that in this conference of political science I do not find any science anywhere and do not see any scientific basis for what is known as political science. Then what do we see? We see the people straggling all that man has regarded as his heritage, not under any disguise but with blatant shamelessness. Will those people who have the following of the millions in their respective countries tell us as to where your political science is going to lead us? Is that the destiny after all for which we have been working all these years? Are the states meant for this?

This is the question which confronts me. I turned to books of political science to seek an answer, but found nothing but chaos and confusion. But I believe I will have better luck here where I find such a galaxy of experts in that science if not in the art of administration.

What really seems to me to be evident—and the conclusion seems to be irresistible—is this, that political science can have no existence apart from human psychology and if you want to study political science you must study human psychology in relation to social problems: how man and humanity are co-related, how individual and society are connected, and how they react on each other and what should be the best system in which both the individual and the society may unfold himself and themselves to the fullest capacity and achieve the maximum without encroaching upon the field of one another.

Fundamental Principle.

The first thing that comes to me is that man lives not by bread alone. That is the fundamental principle of political science and if people were to place it before themselves they would solve many problems. If once man learns to care less for

his own self and more for others, the woes of the world will, I think, vanish. Misapprehensions will be allayed and fellowships established, and we will see all round us a fresh green field where there is enough of fresh air and nourishment for everyone.

So, I should think that we can find a solution for political misfortunes by perhaps throwing into the Ganges here, which is a sacred stream, many of the text-books on political science and if this is done, perhaps you will lay the foundation of a real working basis for political realisation. And what has been the tragedy of the world so far?—man preying upon man with all the ferocity and doing all that in the name of science, science which has given us more than anything. Science, which has given us means for the satisfaction of our material wants, has now become a monstrous engine of oppression because of the destructive use to which the discoveries of science have been applied. At least life would have been easier and less exposed to danger if we had properly applied science.

Social Service: Basis of Political Science.

What we have to remember is this: that science can have only one basis and that is service. If we want political science to serve the purpose for which it was designed, we should rise above our own. When we do that, we will usher in a new era. We will see competition replaced, as I said, by co-operation. We will see subjection and subordination giving place to freedom and national independence, and we will see mutual rivalry converted into friendship of a fruitful type. That should be the object of human endeavour.

If we look at things in this manner, we find that we have to work for a state in which moral values will have a supreme place, in which everything will be subordinated for a moral purpose and in which all that a man does, whether in his individual capacity or in co-operation with others, is directed towards one supreme purpose of social advance. The State can have only one objective before it and that is the maximum happiness of the community and, what is to be remembered, of every individual of the community.

Slavery.

The Greek politicians in the olden days thought that the institution of slavery was essential for the maximum good of the community. The people who settled in America thought that the institution of slavery was absolutely necessary at least for the southern states. What we have to remember now is that a state has not only to work for the maximum good of the community but that it can achieve it only by striving for the maximum good of every individual—the individual that forms the unit of the community.

For that we have to see that individual freedom is not stifled, that civil liberties of the right type are maintained, and what is still more necessary, that what is given with the right hand is not taken away by the left, that a man who is given the vote is in a position to exercise it not only as a citizen, but also as a citizen who is not subject to any economic thralldom of any other citizen and who is not forced to enslave himself to others.

Therefore, if we want the co-operative state in which the maximum effort is made to achieve the destiny of the people, then our endeavour should be to secure the maximum for every individual, and ensure a constitution in which every individual can exercise his free will freely, without being constrained by subjective factors over which circumstances have no control.

Genuine Democracy.

If these oppressing features are removed, then we have genuine democracy. On the one hand, we will have to give real liberty to every individual and we will have to see that the economic resources of the nation are so worked that every individual gets what he needs and that none is subjected to invisible control, which is all the more tyrannical, because it is not visible. If such a change can be brought about, I believe that the states will be in a better position to fulfil the purpose that they are ostensibly intended to serve.

But over and above all that you have also to bear in mind that economic relations now transcend geographical limits. When prices can go down in the village of Ramnagar or in the remotest corner of Benares as a result of world factors, we hope to see that the world will really be converted into a comity of nations, nations that joined nations for purposes political as well as economic, which would enable them to unfold themselves to their utmost to achieve the best in themselves and for humanity. The individual must be linked with the rest of the nation and the nation with all other free nations so that each may rise to the highest and fullest stature of which one is capable.

The Objective.

If that objective is placed by states before them, then all serfdom should cease and exploitation vanish. That is the moral purpose for which political science should exist, and if it does not exist for that, well, let us bury it altogether. We should place the objective before us on which this science is to be founded.

Let us take a vow that the freedom of every state, the independence of every nation, will be the objective of the science. Every individual will be guilty of heresy if he does not work and strive for the independence of every nation on the face of the globe, and, as charity begins at home, he must begin at the

place where he happens to be for the time being. So, that seems to me to be the 'sumum bonum' of political science.

Same Germs.

We hear of dictators and of fascism; we hear of other 'isms.' We hear of Mussolini and Hitler. But I tell you that the same germs are to be found all over Europe; they take different shapes at different times. Sometimes it is poison and at others it is massacre and at others it is very subtle, it is blood-sucking. But the basis is the same fundamental basis, and unless we purge the system of it, it will assert itself in so many various forms from time to time. We are ourselves victims to this disease and we are not struck by its monstrosity. It is said that Hitler is killing Jews and he is saying that; but others in the past could kill Jews without saying that; that is the difference.

The real remedy is to be found in the world realising that moral principles are not only to be initiated and defined in the halls of universities but to be acted upon in the battle-field of life. We must move forward with our two wings to attain real international freedom and brotherhood and a free voluntary federation of free peoples of the world. Every nation should join hands freely without the least pressure of one on another with the common object of elevating humanity to the highest summit—determined to put an end in every state to those forces which lead to disorder and result in exploitation and suppression, whether economic or political.

If this is realised, you will be putting an end to Fascism, Nazism and imperialism. The last is the poison which in course of time may give rise to other violent forms of that disease. These are the eruptions of the same venom in the system. The same germ is appearing in some form or other.

Those who are associated with political science should take a vow that they will achieve the real object; they will approach the real problems of life with courage so that all these evils are remedied and all that we desire is achieved. Let academic life be no longer isolated from the real currents of life. If you all who work in political science will have achieved this purpose, then I for one believe we will have achieved independence and Swaraj.

AN IMPORTANT NOTICE

The Second Indian Political Science Conference will be held at Lahore on the 2nd, 3rd and 4th January, 1940, under the Presidentship of Dr. P. N. Banerjee, M.A., D.Sc. (Econ.) (London), M.L.A. (Central), ex-Minto Professor of Economics, Calcutta University.

The subjects selected for discussion are:—

- (1) Recent Trends in Political Theory;
- (2) Working of the Central and Provincial Governments in India; and
- (3) International Relations and Affairs.

Papers, not exceeding 15 foolscap-size typed pages in length, should reach the Managing Editor, Indian Journal of Political Science, Allahabad University, Allahabad, before 31st October, 1939.

Further particulars regarding the Conference and the arrangements that will be made for the accommodation and board of delegates and visitors at Lahore will be supplied in due course by the Local Secretary. All enquiries in this connection should be addressed to Principal G. D. Sondhi, Head of the Department of Political Science, Punjab University, Lahore.

No separate fee for attending the Conference will be charged from members of the Indian Political Science Association, whose annual subscription is Rs. 10/-/- only.

Members are also entitled to receive the Indian Journal of Political Science without paying any additional subscription. Please enrol yourself a member by sending Rs. 10 by Money Order or Rs. 10-4-0 by cheque to the undersigned.

GURMUKH NIHAL SINGH,

SECRETARY AND TREASURER,

Indian Political Science Association,

Hindu University, Benares, U.P.

120

THE RÔLE OF MYTHS IN THE DEVELOPMENT OF POLITICAL THOUGHT*

BY .

PROFESSOR S. V. PUNTAMBEKAR,

Hindu University, Benares.

Political thought has developed along realistic, idealistic and utopian lines. In its realistic aspect it deals with what is, that is, the actual and the experienced as manifested in human history and behaviour. Here it tries to study facts and events of social life and to propound its theories so as to cover all their significance, forms and effects. In its idealistic aspects it deals with what ought to be, that is, the ideal, the rational and the metaphysical. Here the fundamental and ultimate values of human life are considered and their influence, force and logic of development are stated. In its utopian aspects it deals with purely imaginary, fanciful and romantic states of society which exist nowhere, but which are expected to guide those which exist towards reform. In all these various aspects of political thought political writers have indulged in and also seriously propounded a number of fanciful explanations and fantastic theories about the origin and nature of state and government, or of authority and freedom, which are purely fictional abstractions or myths. They are neither historically nor psychologically true. They merely represent the application of some contemporary beliefs or superstitions to the understanding and explanation of the political phenomena of the state, its why and wherefore, its origin, nature and forms.

A Myth is a fiction, not a historical or psychological or rational reality. It is either borrowed from religious beliefs or racial legends or created out of a mixture of truth and falsehood or out of some mystic intuition or insight of great men. It may give partial glimpses of reality or ideality, but it is not the whole substance or reality. It becomes a sort of mysticism and creates false ideals and formulas in explaining facts of human life. It is based on historical fallacies relating to the origin and authorship of the world and its nature and course of development,

* A paper read at the First Indian Political Science Conference, Benares, December 1938.

and on a pseudo-scientific logic created to explain them. It deals in arbitrary ends, origins and valuations of nature and humanity. It is a false or easy simplification of highly complex situations, phenomena and conditions. It results largely in a poetry of passion and attachment to certain preconceived notions about the world, society and the laws of human behaviour and its development. By its advocates it is considered something sacred, mystical or eternal. But it is mostly irrational. It is not based on human or historical experience. It creates the belief in the inevitability, finality and infallibility of its conclusions and explanations. But they are really convenient abstractions or fictions created by the writer's mind for his own purposes to justify his *a priori* beliefs or to promote his own ends or outlook. No doubt, they have temporarily guided human life, its thought and action in particular channels when they were taken to be the working hypotheses and theories underlying the course of human life, and have thus affected the course of human conduct and history. But they were given up, when old beliefs supporting them were discredited and new ones took their place. They only served as tools for men to achieve their purposes and became their political mythology of reaction or revolution. They are, however, important for the ideas which they produce and the changes they introduce in our political life.

The history of political thought and theories as a whole is spread over with the false valuations and discredited ruins of theories based on such myths and legends. They have played a great part in the development of political thought and historical action. No doubt, without them the novel-like variety and richness of political speculation, and the exuberant record of political conflict and cooperation could not be found in the history of our political theories and activities.

The early Christians inspired by their vague prophecies of the early reappearance of Christ, or the early Muslims by that of the Mahdi, and by the total, inevitable and desirable destruction of the pagan or Kaffir world, developed a doctrine and discipline that radically transformed their own and later generations, although the revelatory myth itself was never to be realised. The eighteenth-century political dogmas of freedom and equality were irrational and impossible, yet they radically modified the whole course of constitutional development in the modern world. Similarly the dogmas of dialectical materialism and its mythical historical constructions are creating a code of revolutionary conduct and anarchistic discipline amongst communists who are influencing and revolutionising the modern world.

Are these mythical or irrational speculations based on and supported by, a correct understanding of social events? They are not. Social events may occur out of some internal necessity or some external contingency or some inter-relationship between various factors. They contain elements of value based on human motives and purposes, their rational causes and effects and the inter-relations of other factors involved in them. They arise out of the challenge of environment and the response of man. No *deus ex machina* nor any single law or theory can explain their happening or course of action and development in detail, nor their psychological urge nor physical response. All necessity involved in social facts is merely conditional, not predetermined, and all value involved in them is merely a relation to human propensities, not moral.

The value of new political myths has been to destroy older myths by emphasizing some other aspects of human life which were ignored or suppressed by the older ones. Today, for example, we are obsessed with the myth of social organism or group, state or community. Personality and humanity which were emphasized in the middle ages are at a discount. Before the theory of progress arose we were falsely carried away by the notion of a golden age in the past and obsessed with and attracted by the myth and mythology of social contract created by Hobbes, Locke and Rousseau. It emphasized respect for the personality of the individual as against the patriarchal, paternalistic and divine right of rulers, who regarded society as a regal mechanism and considered men merely as subjects overruled by reasons of state. The myth of divine right of rulers was met and upset by that of the natural rights of individuals and the general will of groups. Today myths of *étatisme*, such as Fascism and Nazism, and of Communism, such as proletarian dictatorship, are replacing the myths of social contract and asserting the rights of corporate state or classless community as a whole against class interests and conflicts, group antagonism and individual exploitation.

We find from the beginning of political speculation a number of myths or constructions of thought which have moulded the actual politics and political thought of different peoples. The chief of these are the myths of a golden age in the past, of the divinity of rulers, of the divinity and primacy of priests, of the infallibility of prophets and their revealed dogmas, of the natural rights of man, social contract and general will, of the soul of a nation and the superiority of race, of the proletariat and general strike, of progress and dialectical materialism.

None of these myths which various political writers have propounded as political theories of correct value and application have been found justified. They do not cover all the political phases and aspects through which political phenomena and experience have passed, nor explain correctly and fully the origin, nature, scope and end of political authority and obedience, or the why and wherefore of the state, or in short the foundations and nature of political obligation.

The earlier myths have been proved wrong by the logical, historical and psychological criticism of political writers and by the rise of new myths supplanting them.

The myth of the golden age in the past led to the theory of anarchy or statelessness in the beginning of human society. Man was good by nature and like god. There were no evil propensities in him. He did not hurt others and had no greed for property and its possession. He lived peacefully, happily and harmoniously in society. Therefore, there was no need of government and governor, of punishment and punisher. Even the Marxists believe in such a state or stage of early primitive society, which is classless, stateless and propertyless. Now, this picture of man and a self-regulated society where peace, happiness and harmony reigned has been found historically and psychologically incorrect. No sane writer believes in it now. It is found to be a fanciful myth and all its illustrations and arguments to be a veritable mythology. This myth helped the later schools of social contract and anarchism in the development of their political ideas and theories.

The myth of divinity of rulers which prevailed amongst ancient and medieval monarchies and empires led to the theories of absolutism and to the doctrines of non-resistance. History and Logic have proved the divine origin of rulers and the divine sanction of their rule, good or bad, to be wrong. Consequently, their theories of royal absolutism, irresponsibility and legitimacy have now been exploded. But the myth still persists in the hereditary rights and irresponsibility of monarchs and princes in the modern world. Rulers as divine trustees, as Caliphs, as sons or representatives of gods and goddesses, still continue to hold people in subjection. Much of the sacred and profane literature of the early and middle ages shows what a firm faith writers had in this mythology relating to the origin of Kingship and to the sanction behind its office and power.

The myth of the divinity of priests has led to the conflict of Church and State, of *Brahma* and *Kshattria*, of Pope and Emperor, of Bishop and King in the pre-modern history of

mankind. The High Church theory of the absolutism of Popes and of the independence of the church was the direct result of this mythical conception of the origin and sanction of the priestly office. In India it took the shape of the legend that the Brahman was born first and that he came out of the mouth of the great God. Hence arose his primacy, trusteeship, supremacy and infallibility and also his consequent sacredness and immunity. Again, history has proved his claims as to his origin and powers to be hollow and even hurtful to social equality and harmony. But the myth has dominated all the time Hindu and Christian writings, and the common people have accepted its claims and followed its injunctions uptil now. In the middle ages a large number of writers advocated their theories of church and state on the basis of this myth without examining it historically or rationally. The political conflicts of the period were fought to support either the church or the state on the basis of this myth.

The myth of the infallibility of prophets and of their revelations has led to authoritarian conceptions of life, culture and institutions and has promoted crusades and jihads, inquisition and intolerance in political and civic life. Christianity and Islam have been typical exponents of this myth. They did neither believe in nor allow any freedom of thought, belief and institution outside their sanctioned revelations. Their polity was theocratic. They believed in a divine and determined order of life as laid down in their revelations. Human life had to be adjusted forcibly to it. The dogmas they laid down related to the principles of interpretation of all human thought, action and institution. Anything outside, above or against them was considered false, sinful, seditious and immoral. The keys of all heavenly and worldly knowledge and of all experience past and future were to be found in the revelations of their prophets. Modern historical, philosophical and scientific inquiry and criticism have shown that all these high claims are false, misleading and absurd. This myth of the infallibility of particular religions has suppressed human creative thought and action. The forces of rationalism, the doctrine of progress, the study of human history and the advance of science have sapped the foundations of this medieval myth and liberated the human mind in its forward march in the path of new thought and experience. This myth may have lifted men out of some older superstitions, but it also itself created a new myth and a new bondage preventing man's spirit from further inquiry and growth.

The myth of natural law and natural rights destroyed the old authoritarian myths of divine right of rulers, priests and

prophets and led to secular interpretations of problems of authority and obedience, and created the theories of social contract, general will and popular sovereignty, and the doctrines of resistance, revolution and fundamental rights. The law of nature was interpreted morally in various ways, as good or bad, as that of reason, justice, equality, equity, harmony, peace and goodwill on the one hand or as of warfare of each against all or all against each on the other. The natural rights of individuals were interpreted as their self-existing rights to freedom, equality, property, life and pursuit of happiness which could not be taken away or encroached upon, or as their duty of obedience in return for the protection they got. Again, historians, philosophers, utilitarians and idealists have all shown these conceptions to be fictions or myths without any historical or rational foundation. Consequently, all the theories about the nature of man, his original condition in the ante-social period, and the social and governmental contract between men built upon these myths, have been proved to be inadequate and wrong. The conception of an originally perfect, rational, liberty-loving man is absolutely un-historical and false. Similarly, the opposite conception of Hobbes about the primitive man's life being "nasty, poor, brutish and short" is another myth of the same kind. Psychology, individual and social, and history, racial and territorial, do not support these absurd theories of the political writers of the social contract school. They are based on a mythical man, a mythical law of nature and a mythical social or governmental contract.

Rousseau's theory of the General Will is another myth of the same fictional order. There may be individuals willing generally *for* society, but there cannot be a general will *of* society. It, then, becomes the standardised will of mass man who does not at all exist. If the General Will means the generalised mass will, then it has no value or virtue or wisdom inherent in it. If it means the rational or idealised will then it is not that of the mass or common man but of a few ideal or perfect men who also do not exist in any standardised form. If it means the average opinion of all men in a group or the opinion of the majority, then it has no qualitative and permanent value. The theory of General Will merely takes the ordinary interests of the common man and identifies and idolises them as the best interests of the whole community. It thus attributes a divinity to democracy on the theory of General Will, where reason, intelligence, virtue, wisdom, experience do not necessarily count, but merely the idea of the equality of men in all respects and of their quantitative majority as supreme criteria of truth and as guiding factors in

their life. The whole conception of General Will leads to the destruction of the individual and his rights, and of humanity and its values. It emphasizes and supports the aggrandisement of groups with their emotional and non-rational background. It idealises and idolises the moral feelings of the common man and gives them a sanction and sacredness at the cost of higher values and reason. It created havoc during the French Revolution and after. It has become the main inspiration and support of mass movements.

The myth of the soul of a nation or the mission of a religion or the supremacy of a race has created in modern times the totalitarian idea of the state and the community and has sacrificed the idea of personality and its liberty, of humanity and its fellow-feeling at the altar of its authoritarianism, and provoked wars and hatreds amongst nations and communities, races and peoples. The modern world is suffering from the jihads and crusades of those who are actuated by these false ideas or myths. All of them belong to the idealist school which conceives of some one idea or principle as the ideal, the real or the rational, and therefore supreme, universal, inevitable and infallible. They really do not believe in the growth and variety of human life in its various adventures, aspects and responses. If they see a process or development it would be in the past and not in the future. The process would merely be up to the time of the realisation of their idea in the shape of a prophet's revelation, such as that of Christ or Muhammad, or of a philosopher's dialectic, spiritual or material such as that of Hegel or Marx. They consider themselves to be placed at the apex of humanity with a mission to preach or perform.

The mission of the truths of some great religions which have been found inadequate by modern thought and science has been a militant myth which has been the main cause of warfare and intolerance in the world after the births of their founders. Their followers believed in their divine inspiration and in the infallibility of their utterances which were taken as the last word in virtue, wisdom and valuation of life. Therefore no toleration was to be given to any differing value or outlook on life. No freedom of thought, belief or opinion was to be allowed to men.

Hegel's philosophy accepted the idea of real or rational will and conceived it as the spirit of a nation, expanding and embodying itself in a national culture. His idealisation of the national state and culture encouraged nationalism. It culminated in the twentieth-century Fascism and Nazism. Fichte's idea

of the purity of the German race and its mission developed the conception of a soul of the German nation and of the mission and supremacy of the German race and culture. Similar ideas have been propounded and propagated later by Treitschke, H. S. Chamberlain, and Alfred Rosenberg in Germany, and by other writers in other countries.

In Germany, the national idea is the idea of race, its purity, supremacy and mission. History, anthropology and sociology have disproved these claims and ideas of a nation, race and religion, and of their permanent superiority, infallibility and mission. There is no pure race but there is a mixture of races. There is no one true religion. Every religion is a mixture of contemporary beliefs and ideals. There is no permanent nation. Every nation is a historical growth and a changing complex. None of them has a divine mission or a sacred soul or a natural superiority or an inevitable success. All these ideas are pure fictions based on self-interest or mental delusion. No doubt, they have worked havoc in human affairs as they have also done some good. But no intelligent and honest man can believe in all that they say and claim.

The myth of the proletariat-producer and of the general strike as the weapon of the wage-earner in his struggle for liberation and happiness is moralised and philosophised over by George Sorel. He views the great revolution which would be brought about by the general strike, as a valuable "myth" rather than an actual probability. This syndicalist theory of Sorel promises to be more destructive than constructive. It neglects consumers' interests. Its conception of society is one-sided. Its object is revolutionary. Every strike is regarded as a means of arousing sentiments of class solidarity.

George Sorel emphasized the myth value of the general strike. According to him every effective social movement has its myth. "He emphasized three main points:—(a) The importance of the class war which was going on and of the employment of violence. Violence raises men's passions to a white heat. (b) Faith in the creative urge of the workers; the workers rebel, not to promote their interests, but to express their inner urge for living. (c) The necessity of "myths." "Men who are participating in a great social movement always picture their coming action as a battle in which their cause is to triumph . . . these *constructions*, a knowledge of which is so important for historians, I propose to call myths." The syndicalist 'general strike' and Marx's catastrophic 'revolution' are such "myths." A myth is that which calls man's passions and emotions into play so strongly

that they achieve a great social change. The belief in myths is a kind of revolutionary emotionalism. Myths play a big part in politics, but Sorel makes the myth the centre of revolutionary politics and the "soul of the revolutionary proletariat." Sorel says "the masses of men are stirred into persevering and heroic action not by practical or scientific demonstrations of some rationally desirable goal but only by appeals to the imagination." He cited examples from history and showed that social myths, picturing ideal conditions that could never be attained, had none the less, through their effects on human emotions, produced profound social consequences. They gave new directions to the thought and conduct of man through long periods of time. This myth of the proletariat considered as the real humanity, and of the general strike as the solution of all economic and political problems is the revolutionary social ideal, and the method of direct action in modern times. It negatives the rights of other classes to exist, and also the moral conception of individual personality and of total humanity and gives prominence to and promotes class hatred and struggle, and ridicules class cooperation and fellowship. It exalts material life and the economic ideal as the only primary concerns of people. It does not believe in differences of classes, in the tolerance of other groups, their interests and opinions, and in methods of moral persuasion or intellectual discussion and compromises. Human knowledge and experience and moral considerations do not support these one-sided, false and dogmatic valuations of social life and its process of change.

These myths have led to the idolising of the masses and factory workers, sanctioned class wars, violence and dictatorship of the proletariat. They are still infatuating the minds of some intelligentsia, the youth and the wage-earners, but, whatever their effects, they have not succeeded in creating 'syndicalist anarchism' in any of the European states.

The myth of progress and dialectical materialism based on the idea of their historical necessity, inevitability and desirability has led to a false valuation of the course and factors of human history and has created a new *credology* which indulges in denying the pluralistic concept of the complex springs of human life in its thought and activity and in asserting the monistic and deterministic approach in studying its events and their course. The course of human affairs has not been unilinear and pre-determined. No single uniform law, no one exclusive interpretation can explain the varied human happening, development and experience. Man or society is not dominated or determined by

one force or process. There are various forces which inspire human life. There are a number of fluctuations, failures and fatalities in human history. Succeeding ages are not necessarily better—morally, materially, mentally and spiritually—than the preceding ones. There are differences, no doubt, but they are not necessarily indices of progress or melioration. Many later aspects of life indicate the funerals of the higher values of earlier life. Modern historians, psychologists and sociologists have discredited these myths which are the creations of the nineteenth-century pseudo-scientists who were easily flushed with the advances of science.

The myth of progress thinks in terms of eternal social, material and spiritual progress. The myth of dialectical materialism believes in the dominating and determining importance of economic relations to the exclusion or subordination of other factors in the social and cultural evolution of mankind. It idolises the mass man and idealises the moral feelings of the common man. It holds no *a priori* value of right and wrong. It does not recognise the rights of the individual man. It believes in the right of the majority of workers or the proletariat and their *force majeure*. There is no other *a priori* or *a posteriori* standard or aim, except that of establishing a workers' classless community. Its ideas of equality and freedom are confined to workers. Others have no right to differ, to stand where they are, or to move where they want. There is to be no private property, and no privacy of judgment in thought and action. The mode of life advocated is in one way determined, and in another way it is vague, to be determined by the dictators of that *order* and *credology*. When the advocates of these myths and creeds state that a certain course of development in the past was a necessity they fail to tell us whether that necessity was moral, physical or fatalistic. They do not analyse events individually, but merely choose some of them to suit their preconceived theories and patterns of human life. They do not study the inner relation of events but merely correlate them according to their presuppositions. They do not value the individuality of events, but merely subordinate them to their own *a priori* theories and laws of human growth. No doubt, they may explain the importance of certain neglected factors or certain tendencies in the development of human life. But their exclusive claims regarding certain factors have been found to be not only overstated but also falsified by history.

All these myths have not only affected the course of political thought, but have also inspired revolutions and certain courses

of conduct and discipline according to which their followers lived and for which they fought with others. They have thus vitiated the intellectual and moral approach to the problems of political philosophy and led men astray from understanding the real springs and course of human motive and conduct and the working of the human mind in its rich and complex variety, and consequently from the real foundations of political thought.

It is only the proper study of human personality and the spirit of its higher humanity, both in its individual and social aspect, and in relation to its environment and to its ideals, that can give us some stable but only approximate political theories and axioms covering the various facts and factors of human political activities and experience. The richness, variety and potentiality of human life and experience cannot be covered and explained by one formula. Human life not only "is," but also "becomes" this or that. Life is a *becoming*, not merely a *being*. It is dynamic and pluralistic in its behaviour or happening, not merely static and monistic in its course. It is plural, not merely singular. It grows and not merely exists. Theories, social or political, have therefore to take note of these facts, and not start with *a priori* beliefs, myths, fictions, abstractions, and distort their understanding or discredit their happening in advance. These political theories or more properly myths reject the obligation to be reasonable and human. Their advocates will like to destroy all those who oppose or differ from them.

No sound political theory can be based on incomplete evidence or ignorance about human life and experience and on deterministic and divine valuations and easy generalisations about them.

The fundamental values of political life relate to human personality and humanity. They include freedom of thought and investigation, freedom of speech and discussion and freedom of criticism and protest. Without them no rational and complete theory of political obligation, and no intelligent political policy of authority and obedience, of order and peace, of progress and reform can be built up and be durable. Small social groups, orders and classes and their group interests cannot give us any political theory of value. Temporary institutions like states or nations, parties, soviets or corporations cannot exhaust or cover all other aspects and ambitions, ideals and aims, and the constant creative flow and growth of human life. Man and humanity are greater than the temporary groups and institutions which they create in relation to time, place and work. Their creative urge overflows their limitations. They are the two factors on which

our political theories must rest. But they are not fully known,—the man and his personality and the humanity and its spirit. Hence our want of knowledge is the cause of the rise of so many pseudo-scientific theories or myths in political thought. But though we have tried to reject the claim of the strict rational or historical validity of these theories, it does not mean that they have not left any permanent and significant influence upon the course of subsequent human thought and practice. These myths have played an important rôle in the development of our political thought and action, and have contributed a great deal to their variety and richness.

PROBLEMS BEFORE THE PROVINCIAL GOVERNMENTS: PROVINCIAL GOVERNMENTS AND PARTY ORGANIZATIONS*

BY

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Lakhaoti.

Introduction.

In India, the system of political parties has never had time to develop on the lines of the countries where free political institutions have been for long established. For the successful working of a democratic constitution there have to be at least two political parties, the party-in-power and the party-in-opposition and both ready to exchange places on the result of the ballot.

Till recently, Politics in India has been a close preserve, a sort of a vested-right monopolised by a few upper and urban classes, they themselves being bossed over by a foreign agency 6000 miles away. The system of government that has characterized this country is that of an alien Imperialism, which carries on the administration primarily through the instrumentality of a covenanted service, which constitutes the white-cum-brown bureaucracy. This bureaucracy is different from bureaucracy in free countries, for it not only carries out the orders laid down by the law-making authority, but has itself been, till the inauguration of the system of provincial autonomy in April 1937, the chief deliberative body.

Though the reforms of 1909 and 1919 aimed at transferring substantial power to the people of India, yet in effect the power remained centralized in official dovecotes and democracy in the genuine sense of the term had little chance to take root. The Act of 1935, which now replaces the earlier Acts, has grave defects and it is seriously doubted if it is a step towards the establishment of a real self-government in India. The main controversies, however, now centre around the federal structure that has been proposed in the act and so far as the provinces are concerned, the system of provincial autonomy, that has been

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established in 11 autonomous units, has transferred substantial powers to popular control and the working of the system has ushered in a new regime in the provinces. The provinces are now throbbing with a new political life and public opinion is not only getting politically educated but reacts quickly to every new situation. The system of political parties, which had previously no free scope for development, is now appearing in a new perspective, which is the object of this paper to discuss.

Last Elections.

At the time of the last general elections held in February 1937, various political parties appeared in the field and appealed to the electorate to support them on the strength of their programmes. As the new provincial legislatures were to be wholly elected bodies, the British Government ceased to be an interested party as used to be the case under the dyarchical constitution and the various parties had a free fight with each other. The Indian National Congress, which had decided to contest the elections, was by far the most organized and the most influential party and it had the additional advantage of the energetic leadership of Pt. Nehru, who was the president for the year. The only other party which fought the elections, on anything like an All-India scale, was the Muslim League party under the veteran leadership of Mr. M. A. Jinnah but there is hardly any comparison between the organization, resources and influence of the two parties. There were other parties, mostly confined to a single province and sometimes to a certain part of the province. Of these the most noteworthy is the Rural-Unionist party of the Punjab, which had been carefully nurtured by the wisdom and statesmanship of the late Sir Fazl-i-Hussain. As Sir Fazl-i-Hussain died a few months before the elections, the party was led by two of his ablest lieutenants, Sardar Sir Sikander Hiyat Khan and Sir Chhoturam. In the U.P. an effort was made to group the landed and other interests together under the National-Agriculturist party, organized chiefly by the Nawab of Chhatari and Sir J. P. Srivastava but in the combat with the all-powerful Congress party, the national-agriculturists were quickly routed. In Madras, it was expected that the Justice party, which had been in control of the administration for the last 16 or 17 years, should make a good stand against the Congress party but the results showed that the Justices had lost all hold over the province and the Congress under the skilful guidance of Shri Rajgopalacharya swept the polls.

When the results were declared, it was clear that the Congress party had done better than even what its most optimistic supporters expected. In six provinces the Congress had a clear majority, namely, the U.P., the C.P., Bihar, Orissa, Bombay and Madras, and in the last-named it had a majority in both the houses separately. In the remaining provinces also it did well, with the result that in two of them, viz., the N.W. F. P. and Assam, coalition ministries have been established. Sind, similarly, has a strong element amongst the Muslims, the majority community in the province, which is sympathetic towards the Congress programme and, though for the present the situation is very indefinite, the province must fall in line with the Congress, sooner or later. The only provinces, where the Congress failed to assert itself, were the Punjab and Bengal. In the Punjab, the Rural-Unionist party was so well-knit with a clear economic programme of agrarian uplift that the various other parties, the Congress, the Hindu Mahasabha, the Muslim League, the Ahrars and the Akalis, all were badly defeated and the Unionists had an absolute majority in the legislature. Even then Sir Sikander Hiyat, the leader of the Unionist party, has formed a coalition cabinet with Unionist dominance. In Bengal the Proja party captured the majority but this was mostly due to the fact that the Communal Award put the Hindus in a statutory minority by assigning them hardly 50 seats in a house of 250. The balance in Bengal is held by the European and Anglo-Indian seats and this is likely to continue until the Communal Award is revised, at least so far as Bengal is concerned. Since the formation of the Haq ministry the Proja party has broken into several sections, the ministerialists who follow Haq, the independent Proja party and the Krishak Proja party. The last two mentioned have now gone to the opposition and, though various efforts have been made to bring these various groups together, they have met with little success. The leaders of the Krishak and the Independent parties have charged the Haq group with having gone back on their own election manifesto and with having flouted the programme on which the last election had been fought. Most of the members of the Haq cabinet are either capitalists or big Zamindars and the opposition have levied the serious charge against the present ministry, of its not being really representative of the people and its programme being conceived not in the interests of the masses but of a few select interests.

In Sind, the situation is rather fluid, as no party has anything like a majority on its side. A coalition ministry had been formed by Sir Hidayatulla with the backing of several groups

but he was voted out by a schism in its ranks. A new ministry has been formed by Khan Bahadur Alla Bux with the support of the United Sind party but the future of his government mostly depends upon the attitude of the Congress party. A stable ministry is unlikely as the 60 members of the Assembly are divided into a bewildering variety of parties and groups—Sir Ghulam Hussain party (now Muslim League), the United party, Congress, Hindu, Independent, Azad, Independent Congress, and Communist parties and even 'No party' or 'Doubtful.'

In Assam, similarly, there is a system of groups, rather than political parties proper. The two most prominent of these are the Congress with 32 members and the Muslims with the same number, in a house of 108. The rest of the members represent the Hill tribes or the various valleys into which the province is divided. Sir Saddulla, who had formed the first ministry, has now been replaced by a Congress-Coalition cabinet but the political situation in the province cannot be regarded as stable.

Lessons of the Last Elections.

Political parties in the country are yet in the stage of infancy and most of them lack any solid organization or programme. The last elections, however, have created a great political consciousness amongst the masses and gradually, as adult suffrage is established, political elections would become an important factor in the political education of the people. The one important difference between the system of dyarchy and the provincial autonomy now established, is, that the electorate have become the real arbiters of the destiny of each province and with the disappearance of the official blocs from the provincial legislatures, the bureaucracy has ceased to determine the political complexion of the provincial government. Under dyarchy there were instances, when unpopular and even reactionary ministers were kept in office by official majorities. Under the present system, the position of the Governor has increasingly come to resemble that of the King in the British constitution, at least so far as the selection of the ministry is concerned. The institution of a chief minister or a prime-minister has now been fully established and this would further help the growth of political parties on democratic lines. For all practical purposes, the chief minister should act as the real executive head of the province and the Governor should be relegated to functions merely of a ceremonial nature. The constitution itself invests the Governor with extraordinary powers and the only way of avoiding deadlocks between

a ministry backed by a popular legislature and the Governors armed with constitutional authority, is that healthy conventions may be established whereby the latter should never exercise their special powers, except on the advice of their cabinets. The working of the system for more than a year and half has shown that such conventions are by no means difficult to establish and in some of the Congress provinces, where conflicts arose, it was possible to resolve them mainly because of the strong organization of the Congress party. The British Government realized that if a crisis occurred in one Congress province, it would affect all the other Congress provinces and as it would result in the breakdown of the constitution, the ministers were allowed to have their way. If the ministers have a strong organization at their back, the Governors would think twice before precipitating an issue with them.

Party Organizations.

One chief defect of party organizations in India is that, in the case of many, religion has become the basis of their Politics,—religion too of a most dogmatic and sectarian nature. The Indian National Congress is the one great exception but the Hindu Mahasabha, the Muslim League, the Ahrars, the Jamait-ul-Ulmai Hind, the Akalis and other organizations of the Sikhs and the various Christian associations are primarily religious organizations, upon which Politics of some brand has been engrafted.¹ Several of them are progressive in outlook but religion as the basis for a political party is fundamentally unsound. "Religion in danger" is a familiar cry and this is particularly the case with the two rival religious organizations, the Hindu Mahasabha and the Muslim League. The Hindu Mahasabha as a political force has, to a great extent, been liquidated by the increasing influence and prestige of the Congress party amongst the Hindu masses and, in the last general elections, it fared rather badly. The Muslim League, on the other hand, is very much kicking and alive, partly because the Muslim masses are comparatively backward in political consciousness and partly because the leaders of the League have given them to understand that their political future would be endangered, if they let themselves be entrapped in the Congress fold, which is primarily a Hindu organization under a nationalist garb.

¹ This is likely to continue, till the system of separate electorate which obtains in this country is replaced by the system of joint electorate as demanded by the Indian National Congress.

Several parties, however, have been organized on purely political principles, with programmes of a socio-economic nature. Apart from the great organization of the Indian National Congress, which is more than a political party in the conventional sense of the term, such parties as the Liberals, the Congress-socialists (they are the left-wing of the Congress party itself), the Rural-Unionist party of the Punjab, the Justice party in Madras, the Democratic party in Bombay, and the Congress-Nationalists (distinguished from the Congress only in their unqualified rejection of the Communal Award)—all of them give hopeful signs of the way in which political parties may develop in future. There are several other organizations, partly economic, partly political, aiming to protect certain special interests, such as the All-India Chamber of Commerce, the All-India Trade Union Congress, the various organizations of the land-holding interests. The Kisans have their own organizations apart from the Congress. Similarly the Europeans, the Anglo-Indians and the Indian Christians have their own political organizations, as have also the depressed classes who have separately organized themselves. The Indian National Congress, time and again, has claimed to represent all the various classes and communities in the country and, to some extent justly, because the main problem before the country is the establishment of political freedom from foreign rule, and no other party has fought for national freedom so prominently as the Indian Congress.

Political Parties and Provincial Autonomy.

With the inauguration of autonomy in the provinces, a free field has been provided for the growth of political parties. An unfortunate impression has been created, mainly by the propaganda of the Muslim League, that India is now divided into Hindu India under the Congress ministries and Muslim India under ministries predominantly Muslim. This propaganda is not only wrong in fact but mischievous politically. This is clear from the fact that the N.-W. F. P., a predominantly Muslim province, is under a Congress-coalition ministry and Sind, another province with an overwhelming Muslim population, has recently repudiated the leadership of the Muslim League party. The Punjab and Bengal, two other Muslim provinces, have both coalition ministries but neither of them is a Muslim League ministry. Sir Sikander Hyat, the Unionist premier, has agreed to support Mr. Jinnah in All-India Politics but, in his own province, his government has no touch of the Muslim League.

The Unionist party is a non-religious, non-sectarian, political organization, based upon the principle of rural interests, as contrasted with urban interests. Nor is the Bengal ministry a Muslim league ministry either, as it is a cross between a section of the Proja party and several other groups including Hindus, Indian Christians, Europeans and Anglo-Indians. The Muslim League ministry, therefore, exists nowhere. In the six provinces in which the Congress party captured solid majorities, Congress governments have been functioning but a careful representation has been provided to all minorities and, except in Orissa, Muslims have seats in every cabinet.

Future of Party-Politics.

The division of the country into Hindu India and Muslim India is a canard that has been propagated by interested people, for infact nothing like it exists. There is no doubt that there are keen Hindu-Muslim differences and the minority problem has yet to be tackled but there are hopeful signs which indicate that religion is likely to play a diminishing rôle in political alignments and fundamental secular and economic forces will mould the future development of Political parties.

The difficulties of the Indian National Congress arise from the fact that it is not only a political party in control of 8 autonomous provinces but also the chief bulwark against imperialism and foreign domination. The Congress party is not a homogeneous group economically, for it has to muster together all possible forces under the banner of nationalism, with the main objective of liquidating British Imperialism. The Congress, therefore, has in its fold land-lords and tenants, capitalists and labourers, the middle classes of traders and bankers and people of many religious persuasions, Hindus, Muslims, Christians, Parsis, Jains, as well as the depressed classes. Ordinarily, it would be impossible to keep such heterogeneous economic interests together but so long as full political freedom is not granted to India, the Congress is sure to preserve its present structure. Political alignments may follow purely economic lines, when India becomes politically free. The left-wingers in the Congress itself have often charged the main organization with being a bourgeois body and they have raised the slogans of Class War and Socialism but such slogans are premature. It is possible that the Congress as a body may adopt the socialist programme but that would mean a war on two fronts, a war against foreign imperialism and an internal war against the

vested interests within the country itself and no sane general would adopt such a strategy. All that the Congress can do is increasingly to become a representative mass body by bringing the poorer classes on its rolls and curb down the growth of class-differences by beneficial legislation for the welfare of tenants and labourers, without fundamentally changing the economic structure, as at present established. This in fact is the line of action which the Congress governments have followed in the various provinces. Every province has passed or is about to pass agrarian laws to safeguard the rights of tenants *vis-à-vis* the landlords and the interests of the labourers must similarly be protected against the capitalists.

The slogan of Socialism has been prominently raised recently but the leading socialist leaders themselves are loyal to the Gandhian ideology, which for the present dominates the Congress. The Congress governments have proceeded on orthodox Gandhian principles and have tried to give practical shape to prohibition, the establishment of greater civil liberty, the spread of Swadeshism, the nationalization of education and a general change in the tone of the administration itself—all essentially Gandhian ideas. Trouble has been created in several provinces by the left-wingers, where they have organized themselves into Kisan Sabhas and other socialist organizations, but such tendencies have been checked and are likely to disappear as soon as the tenancy laws are put on the statute book. That the Congress organization has been strengthened and the party prestige has improved after the acceptance of office was admitted by so radical a leader as Pt. Nehru.

The Congress party is likely to make a headway in the provinces of Sind and Bengal also. Sind is already Congress-minded and in Bengal the Haq ministry has a precarious support. The motion of non-confidence, moved a few months ago in the legislature, showed that the ministry was kept in office mainly by the support of the Anglo-Indian and European bloc—not a very enviable position. There are disruptions in the coalition groups and a small defection may bring the Congress in office.

The only province where the Congress is sure to meet with a rebuff is the Punjab, where the Unionists coalitionists form a strong group of 120 in a house of 175. The Unionists are not only in office but in power and they have a strong party organization all over the province. On the other hand, the provincial Congress party organization is weak and suffers from internal dissensions. The Congress party has practically no hold over the rural areas in the Punjab, which are solidly Unionists. The

chief cause of the success of the Unionists is that in the Punjab there are no divisions in the land-holding interests and the big landlords are only a handful as compared with millions of small peasant-proprietors. It is not the landlord who exploits the peasant in the Punjab but the money-lending capitalists and the Unionist ministry has recently passed a series of agrarian bills to safeguard the agricultural population against this exploitation. The Unionist leaders have asserted that the Punjab Congress itself is a coterie of a few capitalists and nothing has been done to refute the Unionist assertion. The Opposition groups in the Punjab Assembly led by the Congress party are weak and they have further added to this weakness by their dubious attitude towards the recent agrarian legislation, which undoubtedly benefits the ryots as a whole. The Congress High Command realize the weakness of their organization in the Punjab but no steps have yet been taken to rectify it. If the Congress is ever to come into power in the Punjab, it is clear that they would have to adopt the Unionist programme *en bloc*. That would mean the *en masse* conversion of the present Unionist party and if the Congress proceeds rightly, a *rapprochement* is not impossible.

Conclusion.

The chief merit of the Act of 1935, so far as the provinces are concerned, is that by making the electorate the sovereign authority in the province a constitutional machinery has been provided, whereby the autocracy of the bureaucracy may be peacefully transformed into the democracy of the masses. This transfer of power, however, would considerably depend upon the organization of political parties and even more particularly the methods the parties adopt to approach the electorate. Most political parties die by swallowing their own lies and in a country like ours, where democratic institutions are yet in their most rudimentary form, politicians must see that they do not undermine those institutions, at the very start, by petty party wrangles, which the party system produces. The electorate in India are ignorant, poor and illiterate and it is perhaps more imperative here than was the case in England "to educate our masters."

Political parties in India would develop much as they have developed in other countries but for the time being no party can pretend to serve the masses, unless it also strengthens the national urge towards full political freedom. Another fact to be kept in view is that we should encourage parties on purely economic and political principles and the religious basis which some of the

parties have adopted should be eradicated. Politics on a religious basis would mean communalism, which would in turn mean the absence of nationalism and the perpetuation of foreign rule in the country.

Another tendency in the party system in India is that it is developing on the lines of the continental system of multiple parties. It has been shown by the case of France that a multiple party system means unstable and weak cabinets and in India we have particularly to safeguard against this danger. This danger would become all the more likely when, with the liquidation of the foreign rule, the Congress party breaks up into its natural economic groups. What we really need is the growth of a few parties which may genuinely represent the masses of the country.

Another feature of political parties in India as contrasted with similar bodies in western countries is that, with the exception of a few, they are improvised whenever a general election is due and, for the rest of the period, nothing much is heard of their activities. The consequence in many cases is that many of these organizations are still-born. In comparison with the organization of American parties, with its characteristics of 'the party boss,' 'the caucus,' and 'the spoils system,' the system of parties in India appears a comparatively colourless affair. The American system has developed its own evils and India would do well to avoid them in her own system. It must, however, be remembered that the success of the American democracy has, to a great extent, been due to the strong organization of her parties.

The system of party organizations in Great Britain strikes a happy mean between the multiple system of the continent on the one hand, and the rather overcentralized American system on the other. No one country can be regarded as an ideal to be followed but owing to the close political associations of India with Great Britain, we would do well to apply some of the healthier principles of political parties in England to our own parties. In view of the increased scientific facilities, political parties are likely to play even a more important part in the future working of governments and we in our case would do well to base them on sound political principles.

THE REORGANISATION OF LOCAL SELF-GOVERNMENT*

BY

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(1) Historical Background.

Local self-government in modern India has a history of seventy-five years behind it. During the course of this period its evolution was marked by five principles. It started on a recognition of distinction between services, needs and interests of a local character and those of a provincial and national character; and among those that have been included in the former are education, sanitation, public health and roads. The second principle is the organization of a separate administrative agency for managing the local services. The municipal councils, and the District and Sub-District or Taluk boards, and the Village Panchayats are the most important of these agencies. The consequence of this is that in every administrative area for purposes of local self-government there is a dual administrative agency—one to look after the local services and the other to manage the provincial affairs in the locality. In any scheme of reorganisation this question as to whether the dual agency should continue requires an answer. The third principle is that bodies established to look after local interests should be elected on a fairly wide franchise and they should not contain any official or nominated element. It was only recently that this principle received wide acceptance and it was round this that some of the most important political battles were fought, till at last those in authority in India as well as in England became convinced that this democratisation of local bodies was not only good in itself but was also the most effective means for training the people in the art of self-government. The fourth principle in the evolution of local self-government is the entrusting of elected bodies and their chairmen not only with deliberative but also with executive functions. In early days Collectors of districts, Deputy Commissioners and some other members of the permanent civil services were *ex-officio* presidents

* A paper read at the First Indian Political Science Conference, Benares, December 1938.

of local bodies and as presidents they not only presided over meetings but also served as executive officers responsible for the due execution of the policies and resolutions of the local authorities. But as time advanced the opinion gained ground that local bodies could not become really self-governing until this official element was removed from them and until their presidents were elected. Provision was therefore made for elected chairmen and presidents and these continued to exercise the executive authority formerly vested in the Collectors and other members of the civil service. The investing of elected bodies and persons with executive authority in the running of the day-to-day administration of local bodies has come in for a good deal of criticism and today a large amount of controversy has gathered round this subject. It may even be asserted that the central problem today is one concerned with the creation of an efficient and non-partisan executive, and the separation of the functions of the chairman from those of the executive officer. The fifth principle is the relaxation of state control over local bodies which at one time was extremely rigid and comprehensive. Under the stimulus given by the Montagu-Chelmsford Report on constitutional reforms this control was modified in several directions. This has also created a problem as several competent observers have come to the conclusion that it was the relaxation of state-control subsequent to 1920 that is responsible for the present inefficiency of local bodies.

(2) The Validity of the Principles of the Past.

The validity of the above principles for our present-day purposes has been questioned in several quarters and it is as a result of this questioning that the need for reorganising the system of local self-government is being felt today. (1) There are practical administrators and students of Political Science who are of opinion that the distinction between local and non-local services is artificial and that it has lost to-day much of the significance which it might have possessed in former days, and that the structure of local government based on this distinction has become antiquated and worn out. From their standpoint the services hitherto regarded as local are no longer local in character and it were best that they be brought directly under the management of the provincial government and administered by the members of the provincial civil services. In the U.P. Report on the working of the system of government submitted to the Indian Statutory (Simon) Commission it is stated:—

“As explained in the memorandum on the working of the municipal boards, the important functions discharged by the district boards are largely non-local. Education, communications, medical relief and public health work are the most important items of expenditure and they are provincial rather than local.”¹ A similar view is expressed especially in regard to education in Bombay where a great deal of controversy went on in respect of the management of schools by local bodies.² There are again writers on political science who point out that improvements in means of communication, the growing facilities for travel, the ease with which epidemics can now spread, and above all the growth of ideas of a national minimum in education, health, and social welfare—all these tend to make most services of Government national in character and that local authorities with limited jurisdictions and limited finances are not fit to deal with these subjects.³

In spite of these weighty opinions it is not wise to ignore the reality of the distinction even today between local and general interests. The distinction is real from more than one point of view: (a) The inhabitants of a locality may be interested in achieving something beyond and in excess of the national minimum laid down by the provincial government, especially in view of the fact that the tastes and the financial resources of the people are bound to vary from one area to another. The necessities of national life may have a uniformity about them; but comforts and luxuries tend to be diverse. (b) The measures that have to be taken to attain the national minimum need not be the same in every locality. They may vary from locality to locality according to the state of public opinion. For example, literacy or any other minimum standard of education may be attained through coeducational schools in some places, and not perhaps in others. Medical relief may be provided for through Ayurvedic, Unani or Allopathic institutions. Here is room for variety and such variety deserves encouragement. (c) There are also many services even at the present day which are of a local character in the sense that their supply will benefit the inhabitants of only a particular locality. Street lighting, parks, provision of amusements, theatres, libraries, and museums fall into this category. (d) If agriculture, cottage industries, and similar other projects are to be promoted local circumstances

¹ Page 485, para 349.

² *Bombay Government Memorandum*, pp. 22-23, 55.

³ *Finer, English Local Government*, pp. 10-16.

similar question came up when Germany was a democratic state. At that time it was said that in a democratic state a municipality was only another democratic unit and there was no need for it. It had been recommended to dispense with the municipalities as individual administrative bodies and to embody them in the state administration." There are politicians in our country today who think on these lines but a reorganisation which creates nominated instead of elected councils will prove to be most injurious. (c) That local bodies should be constituted on an elective basis has been the opinion held so far by officials and non-officials. To revert now to a nominated system will be a reactionary step. It will throw an unnecessarily heavy responsibility on the provincial cabinets and introduce irrelevant local issues into the provincial legislature. (d) Moreover, there is nothing to indicate that so far as policy-making is concerned elected local bodies have been failures. In the opinion of the *Indian Statutory Commission*,⁵ "there has been a very general and very marked growth in the interest taken in the extension of education and of medical facilities." The voters have in recent years been showing greater interest in elections. They have learnt that they should look to representatives on local bodies and not to the district collector for getting many of their grievances redressed.⁶ The defects noticed relate to the existence of communal differences, the unwillingness of the representatives to resort to additional taxation, the tendency to jobbery, and delay and inefficiency in the discharge of executive duties. Of these defects, the first is not peculiar to local bodies. It is vitiating the whole political atmosphere in the country and its disappearance depends upon several factors which have no bearing on the reorganisation of local bodies. The unwillingness to resort to additional taxation is again not a special defect with Indian local bodies. Even in England, "people are not passionately anxious to contribute to the rates. At all times, indeed, a great force has been needed to overcome their repugnance to being taxed The result is that local authorities have always had to be urged forward forcibly, either from outside, or by some of the more convinced or interested of local citizens."⁷ As regards jobbery the *Indian Statutory Commission* has stated that it is not a feature peculiar to India, and such a practice is very difficult to eradicate.⁸ Even in

⁵ Report, para 353.

⁶ U.P. Report, p. 510.

⁷ Finer, *English Local Government*, p. 370.

⁸ Report, para 355.

England, "the vacancies are often, but not always, advertised; and simple patronage, appointment on political grounds and appointment of relatives, simply because they are relatives, are occasionally encountered."⁹ As regards the inefficiency in the discharge of executive duties the remedy lies in depriving the elected councils and chairmen of such duties and transferring them to a separate executive. Reference will be made to this point a little later. (e) There is, above all, the fundamental consideration that all parties are distinctly in favour of democracy as the future form of government for India in spite of the loss of prestige from which it is suffering to day in most parts of the world. With democracy as the foundation for the political system of the country it goes without saying that local bodies should be democratic. The following words in the Montagu-Chelmsford Report forcibly bring out this idea:—"The unskilled elector, can learn to judge things afar off only by accustoming himself to judge first, of thing near at hand. This is why it is of the utmost importance to the constitutional progress of the country that every effort should be made in local bodies to extend the franchise, to arouse interest in elections, and to develop local committees, so that education in citizenship may as far as possible be extended, and everywhere begin in a practical manner."¹⁰

(4) It is against the fourth principle referred to above that the largest amount of criticism has been directed. The mistake really lay in the failure from the very beginning to separate the functions of the president from those of an executive officer. In early days the collector was the *ex-officio* president and the executive officer of district boards and also of municipal councils in some provinces. If he had merely been the executive officer without any substantial share in the policy-making by the local bodies the objection to his association with local government would not have been very formidable. But as president he was able to dominate the local bodies and interfere with the freedom of discussion and the formation of a sound policy based on the opinion of the representatives. The collector is no ordinary official. He is the magistrate of the District and is responsible for its peace and order. The combination of judicial and executive authority in him has made him a sort of a petty despot. And no one could afford to oppose him or incur his displeasure. So long as he was the president the local body had no individuality;

⁹ Finer, *English Local Government*, p. 254. Hasluch, *Local Government in England*, pp. 71-72.

¹⁰ Montagu-Chelmsford Report.

and conditions have to be taken into consideration. From all this the conclusion follows that while some of the services that have hitherto been regarded as local have become quasi-provincial, the distinction between services to be uniformly administered and those in whose administration variety and diversity are essential factors is a real distinction and any re-organisation of local self-government should be based on this. There is, therefore, no case for provincialising all the services that are now regarded as local.

(2) Assuming that the distinction between local and non-local services is valid it may be asked if the agency for administering local services should be different from the agency administering the non-local services in the same area. The dual agency as it exists at present is the outcome of several circumstances: (a) A non-local service has to be administered on a strictly uniform basis throughout the whole province in accordance with the rules and regulations laid down by the provincial government. There is no room for discretion in the administration of such a service. But diversity is the basis of a local service and those who administer it have to be given a good deal of discretionary power. Questions of policy, of alternative methods of doing a thing, and of the distribution of resources over a variety of items—all these arise in administering local services. They can't be reduced to routine. The administration, therefore, of a non-local service is bound to be of a routine character while that of local services is coupled with the exercise of discretionary power. The same kind of agency will not be appropriate for both these purposes. (b) From this arises another characteristic. Where discretion is to be exercised it is better on the whole that administration is left not in the hands of one individual but in those of a council. The choice between alternatives which discretion always involves will be wiser when made after discussion among a number of people than when it is left to the responsibility of a single individual. Such a council is not essential in the administration of a non-local service. (c) Apart from these theoretical considerations, the dual agency in our country originated in consequence of the desire that, in administering a few services at least, the inhabitants of the land should be allowed to participate. It is the forerunner of the system of dyarchy which was subsequently transported from the sphere of local government into that of provincial government.

In the light of these considerations it may be asserted that it is best that the dual agency is continued. Both theory and practice justify its continuance. Administration of local services

involves two tasks—the task of policy-making and the task of policy execution. The administration of a provincial service in a given locality involves only the execution of a policy made at the provincial headquarters by the cabinet and the legislature. The Collector, the Executive Engineer, the District Medical Officer, the District Educational Officer, etc., are executive officials pure and simple with very little discretionary authority. It does not follow from this argument that the policy arrived at by a local authority or council should be executed by an agency different from that administering the non-local services in the area. The executive agency may be the same or it may be different. This point will be referred to below. Here, it is sufficient to recognise that as the administration of a local service involves the laying down of policy, the agency for this purpose should be different. It is, therefore, a mistake to entrust the entire administration of such a service to members of the civil services.

(3) The next point to be considered is whether the council for administering local services is to be a body elected by the inhabitants of the locality. (a) For, there are countries in the world where the distinction between local and national services is recognised and where a separate agency is organised to administer local affairs—to levy taxes; to distribute expenditure among different subjects; to borrow money on the security of local revenues and, therefore, to lay down policies—but where the agency is a council consisting of the nominees of the central government—though these nominees are selected from among the residents of the locality. And there are writers who are convinced that even under this system there is nothing wrong in speaking of the nominated bodies as autonomous or self-governing so long as they enjoy considerable discretion in all that they do.⁴ (b) It may also be argued that nominated councils are objectionable if the provincial government nominating the members on them is a bureaucratic one, not responsive or responsible to public opinion. This was one of the grounds on which objection was taken to the presence of nominated members on the local bodies in our country till 1920. But today the situation is different. The provincial governments have become democratic and responsible and nominations by them have not the same serious objection as before. The writer in the *National Municipal Review* referred to in the footnote states that “a

⁴ Gotthilf Bronisch, *New Local Government in Germany*. *National Municipal Review*, September 1936, pp. 518-19.

and self-government was unreal. "He dominated the meetings as much as the administration; his views and decisions were almost invariably accepted without question and often without discussion. Cases are known where the resolutions used to be drafted in the district office and only the formality of a signature after a brief exposition of the agenda and the proposed action was gone through in the Boards' meeting. Rural local self-government was almost a name."¹¹ So the progress of genuine self-government required that neither he nor any other member of the civil service should be *ex-officio* president of any local body. This was what was achieved by legislation from 1920.

The mistake, however, lay in depriving him of executive authority and in entrusting that authority to elected chairmen and presidents. It was a mistake from several points of view. Elected persons are not wholtime salaried officers of the local body. It was only their spare time that they could devote to discharging these executive duties. They are raw and inexperienced and work falls into arrears. Inefficiency has come to rule everywhere. The office is practically run by the head clerk or the manager. Moreover, the elected president belongs to some party or other. He is in power only for three years and in some provinces he could be removed even within this period by a vote of no-confidence passed by the local body. Even otherwise, he has to justify his conduct at the next general election. This makes his position as an administrator quite dubious. He has to make appointments to satisfy his party, to enter into contracts with the same purpose. Efficiency and economy suffer. What an officer with a permanent tenure of office can accomplish is not possible for the elected president. The memoranda submitted by the provincial governments to the Indian Statutory Commission supply convincing proof of the evils arising from executive authority being vested in elected bodies and persons.¹²

No reorganisation of local self-government will be satisfactory unless a right solution is given to the problem of the executive in a local body. Elected councils and their chairmen are naturally unwilling to part with their executive authority. But the situation requires that a strong, efficient and non-partisan executive should be created if democracy and efficiency are to go together. Politicians whose main business is talk should not be

¹¹ U.P. Report.

¹² U.P. Report, pp. 408, 431, 506. Bombay Report, p. 158. Indian Statutory Commission Report, p. 309.

put in positions which require special administrative ability for success. It is only by a proper adjustment of the relations between the amateur and the expert that democracy can succeed.¹³

(5) The principle of the relaxation of state control over local bodies has also created a certain amount of confusion. Here the question is not whether there should be state control at all. The local bodies are corporations created by an act of the provincial legislature for certain purposes. As such they possess a limited autonomy. This point need not be elaborated. What has to be emphasized is that local bodies and provincial governments should not look towards each other as if they were rivals. The relations between them are of a cooperative and complementary character. Every extension of provincial control should not be regarded as amounting to a diminution of local freedom. Both are engaged in the same task of promoting general welfare. Historically, however, the fact that the state that exercised control over local bodies in India was until very recently a bureaucratic state has been responsible for the feeling that all state control is bad; and it is this attitude that has to undergo a change.

The Montagu-Chelmsford Report¹⁴ laid down the wholesome formula that "there should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control." Legislation was undertaken in all provinces to give effect to this formula and state control was relaxed to a great extent. The Indian Statutory Commission has, however, observed that there was too much of relaxation and that it has consequently contributed to the inefficiency of local bodies. This observation is not correct. Even after the legislation of 1920 provincial governments have retained a considerable amount of control in their hands.¹⁵ Moreover, a comparison between the position in England and in India shows that control in India is as comprehensive as it is in England and extends to rule-making on all sorts of subjects, to prescribing the qualifications and tenure of officials, to action in default, to the sanctioning of loans, to the making of enquiries and obtaining of reports, to the audit of accounts and surcharging of persons concerned, to carrying on of inspection and the withholding of grants. And these are the several kinds of control that the central government in England exercises

¹³ Prof. T. V. Smith in *Public Management*, 1937, p. 365.

¹⁴ Para 188.

¹⁵ For details see *Madras Memoranda*, pp. 404-405; *Bombay Memoranda*, p. 160; *U.P. Report*, pp. 462-3 and p. 447.

over the local authorities.¹⁶ It is not, therefore, correct to say that control is not provided for in India at present. The Statutory Commission is also wrong in stating that under the old system when the district collector was the official chairman the control was effective. For, the truth is that, in those days, the collector as the agent of the provincial government controlled his own work as the chairman of the local authority. Both before 1920 and after it, the defect in respect of control lay essentially in the absence of a suitable machinery for exercising it. There was no regular inspectorate, for instance, competent to look into the work of local bodies and making the provincial control effective in character. In one sense it may be said that the situation has improved after 1920. The district collector has ceased to have any direct connection with local bodies and as the agent of the provincial government in the district he has the right and the power to inspect, to take action in default and to control the local bodies in several other ways. There was also another serious defect in this regard throughout the whole period of the history of local self-government. The potential value of controlling local bodies through friendly advice and guidance was not realised, due in the main to the fact that at the provincial headquarters there were not officers specially trained for this purpose and capable of giving the necessary guidance. The mechanical nature of the annual administration reports is a proof of this lack of intelligent understanding of the problems of local government on the part of the officers of the provincial government. Apart from this, in the period subsequent to 1920, the ministers in charge of local self-government were not anxious to exercise any control—unless it be for purposes of strengthening their party and political connections—even though there was ample legislative provision for it. As is stated in the U.P. Report, “Government’s policy was not only to avoid interference but even helpful action if it was liable to be misconstrued as interference or encroachment.” Owing to the financial difficulties of the period the government was unable to make use of organised grants-in-aid for extending its control and making it effective.

(3) Suggestions for reorganisation.

In the light of the above analysis it is clear in what directions reorganisation is immediately called for. (1) All idea of abandoning the distinction between local and provincial services,

¹⁶ Finer, *English Local Government*, p. 289.

and of managing the present local services through departmental officers on the score that local boards have been found inefficient, should be abandoned. The distinction between control and management should not be lost sight of. Management of local services should be left in the hands of local bodies while control should be kept by the provincial government. (2) The system of control should be organised through the strengthening of the staff required for the purpose. District Collectors must pay more attention to this branch of work. Their supervision and control will be of a general character. The control over technical departments like education, health, medical relief, roads and buildings, etc., should be exercised through officers of the provincial headquarters and their assistants. The Director of Public Instruction and the Deputy Directors, the Director and the Assistant Directors of health, the Sanitary Engineer and his assistant, the Superintending Engineers working in the different parts of the provinces constitute the nucleus of the machinery of control. Wherever necessary, this staff should be strengthened. To carry out inspection of a general character every province should have a number of inspectors of local boards and municipalities as is already the case in Madras. In addition to this the secretariat attached to the minister of local self-government should constitute the central directing agency and it should consist of those members of the superior civil services who have a special aptitude for work in the department of local self-government. It will be necessary to depute some of them to foreign countries for studying the working of local institutions there. With these changes in the machinery of control many of the defects in local administration can be removed. (3) Every scheme of reorganisation should provide for local bodies being elected on a wide franchise. Want of space precludes a discussion of whether the franchise for local bodies should be wider than that for provincial legislatures. But this is a question that requires more consideration than is usually given to it. (4) In all elected bodies provision should be made for the transaction of business through statutory standing committees into which experts and outsiders may be coopted. The committee system is all the more necessary in the case of District Boards. Members of these boards are scattered over a wide area and meetings of the board as a whole cannot be held frequently. Business has, therefore, to be transacted through committees to a much greater extent¹⁷ and the District Departmental officers must

¹⁷ Compare R. C. K. Ensor, on ‘Supersession of Country Government,’ *Politica*, August, 1935.

find a place on them, preferably as secretaries. (5) More important and urgent than these reforms is the creation of a strong executive. Here, three alternatives may be thought of. The Collector may again be made the chief executive officer of all the local bodies in the district. But this alternative is open to many objections. He will re-establish his position of dominance over local bodies; he cannot be the executive officer of all local bodies in the district at the same time; the more appropriate position for him is that of the local agent of the provincial government exercising supervisory powers; and above all public opinion will not tolerate the resumption of executive authority by him. A second alternative is to create a local government civil service and provide executive officers to municipal councils and district boards through it. Members of this service will have to be recruited through a competitive examination. But taking into consideration the small number of executive officers that will be required and the very few vacancies that will arise from year to year it does not appear desirable to have a separate local civil service. The third alternative is to have a unified civil service for the whole province the members of which will be serving as executive officers of local bodies or in other departments of provincial government. This appears to be the ideal system. One system of competitive examinations, one method of recruitment, a single Public Service Commission, a single set of rules regulating emoluments, promotions and discipline and tenure—this will work out most satisfactorily. The lower grades of civil service as well as the clerical services may be recruited on a uniform basis for both the provincial and local administration. In the case of Health Officers, District Board Engineers and District Panchayat officers and municipal commissioners in the province of Madras provincialisation has given satisfactory results. The extension of this principle is what is required. With the introduction of this system every local body will have a non-partisan executive officer and the chairman will preside over meetings and play a dignified part on ceremonial occasions. It is on lines like these that the executive has to be reformed; and it is this phase of reorganisation that is most urgent.

THE CONTEMPORARY WORLD CRISIS AND ITS BACKGROUND*

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We cannot hope to understand what is happening in Europe to-day unless we examine much more carefully than is generally done the genesis of the dominant patterns of political, economic and social thinking which are changing the face of the world. One key-word at least is Nationalism and with this we may begin our study.

Nationalities have been defined as groups of persons "who speak a common language, who cherish common historical traditions and who constitute a distinct cultural society, in which among other factors, religion and politics have played important, though not necessarily continuous rôles" (Hayes, *Essays on Nationalism*) "Nationalism is born when such nationalities become conscious of their distinctiveness from one another.... it rests on a double basis; it herein resembles the concept of blood-brotherhood which dominates the life of primitive tribes and in which adoption, accompanied by the proper rites, is equivalent to blood-relationship through inheritance. In modern society the place of such adoption is taken by assimilation or nationalization both depending on the working of external influences." "Nationalism is not separateness or distinctiveness as such; its essence is the awareness of such distinctions and the importance given to them."¹

Thus it will be seen that nationalism begins by being a feeling which is rationalised rather than a set of logical principles which are induced.

The Nation in the modern sense of the word is the product of certain factors which we must examine.

* Written early in August, 1939.

A postscript, written by the author on the 8th of September, is added to bring the article up-to-date. (Editor)

¹ M. J. Bonn, "Crumbling of Empire," p. 106.

First of all there is the effect of the twin movements of the Renaissance and the Reformation. From the "New Learning" came a new way of thinking; for some it was a joyful return to paganism, an escape from the dark mediæval obsession with sin and a fallen creation; for others it meant a new humanism, in the case of such men as Erasmus or More, deeply Christian in inspiration, penetrated through and through with a rich consciousness of human worth and dignity and potentiality. Nowhere is this better expressed than in Hamlet's famous speech:—

"What a piece of work is a man; how noble in reason!
how infinite in capacity; in form and moving how
express and admirable! . . . How like a God etc."

The Reformation in a rather different way emancipated the individual by freeing him from the religious sanctions of the Middle Ages, laying on him the dangerous burden of full individual responsibility for his actions and denying the right of mediation between God and Man to any priest. The Reformation shattered the mediæval synthesis, based on the common Catholic faith, the one feudal order of society and the common use of the Latin language for cultured intercourse. National Churches or local sects take the place of the one Catholic Church, of Christendom.

Both Reformation and Renaissance assisted the growth of the modern State. The rationalist men of the Renaissance opposed to the mediæval idea of Static God-given societies the belief that States were *made* by the application of human reason. Long before the rise of democracy modern state-makers like Richelieu and army organizers like Cromwell were fashioning some parts of the modern state-machine.² While Machiavelli and others were elaborating theory, soldiers, statesmen and sundry adventurers were translating that theory into highly experimental practice. Out of these experiments emerges the sinister dogma of national sovereignty. The centuries which followed the Reformation in Europe were centuries of unparalleled individualism. In philosophy the metaphysical realism of the Schoolmen gave place to the subjective idealism of Descartes and Bishop Berkely. Man, the thinking substance, was divorced from the object of thought. In religion the predominance of the organic ideal of the Church gave place to innumerable societies of "believers," while in economics the same period began to see the rise of *laissez faire* in the place of

the rigidly controlled economy of the Middle Ages. In Politics the same individualistic note can be detected and it has its grandest expression in the several proclamations of the "Rights of Man" in the 18th century. Democracy is rooted and grounded in an earlier religious conception of the worth of every human soul in the eyes of God but these "Rights of Man" were cut off from their religious origin and substituted for God the rationalist conception of the Impersonal Nature of Things.

The Rights of Man logically lead to the American and French Revolutions and it was only one step from the proclamation of the rights of individuals to that of the rights of nations. It is significant that nations have come to be personalised in such conventional figures as "John Bull," "Marianne," or "Uncle Sam." Colonists demanded self-government and modern states had come into existence, conscious of their own distinctiveness. The conversion of these absolute States into democratic nations released new forces and the clash of the democracies with the forces of feudalism and absolutism gave a fresh turn to nationalism. On the one hand it denied all distinctiveness and insisted that all men were equal, on the other hand it truculently demanded self-determination for all minorities. Having driven back the armies of intervention the French Revolutionary Armies led by Napoleon felt impelled with an almost missionary ardour to spread the Gospel of national self-determination in the heathen darkness of feudal absolutism. The Napoleonic creation of national states gained the sympathies of the oppressed Poles and other minorities but not all equally appreciated the motives of the Napoleonic armies and the Germans above all rationalised the growing anti-French form of nationalism. This set a separatist nationalism against the universalist nationalism of France. Herder wrote, for example, "Where Nature has separated nationalities by language, custom, and character, one must not attempt to change them into one unity . . .," and the same writer asks, "Has a people anything dearer than the speech of its fathers? In its speech resides its whole thought-domain, its traditional history, religion and basis of life, all its heart and soul."³ It is worth recalling that Nationalism was linguistic and cultural before it became institutional.

The Slavonic people under German-speaking Hapsburgs had demanded the right to use their own language and the Romantic movement all over Europe had led to a revolt from an imitative classicism and back to folk-lore, thus paving the way

³ Quoted Bonn, p. 109.

to many a linguistic revival. The centralizing bureaucracies of such Empires as the Austrian and the Russian had forbidden the use of national languages, partly from motives of convenience and partly because it enabled the ruling-class to secure the best positions, but at this time a host of writers arose to defend and rehabilitate the national languages. The materialism of the age also had a great influence on the development of Nationalism, and an often pseudo-Darwinism was applied to social and political questions. Up till this time Nationalism had largely been a spiritual question, based on language and culture and other values not easily measured; it looked for its criterion to the realm of ideas and a nation had been thought of as a group bound together by a way of living. But now Nationalism began to get assimilated to the concept of Race. "Vulgar" materialism became a popular philosophy; life was regarded merely as a function of matter and thought merely a question of gland secretion. Thus spiritual factors were made to depend upon physical factors. Further, if the struggle for existence and natural selection were accepted as the basis of social as well as physical life, then certain groups of people could lay claim to peculiar fitness by virtue of their position of ascendancy. Their very survival at the top was proof of their superiority. So it began to be felt that the national supremacy was not due to happy accident or external causes but to inherent biological fitness. This conception was probably first utilised by the aristocracy in its struggle with the new middle class to justify its rights to rule on a basis of lineage but later it became a weapon in the hands of suppressed nationalities which comforted themselves with the assurance that their vigorous stock would prevail ultimately over the "decadent" breeds. Germany, a late-comer among the nations of the world, gained comfort from the very beginning in this Biological Nationalism, which, be it said, is far older in Germany than its extreme expression in National Socialism to-day. For this kind of Nationalism no assimilation into the nation is possible either by adopting the national language or citizenship, for nationality consisted in certain physical characteristics which could not be imparted to others but could actually be lost by "interbreeding."

"The doctrine of the Nordic Race was originally not much more than an effort on the part of a romantically inclined, embattled aristocracy to assert its privileges against a rampant, egalitarian democracy, by basing its claims on the immanent and immovable laws of nature which protect pure

lineage. It has been converted into a doctrine of nationalism by an egalitarian democracy opposed to other nationalities, to whom—as well as to itself—it wants to prove the divine foundations of its own aspirations."⁴

This tendency in nationalism was greatly encouraged by the rise of a new type of imperialism, based upon the needs of Capitalism. The liberal philosophy of the Cobdenites reflected the early days of stable industrial capitalism; it was essentially pacific and its slogan was free trade but, as capitalism was driven to seek new markets and fields of investment, it threw off the trappings of liberalism and revealed itself as predatory and ruthless. It is very important to recognise the connexion between the national idea and Imperialism. Imperialism has always utilised Nationalism for its purposes and its conquests have fanned the latent tendencies in nations towards a "demonic" pride (cf. for example the language of Kipling or Cecil Rhodes or the German pre-War *Kultur Kampf*).⁵

National leaders began to speak of their Divine Mission to spread their national culture and to "civilise" the backward and inferior races. The British jingoes may be paralleled in Germany and Czarist Russia, where the "slavophiles" were pronouncing the superiority of the Russian soul over the West

⁴ Bonn, p. 115.

⁵ Of this extraordinary literature we will not quote but sum it up in the words of Ruskin as true to-day as when they were written:—

"There are masked words droning and skulking about us in Europe just now which nobody understands, but which everybody uses and most people will also fight for or even die for, fancying they mean this or that or the other of things dear to them . . . they are the unjust stewards of all men's ideas; whatever fancy or favourite instinct a man most cherishes he gives to his favourite masked word to take care of for him; the word at last comes to have infinite power over him and you cannot get at him but through its ministry."—Quoted by Hobson, *Imperialism*, p. 207.

John Gunther in *Inside Asia* laughs at the pretensions of Japan to create a "new order" in Eastern Asia and their peaceful intentions towards China but the British and the Americans have long ago used this kind of moralistic facade for imperialism and Italy's "civilising mission" in Abyssinia is only a new variety of the white man's burden.

Germany's dream of Empire is neither more ruthless nor more fantastic than that of Cecil Rhodes' nor their language more bombastic. For quotations from the earlier literature of imperialism cf. B. Russell, *Freedom and Organisation*.

which was doomed. Russia and its peasants would be saved from the collapse of the West. Such emotional nationalism was easily allied to economics; for instance, in the Czarist Empire the abnegation of European values depended upon the protection of Russian and the exclusion of foreign goods to the great profit of the Russian manufacturer. Furthermore, it was announced that the great task of the Russian people was to raise the Cross over the Crescent and conquer the crumbling Ottoman Empire and unite all the oppressed Slav people.

Many a liberationist movement of minorities has ended by becoming a tyranny. The Democratic States who very properly rebelled against the heavy hand of feudal Empires have themselves enslaved and conquered many a colonial people. This is largely the result of finance capitalism which has exploited and utilised national sentiments. Nationalism began to sanctify War.

Nationalism performed a progressive rôle in history by challenging and breaking up the old topheavy empires. The nineteenth century saw the emergence to nationhood of Germany and Italy out of the ruins of earlier empires and feudal states, and other examples were the establishment of the Dutch Republic at an earlier date and recently the emancipation of the Slavs of Central Europe after the collapse of the Austrian-Hungarian Empire.

Germany was only able to become a modern state after freeing herself from the grip first of the Austrian Empire, then of Imperial France. It was essential for man that the tyrannical and reactionary empires should be broken up and the creative energies of the people of the world be unharnessed. This is the historical justification of nationalism and still justifies the type of nationalism that we see in India to-day—a better name would be liberationism in view of what Nationalism has become.

But to-day the justification for nationalism is no longer valid. The world no longer consists of young capitalist nations struggling to be free; many such nations now hold down more subject peoples than the feudal empires from which they wrested their freedom ever claimed to do! But men are still asked to defend these sprawling empires in the name of "patriotism" and from 1914—1918 died in millions to do so and may only too soon be called upon to do so again! Wars have ceased to be in any sense wars of liberation and either take the form of wars of aggression, i.e., of imperialist expansion or of defence, i.e., imperial retention^x "what we have, we hold."

The era of fully constituted imperialism only opened at the beginning of the twentieth century with the more or less complete division of the available territories of the earth between a handful of leading powers, representing highly concentrated finance capitalist groupings. From the outset the era of imperialism was highly unstable in contrast to the relative stability of the preceding period of industrial capitalism. Its course was marked by the British Wars in South Africa, inter-imperialist occupation of Pekin, the Russo-Japanese War, an Italian War in Tripoli and two Balkan wars as well as sharp international clashes in 1905, 1908 and 1911 and an intense armament race which led up to 1914. The cause of this extreme instability and conflict as bad to-day as before the blood-letting lies in the uneven development of capitalism, especially in its imperialist phase.⁶

The great trusts and cartels of monopoly-capitalism have enormously increased production and they demand continuous expansion and domination of the maximum area for their successful functioning. Between 1876 and 1900 the proportion of African territory held by European powers expanded from one-tenth to nine-tenths and the conquest of Abyssinia by Italy marks the final partition of the Continent.

Between 1870 and 1900 Great Britain acquired 4,754,000 sq. miles of territory, adding to her subjects 88,000,000 people. Between 1884 and 1900 France acquired 3,583,580 sq. miles and gained 36,553,000 people, while Germany gained 1,026,220 sq. miles of territory and 16,687,100 people.

But the struggle advanced to a new stage when this scramble was completed and there were no more "unoccupied" territories to conquer.

The competition of capitalist industry in an earlier age which led to a development of monopolies led to a parallel competition of rival imperialisms over the already divided world and for the conquest and economic penetration of territories under already recognised sovereignty, e.g., for the partition of China and the Turkish Empire and the economic penetration of

⁶ It is impossible to discuss in detail the question of Imperialism in such a paper: it was done supremely well by Hobson and it was this book written as long ago as 1902 which gave Lenin much of the material for his most valuable contribution to Marxist thought, namely the relation of imperialism to monopoly Capitalism. Two useful books on Imperialism of a brief kind are a pamphlet published by the Pacifist Research Bureau called "*Why Are They Proud?*" and "*The International Share-Out*" by Barbara Ward.

South America, direct political conquest of which was forbidden by the American Monroe Doctrine.

Such is the conflict for the re-division of the world which is the characteristic conflict of imperialism. The various industrial Powers developed unequally in accordance with historical conditions and stages. Conflicts thus have arisen over monopolist control, culminating in an attempt to break down the barriers by military force.

In the pre-War period Germany represented the expanding, dynamic forces of capitalism, while Great Britain was still actively in the field. Both Germany and Italy had come late to the colonial scramble. The British Empire, France and Czarist Russia had secured great spoils, but young German capitalism was expanding far more rapidly than any other in Europe and even at the end of the nineteenth century was outstripping British capitalism in heavy industry and technical organisation. It is worth nothing that even in the pre-War Empire under the Bismarck regime there was a far greater degree of rationalisation of industry and state control than in any other country at the time.

Around the central Anglo-German antagonism gathered all the economic, political, national and racial conflicts of the day. Britain found allies among the Powers in possession—the crumbling empires of Austria-Hungary and Turkey. Italy, the other dissatisfied Power, was ultimately bought off by an offer by the allies. As to-day efforts were made to stave off the impending disaster, people began to speak of the decadence of Britain, which was, however, well able to strike when it came to the point and to strike ruthlessly; there were discussions as to satisfying the demands of the “hungry” Powers and attempts were made to devise international mechanism to avert war. Statesmen met to find a peaceful solution to the colonial problem and even to discuss the possible transfer of the Portuguese colonies, but the War came, the worst in history up till then. Roughly, one man in every forty in the whole world was killed, Empires collapsed and most important of all, the Russian Revolution led to the withdrawal of the old Czarist Empire from the sphere of imperialism and the building of a new socialist order over one-sixth of the earth’s surface. Actually the revolutionary wave spread widely but only prevailed in Russia, though great changes took place in China and the colonial people throughout the world increased their struggle for freedom from Western domination.

It was a new age. A breach had been made in the ramparts of the old economic system and socialism now had a world base which withstood all assaults.

All attempts at returning to pre-War conditions failed and the result may be seen in the great economic depression which left no part of the capitalist world unscathed and which increased the social conflict. Every country was faced with the spectre of unemployment and in a growing number of countries the extraordinary methods of Fascist Dictatorship were adopted to maintain the existing system of economic control by a small class. These dictatorships drew upon all the emotional resources of racial and national prejudice which lay to their hand and which the neuroses and general break-down of older religious, social and moral sanctions attendant on a long and cruel war only intensified.⁷

Victory in war had fallen to the powers in possession and they used it to increase their possessions and permanently to cripple their rivals or that at least was their expectation.

Germany lost her colonies which were given under Mandate to Britain; she was forced to cede territory to Denmark, France and Belgium, and to consent to the “corridor” which enabled the resurrected Polish nation to have access to the sea; her mines were forced to work for the allies, her financial obligations under the Treaty made her a heavily encumbered debtor country and she was driven along the road to bankruptcy by inflation. Before the war, Germany had been the economic metropolis of the Russian Empire, whose semi-colonial condition provided great opportunities for capitalist expansion, and both the Austrian and Turkish Empires provided friendly markets. All this was finished. These Empires had gone and Russia was no longer a field for capitalist enterprise. (Does this partly explain the Nazi hatred of Bolshevism?).⁸

⁷ It is worth studying carefully the events which led to the establishment of Fascism in Italy and Germany. Cf. especially:—

P & I Petroff, “*Secret of Hitler’s Victory.*”

Mowrer, “*Germany Puts the Clock Back.*”

Rossi, “*Rise of Italian Fascism.*”

⁸ Actually Hitler borrowed not a little of the Bolshevik technique.

“It is a bolshevism of the ignoble which undoubtedly is a more horrible menace to civilisation than the social doctrine whose menace has driven so many of the propertied classes into the arms of fascism or at any rate inspires them with sympathy for it. . . They consider fascism a protective bulwark which will save them from the real, the proletarian Russian bolshevism and socialism in general. The fascist dictatorships actually pretend to be such a bulwark, they act the part of the saviours of European civilisation against bolshevism, towards which they maintain, democracy is a

But, as we shall see, this treatment of Germany raised innumerable new problems.

We may sum up the post-War shape of the world in the following rough conclusions:—

On the one hand the victorious powers of the last war, satiated and so pacifist, desirous of maintaining the *status quo*—Britain, France, and with them for the moment the greatest capitalist power of all, U.S.A. U.S.A. was a creditor to the rest, endeavouring to gain a world dominance through leadership of the Peace Conference and the League, but afterwards retiring into isolation which policy, however, is increasingly being defeated by world developments.

preliminary step. They can be said to exist by means of this artificially propagated fear; this fear, above everything helped the fascists to their internal victory and they are confident that the anti-bolshevist ideology will help them to the external or world victory . . . But . . . the idea that Fascism,—especially German National Socialism—has the function and intention to preserve private property and an individualistic society is completely erroneous . . . German National Socialism . . . is practically identical with bolshevism (in its economic effect). Under National Socialism, to be sure, the workers are deprived of rights, the unions are destroyed, all socialistic organisations are annihilated. But the hope that this would bring the golden age of capitalism was a dream of Herr Thyssen and other capitalist patrons of the Hitler party . . . the war economy of the Third Reich is a morally low form of socialism but nevertheless a form of it . . . a military dictatorship of the state over national economy, a complete elimination of business initiative, the unquestionable collapse of private capitalistic economy.”—Thomas Mann, *“The Coming Victory of Democracy.”*

But Mann hastens to make it quite clear that genuine socialism is international and peace-loving and as such is being murdered in the Third Reich. He points out that it is not Russia who compels the world to arm but Germany; yet Russia lost as much if not more than Germany through the great war—great blocs of territory such as the Balkan States which became independent nations and Bessarabia which fell to Rumania, yet USSR has in no way been aggressive in its attitude to these countries. Despite the background of armed intervention and economic blockade Russia has not become a revengeful aggressive power demanding revision of peace treaties, though it is worth remembering that the treaty of Brest-Litovsk which Germany forced on Russia was far crueller than the later Treaty of Versailles was to Germany. Russia has been leading the way in the demand for a Peace Front and on more than one occasion when there has been trouble with her Far Eastern neighbour Japan has preferred peaceful settlement to the rattl-

Outside Europe the rising powers—Japan and the British Dominions, though the latter are still to some extent related economically to Britain. Britain is torn between European liabilities and the tendency of the Empire to disintegrate. France sought a precarious leadership in Europe, too great a task for her strength.

Italy resented her treatment at the Peace Conference and increasingly came into line with the defeated powers.

We may add to this rough classification the following:—

1. Satellite states of the victor powers, e.g., Portugal and Denmark and ex-neutral states—Switzerland, Holland and the Scandinavian countries.
2. Colonial nations struggling for independence.
3. USSR. (The Soviet Union)

Already the “war to end war” has led to bloody conflicts—the almost unnoticed Gran Chaco war in South America (largely the result of rivalry between petroleum interests), Abyssinia, Spain, China and the prospect of a grand conflagration in the future is only too probable. Furthermore, the war “to save democracy” has resulted in the disappearance of Democracy in an increasing number of countries.

ing of sabres but as realists the Russians are prepared for all contingencies and have one of the strongest defence forces in the world.

It is very easy and very misleading to over-simplify issues to-day and the view which I have adopted to some extent that Fascism represents the large stage of capitalism must not be pushed too far. In the 1890's Joseph Chamberlain regarded the State as a kind of joint-stock company designed to forward the interests of a small group of shareholders but to-day in the State Leviathan all interests are subject to the “will of the collectivity” which generally means in fact the will of the ruling clique but this clique is not composed of business men nor is its interests purely commercial. A narrowly economic interpretation of contemporary history will ignore the vital importance of Mussolini's will to power or the Nazi myth of blood and soil. The Japanese capitalists have little use for the militarist policies of the army with its form of collectivist dream and indeed a Prime Minister and one another minister were shot for opposing the schemes of the army for advance in Manchuria. In Germany “we are not dealing with capitalists, but with the capitalists' Frankenstein, a creature for whose birth they were partly responsible, but which shows few signs of filial piety. . . . this new state is primitive and barbaric, yet backed by modern science, modern armaments and superlative technical efficiency.” Cf. Barbara Ward, *“The International Share-Out,”* pp. 97-98.

The Treaty of Versailles was intended to be a world settlement leading to a world League. In fact, on account of Anglo-American antagonism it became a European settlement. It will be seen that the winners of the war were sharply divided as to the spoils of the peace. U.S.A. dreamt of being the arbiter of the world's destinies and the muddled idealism of President Wilson led to the formation of new national states, e.g., Poland and Czechoslovakia, on the principle of self-determination, though this was not applied to colonial peoples nor to Persia or Egypt.

But Wilson also accepted the principle of American predominance. He was not strong enough to enforce it in the face of British and French opposition and so America refused to sign the peace treaty or to enter the League. American isolation has actually meant economic and diplomatic penetration and the strengthening of arms. In regard to Germany, French and British aims were mutually antagonistic. As Lloyd George said,

"We have got our way . . . the German navy has been handed over and the German colonies have been given up. One of our chief trade competitors has been most seriously crippled and our allies are about to become her biggest creditors."⁹

France was less successful; she secured Alsace-Lorraine but failed to extend her frontiers to the left bank of the Rhine, though she obtained its occupation for 15 years together with 15 years of Saar coal and demilitarization of a 50 km. zone on the right bank of the Rhine. Disarmament was imposed on Germany and heavy reparations. French policy was directed to securing the permanent occupation of the Rhineland and the conquest of the Ruhr. France also strengthened her position by a series of alliances with secondary states. The idealistic motives of self-determination are very superficial in any analysis of post-War Europe, which has reflected the aims and relations of imperialism. Self-determination could not justify the lopping off of German populations or the prohibition of the desired union with Austria. These had been determined by strategic considerations.

The new states were Poland, Czechoslovakia, Yugoslavia and an enlarged Rumania. In these new states the national majority of 47·9 millions were given rule over national minorities of 22·7 millions.

⁹ As reported in Lord Riddell's *"Intimate Diary of the Peace Conference and After—1918—1923."*

It is only possible to summarise what followed.

America refused to accept British naval supremacy and ceaseless disputes on naval parity have dragged on as was revealed in the final break-down of the Washington basis when the Japanese made their repudiation in 1934.

In the Near East, war broke out between Turkey and Greece, Britain supporting Greece and France Turkey. Nationalist Turkey was able to establish itself by playing off the French against the English. France occupied the Ruhr in 1923 and on the failure of this in view of German mass opposition, temporary Anglo-American cooperation enforced the Dawes Plan for the more scientific exploitation of Germany in the interests of Anglo-American finance in 1924.

A period of stabilisation ensued from 1924 to 1929. The Dawes Plan restored economic capitalism in Germany and the flow of American capital into Germany and elsewhere led to rapid industrial expansion. In 1925, the Locarno treaties brought political settlement and in the same year Britain returned to the Gold standard. In 1926, Germany entered the League. Franco-German cooperation was established and Franco-German interests formed the European steel cartel. This was the Europe of Briand and Stresemann, of the ideal of *pan-Europa*, of hopes of peace and dreams of a new social order peacefully ushered in. It was this world in which the author spent his young manhood and it is no easy task to throw off the illusions of that period and to face adequately the difficult world of ten years later. European pacifists and the apostles of "appeasement" really still live emotionally in that happier decade.

In 1928, the Briand-Kellogg pact recorded pledges of all states "to renounce war as an instrument of national policy." In 1929, the Young Plan experts were laying the foundations of an International Bank. Production and Trade leapt up and with them a host of tragic illusions. Poverty was to be conquered, crises would be no more, capitalism would be reorganised and an era of peace and prosperity would begin. The Social-Democratic leaders of the Labour Movements in Europe and America accepted the view that the world had entered a period of capitalism which would lead to an organised economy, in principle to social planning of production "without tears."

But how different the reality! The economic crisis which began in 1929 exceeded in intensity any that had gone before. The whole temporary scaffolding of stabilisation was rotten and crashed to the ground.

It is impossible at this point to avoid some reference to economics. The impoverished world was in debt to wealthy American capitalism and at the same time America was pouring out a surplus of goods which increased the debt. Europe with an adverse trade balance of £400 million paid tribute to America which had a favourable trade balance of £200 million. There was a flow of gold to U.S.A. and while Europe struggled with paper inflation, U.S.A. "sterilised" its gold in vaults. The position was precarious in the extreme and dependent on American capital export, but the enormous debts involved, especially in Germany, vast exports to pay for this capital. Exports increased enormously and a gigantic process of rationalisation with the aid of borrowed capital endeavoured to equip German industry to pour out mass-production goods on the world market. But under conditions of exploitation (which we may briefly and inadequately describe as wages held down to a certain level in order to maintain the rate of profit and colonial countries kept in a backward state) the expansion of production broke against the limits of mass consumption, i.e., limits in the sense that more money could not be given to the people to purchase the vast quantity of goods produced and services available.¹⁰

¹⁰ The restricted utilisation of the productive forces was a marked feature of post-War capitalism even before the economic crisis of 1929. "We appear to be in a condition of a stability at a level of production considerably below the capacity of the national capital and labour force" declared the *London and Cambridge Economic Service Bulletin* in March 1928.

In a survey entitled "*America's Capacity to Produce*" published in 1935 the conclusion is reached that between 1925 and 1929 from 17% to 20% of the capacity of available plant was not utilised and that on the basis of careful calculation production could have been technically increased in 1929 to give to million families a further £4 a week each on their income. The depression greatly enhanced this tendency not to employ available means of production with consequent unemployment and derelict factories and whole areas lying idle.

To-day the crisis of capitalism which is unable to produce for consumption is partly solved by producing armaments. There can be no doubt that there is a sinister connection between the paradox of poverty in the midst of plenty and the other dreadful paradox of intense preparations for war in a world where the great mass of the people desire peace above all things.

"The socialist embryo is demanding birth, and if birth is denied the capitalist mother will perish nevertheless. If birth is allowed the mother may live to a ripe age as the child grows sturdier. Even in those Fascist countries where an

The crash began in U.S.A. in 1929 and it lasted throughout the world till 1933. Mass unemployment rose to an estimated total of 30—50 millions. In 1930 an emergency régime was established in Germany and this formed the transition to the establishment of the Nazi régime in 1933. In 1931 came the suspension of all payment of reparations and war debts, the formation of the National Government in England; the collapse of the gold standard and Japan's invasion of North China in contravention of the League, the Washington Treaty and the Kellogg Pact. Japan then left the League and it was while Japanese guns bombed Chapei that the Disarmament Conference opened and it dragged on for three years. Lausanne marked the end of Reparations, Ottawa of the last relics of free trade, while the end of the first five-year plan made USSR the chief industrial power in Europe and the second in the world. After Hitler gained power in 1933 Germany left the League and the World Economic Conference ended in fiasco.

1934 was a dark and gloomy year in very truth. In Germany Hitler pressed forward with re-arming and purged his party in the bloody June days; Dolfuss was assassinated by Nazis in Austria and Barthou and King Alexander of Yugoslavia at Marseilles. It is worth noting that these together with the assassinated Premier of Rumania were all notorious anti-Nazis. In the same year the workers of Vienna had fought against the Clerico-Fascist government and were machine-gunned in the magnificent flats which had been the admiration of all Europe.

attempt is being made to avoid the inevitability of socialism, and being made to abort the embryo, the State is only managing to keep the private enterprise go machine system going by dumping the capitalist surplus into a form of socialist expenditure. The private enterprise system, no longer able to find foreign investment for its surplus, is being kept going by manufacturing guns and machine-guns and explosives and forts and aeroplanes and battleships and military roads and railroads paid for with borrowed money. Socialist expenditure for the purpose of increasing the education and leisure and standard of living and standard of comfort of the people is only being avoided in fascist countries to-day by speeding the production of socially owned destructive equipment. Indeed the difference between Fascism and Socialism is becoming one of ideals rather than economics. One expands socialist destructive expenditures to prolong the life of private enterprise, however many human lives are eventually destroyed; the other expands socialist function to give human beings a richer life."—John Lee, *Socialism in New Zealand*, pp. 9-10.

The result was the destruction of the Austrian social-democrats.¹¹

The total abandonment of all pretence of democratic government and the victimisation that followed largely explains the later success of the Nazis in Austria. Gedye points out (in *Fallen Bastions*) that to the very last moment Schussnigg, the successor of Dollfuss, could not bring himself to change his ways and make an alliance with the underground socialist groups, who would have supported him against the Nazis.¹²

But the moral of the preceding years had not been lost on the Left. The workers fought Fascism in Spain and France, and Russia joined the League. It was the year which saw the inauguration of the "Popular Front" in both France and Spain.

It is at this point that we may mention the contradiction between "class" interests and imperialist interests which makes the present position so very confusing. This paradoxical situation can never be omitted in any analysis of the present international situation and it makes every country virtually a potential scene of civil war.¹³

There are people in every country who secretly or openly desire the victory of Fascism in Europe because they think it

¹¹ On the tragedy of Austria cf. Gedye, *Fallen Bastions*.

¹² *op. cit.*

¹³ A very frank statement is made by Mme. Tabouis on this fact, and she cannot be accused of being a dogmatic socialist. cf. "*New Tyrannies for Old*"—an essay entitled, "The Confusion of Western Democracy under Capitalist Domination." Mme. Tabouis asks very pertinently whether one does not get the impression that every time the dictators get into difficulties the capitalistic systems help to re-float them!

The capitalist ruling class forms a veritable International in every country. Mme. Tabouis points out that for many a dictatorship means "order," i.e., the maintenance of privilege on the part of certain classes and above all "a battle against communism." This false issue warps the judgement of those who have an *idée fixe* about the dangers of communism.

The most devastating indictment of the policy of the British Government as a government inspired by class feelings is to be found in a series of books by K. Zilliacus (under the name *Vigilantes*), viz., "In quest on Peace," "The Road to War" and published this year "Why we are losing the peace." Zilliacus has been for years in the International Secretariat of the League at Geneva and knows full well of what he writes. It is a terrifying picture of ineptitude and blind prejudice which in the end may encompass the destruction of the very class it seeks to defend.

protects their economic interests. These are the shareholders in the great trusts, the armament manufacturers who are international and the controllers of finance capital. In every country these groups are a small minority—the famous 200 families in France for instance.

Fascism in several countries has broken the Labour movement and created a society, peculiarly adapted to the needs of monopoly capitalism which is impatient of the interference of democratic forms of control. The small people who supported Hitler through fear of Socialism have gained little or nothing. The June purge represents the end of that section of the Nazi party which stood for the revolutionary feelings of the depressed petty bourgeois. Henceforth, Nazism was to express the needs of the great industrialists, of Thyssen and Krupp and the armament manufacturers alone. The small capitalists are by no means satisfied with the Nazi régime any more than the shopkeepers are.¹⁴ But the great industrialists are closely linked with similar interests in France and Britain and this may explain the astonishing pro-Nazi policy of some right-wing politicians in these two countries.¹⁵

British foreign policy permitted the Japanese annexation of Manchukuo in 1931, assented to German re-armament, concluded a Naval Treaty with Germany and together with France failed to apply effective sanctions against Italy in the Abyssinian war. (It has been suggested that this may have been partly due to oil interests, which naturally had no desire to see an embargo on the importation of petrol for Italian aeroplanes—Italy has no oil.)¹⁶

Still more flagrantly in Spain powerful interests supported Franco and the non-intervention committee virtually formed a cloak for open Fascist aggression in Spain. At the time it was indignantly denied but since the war has ended both Hitler and Mussolini have received the returned "volunteers" in great

¹⁴ On the present economic position in Germany cf. Guenther Reiman, *Germany—World Empire or World Revolution*.

¹⁵ A good example is Lord Londonderry whose "Penguin Special" "*Myself and Germany*" is commendably frank. One may also refer to the talks between Herr Wholtat and Mr. Hudson as to a possible loan to Germany which were disclosed recently and made not little confusion in high places and, though their official character was denied, are hardly likely to convince Hitler that another Munich is not a possibility.

¹⁶ cf. G. T. Garratt, "*Mussolini's Roman Empire*."

triumphal rallies at Berlin and Rome.¹⁷ These interests are terrified of the collapse of Fascism and bitterly hate the Soviet Union which was taking a lead in demanding a "United Front" against Fascism.¹⁸

To defend their economic connexions, Hitler's friends in England and France have betrayed their own countries. The very deep pacifist feelings in both countries were utilised to "appease" Hitler on a number of occasions. At any time during the last two tragic years concerted action on the part of Britain, France and the Soviet Union with American moral support would have called Hitler's bluff, for his internal situation was and is by no means secure, but the acquisition of Austria and the control of Czechoslovakia have vastly enhanced his strategic position while the defeat of the Spanish republicans makes German (and less importantly Italian) dominance more or less certain in the new Fascist Spain despite Franco's hints at neutrality. This would mean enemies for France on three frontiers and the loss of a valuable ally in Czechoslovakia and it would imperil British trade routes to the East.

It is extremely difficult to get any reliable information as to the morale in Germany but the general impression is that the mass of the people do not want war; they are weary of propaganda and the increasing badness of the food.¹⁹ It is said that at the time of the Czech crisis in last September the German general staff threatened to resign if Hitler went to war. Since the Munich Pact, there has been a vast amount of speculation and debate. The Pacifists still defend Mr. Chamberlain's action on the basis of anything being better than war, though they equally strongly disapprove of his continuing to rearm.²⁰ It is certainly

¹⁷ There is an enormous literature on the Spanish War. In this connection one need only mention Borkenau, "*Spanish Cockpit*," "*Unknown Diplomats*," "*Britain in Spain*" and "*Searchlight on Spain*" by the Duchess of Atholl.

¹⁸ The Soviet Union at this time largely abandoned any attempt at fomenting revolution in other countries through the instrumentality of the Third International and took an acknowledged leadership in the struggle for peace and at Geneva.

¹⁹ Cf., for instance, articles on Germany in the American "*Nation*" of July 5th, 1939. Also "*Hitler Calls This Living*" by a member of the German Freedom Party.

²⁰ Among defences of Mr. Chamberlain's actions one may mention his own "*My Struggle for Peace*" and the qualified support of the pacifists as outlined in Professor Joad's "*Penguin Special*," "*Why War?*"

true that as the Chinese gentleman said "Many chickens have come home to roost!"

Mussolini seems to have become a very junior partner in the Rome-Berlin Axis. When after the murder of Dolfuss the Nazis were expected to make a *Putsch* in Austria, Mussolini massed his troops on the Brenner Pass. Since then he has embarked on a hazardous experiment in Empire. Mr. G. T. Garratt²¹ has pointed out that Mussolini could not have maintained himself in Abyssinia without material assistance from British sources. The staunch resistance of the Republicans in Spain demoralised the Italian army not a little and weakened Mussolini's prestige at home.

While Hitler has pressed forward Mussolini has only seized Albania but, though this too is a distinct danger to Franco-British interests in the Mediterranean and the Near East, it frightened Yugoslavia and Greece and is one reason why there are better relations to-day between Britain and Turkey.

It is worth noticing that Mussolini supported Hungarian claims in Ruthenia—a backward minority at the South end of Slovakia; but Hitler does not want an enlarged Hungary, for he cannot control it now, since Hungary is ruled by a land-owning class which controls 90 per cent of the land and the middle-class is too weak to be of much use to Hitler. Hungarian Fascism would not be subservient to Hitler. The proposal to divide Ruthenia was strongly opposed by Rumania in that it would divide her from Czechoslovakia. However, Hungary has joined the Axis.

In Franco's Spain German capital is already entrenched but the Italians are unpopular, though one doubts whether the Germans are much less so; and the Spaniard, be he conservative or socialist, is fanatically individualist and suspicious of foreigners. One has not heard the least of opposition in Spain, that is quite certain.

The position in England is by no means easy to sum up.

At first after the Munich débacle there were some in England and indeed still are who dreamt of a four-power pact out of which would emerge a new balance of power with Britain and

Among critics of very varying type cf. Seton-Watson, "*Munich and the Dictators*;" E. A. Voigt, "*Munich and After*;" Douglas Read, "*Disgrace Abounding*;" A. Werth, "*France after Munich*;" Vigilantes *op. cit.*, and for an American review Hamilton Fish Armstrong "*Where There Is No Peace*."

²¹ *op. cit.*

Germany as the major partners and France and Italy as the secondary members but the seizure of Prague and the recrudescence of extreme Jew-baiting made it difficult to push this line and feeling generally hardened against the Nazis in England. On the other hand, Chamberlain was able to achieve a small degree of Conscription which has always been a most unpopular measure in England. Both, in England and France, in the name of national defence, the Press will be tuned and the workers constrained to play their part. The French foreign minister Bonnet is a notorious pro-Fascist and there have recently been most sinister suggestions made about him. On the other hand, the French general staff and the English Imperialists—the Tory Democrats and a section of the Liberals—have definitely set their face against further “appeasement.” At the moment the crucial issue is the alliance with USSR. There has been great delay in this and some critics of the British government question whether it will ever be achieved. It is significant that while Mr. Chamberlain went to see Hitler personally and sent Runciman to Czechoslovakia, the Russian conversations were left to a Foreign Office official and the British ambassador.

The Soviet Foreign expert M. Litvinov retired in favour of M. Molotov who seems to be proving a match even for the British diplomats. His intention seems to be to ensure that the Peace Front really is complete with no loopholes. But if, in the view of Nazi aims against Poland, Britain and France decide to support Poland it can only be done with Soviet assistance. It is by no means a fantastic notion that if the alliance with the Soviet fails to fructify, USSR will relapse into armed neutrality and even conclude a pact of non-aggression with Germany. It is significant that for some time past attacks on the Soviet have disappeared from the inspired German press while there has been a crescendo of bitter invective against Britain.

At this point let us look at the Far East. The weakness of the League in 1931 was largely due to the inability of America and Britain to work simultaneously. The European situation abundantly demonstrates that the main section of British Conservatives (Chamberlain) is timid; it is not prepared to pay the cost of new commitments. As it is, the defence of the Empire costs Britain more than she gets back in profits. The British interests are not only on the defensive but in active retreat, hoping that they will be allowed to keep what they have got. In China, British capital stands to lose by a Japanese victory but may also lose by an outright Chinese victory. Victorious China would mean general industrial expansion which

would feed international trade, but dominant British interests fear that this would favour countries ready for new enterprise and would provide a disturbing example to India. China can only vindicate her independence by freeing herself also of civil-war militarism. In Asia the policy is to check aggressors but not to defeat them. The choice between surrendering a part of British might in the Far East to aggressors (as in the case of Tientsin) and freeing semi-colonial and subject people seems to be decided in favour of Fascism, not freedom.²² American policy also hates the idea of triumphant Japan for America has thought of developing China and U.S.A. has less interest in preserving a semi-colonial China and has no India to be stimulated by a new China. This is the point at which American and British interests diverge. The events of the last month or two seem to make this fairly clear. It is true that there are interests ready to make money out of financing Japanese conquest, but American conservatism is less concerned than Britain in maintaining past gains.

The reactionary forces among the Chinese themselves are weakened by the Japanese insistence of allowing no “superior” class to survive under Japanese rule. China has never been more united.²³

The greatest victories have taken place in areas from which the regular armies have withdrawn and the rapidly changing China of to-day could not accept the peace terms that the rulers of an unchanged China might have been forced to accept a year or two ago. America will not prevent any attempts to make a peace which lets the aggressor get away with something but they

²² On this point cf. article by Owen Lattimore in “*New Statesman*.”

It is perhaps still worth quoting Mr. Amery's remarks in the House of Commons on February 27, 1933:—

“When you look at the fact that Japan needs markets and that it is imperative for her in the world in which she lives, that there should be some sort of peace and order, then who is there among us to cast the first stone and to say that Japan ought not to have acted with the object of creating peace and order in Manchuria and defending herself against the continual aggression of vigorous Chinese nationalism? Our whole policy in India, our whole policy in Egypt, stands condemned if we condemn Japan.”

²³ Cf. Pringle, “*China Struggles for Unity*” (Penguin Special), Agnes Smedley, “*China Fights On*,” Bertram “*North China Front*,” Mowrer (Penguin Special), “*Mourner in China*.”

will not cooperate to defend British vested interests without guarantee of America's future interests.

We must pass over the pregnant possibilities of future conflict in Latin America where Fascist influence, both German, Italian as well as Japanese is increasing.²⁴ The future development of these countries will one day be raised and with it the future of the Monroe Doctrine. Both German and Italian influence may be seen in the Near East in the stimulus given to Arab Nationalism and the tragic conflict in Palestine which is perhaps one of the most embarrassing situations that British Colonial Officials have ever had to face. Palestine is to-day one of the most important strategic points both by reason of its geographical position and its possession of the pipe-line to Iraq.²⁵

So we may see the complications and the subtle pattern of international relationships which the paradox of conflicting economic interests has produced.

The fear of possible socialist or communist developments in countries where Fascism had broken down leads to an active support of Fascism and the result of this may be seen in the policy of the *Munichois* as the French call them. This policy has actually endangered imperial interests and such clear-sighted imperialists as Mr. Churchill have come out strongly and consistently against it.

Italy has dreamt of the Mediterranean once more becoming *mare nostrum* (our lake) in a reconstituted Roman Empire; she has at no little cost to herself become an Imperial Power in Africa and gained strategic points of the greatest importance on the Balearic Islands. Both Italy and Germany have gained vastly by the success of Franco in Spain. Similarly, the "betrayal" of the Czechs gives Hitler a considerable advantage. Not only does it mark a further step in the revision of the Peace Treaties but it gains him economic control of valuable territory,

²⁴ A new book by Carleton Beales is worth mentioning entitled "*The Struggle for Latin America*."

²⁵ Of the considerable literature on Palestine cf. two books written from the Arab point of view:—

J. M. Jefferies, "*Palestine the Reality*."

George Antonius, "*The Arab Case*."

and from the Jewish viewpoint,

Norman Bentwich, "*Fulfillment in the promised Land*."

Feiwel, "*No Ease in Zion*."

and an independent Jewish view,

Zukerman, "*The Jew in Revolt*."

an access of population and immense prestige. It gives him potential mastery of Hungarian wheat, Rumanian oil and timber, ultimately the possible control of the Black Sea and beyond it the Caspian Sea and the Persian Gulf—vital life-lines of British Imperial Communications. Above all it removes the menace for Hitler of an armed democratic power in alliance with USSR on his borders and it reduces France virtually to a second-rate power in Europe, though to-day—nearly a year since Munich—France shows signs of recovery. But the whole system of French hegemony in Central Europe and the system of pacts and alliances has collapsed. It seemed certain that USSR would be driven to more complete isolation from Europe and that France bereft of allies would be unable to prevent the British "appeasers" adopting Hitler's dream of a Four-Power Pact with the ultimate likelihood of an attack on the Soviet Ukraine. But it is also unlikely that Hitler would give up his demand for colonies, though he could afford to do so for the moment. Few people outside Germany have read the unexpurgated edition of Hitler's "*Mein Kampf*" but he seems to remain faithful to it and it still provides a key to his policy.²⁶

"*Mein Kampf*" gives us the method by which he secures victories, namely, unilateral acts preceded by an assurance of no further action to allay suspicion, e.g., in January 1934, after the return of the Saar to Germany Hitler told France that he would accept the letter of Locarno and "maintain every treaty voluntarily signed." There followed re-armament, conscription, reoccupation of the Rhineland and the formal repudiation of Locarno on March 7th 1936! In May 1935 and January 1937 he gave assurances that Germany had no intention of interfering with or annexing Austria. In March, he invaded Austria at the very time that his ambassador Von Ribbentrop was telling Lord Halifax that such a thing would not happen. At this time also, Goering assured the Czechs that they would not be molested; we see the value of these assurances now.

"*Mein Kampf*" shows how Hitler appreciates the value of unscrupulous propaganda such as is so successfully broadcast by Dr. Goebbels, who has said that "objectivity is weakness" and that propaganda should not be "respectable or mild but successful."

The theory underlying "*Mein Kampf*" is that of the romantic nationalism which we began by defining, e.g., "land to be won with the German sword for the German plough, not in

²⁶ Cf. the unexpurgated edition published by Hurst & Blackett.

Africa but in Europe" or again "State frontiers are made by men and altered by men." He goes on to say that land must be won in the Ukraine, Poland and the Baltic States. By utilising the German minorities and the Fascist groups in North Europe and Southern Europe as well as his deluded friends in England and France (popularly called his "Fifth Column" since the Spanish War). Hitler has pushed forward his plans. At the same time he expressed his desire for Friendship with Britain and his approval of British domination in India.²⁷ But Hitler also says in "*Mein Kampf*" that Britain must be detached from France—"the immortal enemy."

Hitler has removed the last dyke of democracy in Central Europe; there is no evidence that he will cease his forward drive unless he can be convinced that he will be met with invincible might to prevent him and the history of the last few years may not have the effect of convincing him that Britain means to prevent

²⁷ Cf. above edition, pp. 535-536 where Hitler says:—

"I would rather see India under British domination than under any other nation."

A little earlier he has referred to a certain proposal for a league of Oppressed Nations and says:—

"... few Asiatic mountebanks, who put themselves forward as 'the champions of Indian Freedom' began to peregrinate throughout Europe and succeeded in inspiring otherwise quite reasonable people with the fixed notion that the British Empire which had its pivot in India was just about to collapse there. They never realized that their own wish was the father of all these ideas. Nor did they stop to think how absurd their wishes were. For inasmuch as they expected the end of the British Empire and of England's power to follow the collapse of its dominion over India, they themselves admitted that India was of most outstanding importance to England."

Again he says:—"England will never lose India unless she admits racial disruption in the machinery of her administration (which at present is entirely out of the question in India) or unless she is overcome by the sword of some powerful enemy."

Pandit Jawaharlal Nehru in his *Autobiography* refers to his having represented the Indian National Congress at a Conference of the League of Oppressed Nationalities at Brussels. Perhaps he was one of the mountebanks to whom Hitler refers!

Certainly the whole spirit of Hitler's references to India shows nothing more than racial superiority and respect for Britain's might. Those who to-day may think that something may be gained by India cultivating the Nazis should be forewarned.

him. It seemed after Munich that nothing could stop the ultimate attack on USSR and the consequent freedom for Hitler to dictate to Britain thereafter. Munich seemed to make it clear that Mr. Chamberlain was more ready to be Hitler's junior partner than to cooperate with the Soviet. There can be no doubt that the Munich affair was highly destructive of British prestige. Runciman was sent to Prague and put insistent pressure on the Czechs, who as Churchill has pointed out could have got far better terms had it not been for this intervention. Chamberlain himself had said publicly that Hitler could have all he wanted without war and without delay. For a short time after Munich, there was talk in England of a new era of peace, but this illusion like so many others was soon shattered. Hitler, not satisfied with having gained the Sudeten minorities, proceeded to turn the whole of Czechoslovakia into a Protectorate and in November 1938 after a crazy Jewish youth had assassinated a German official in Paris took more drastic and horrible reprisals against the helpless Jews in Germany than had been thought possible.²⁸ After the seizure of Bohemia and the ultimatum to Lithuania which led to the surrender of Memel there could be no room left for self-deception. As long as Hitler contented himself with seizing "lost" German peoples it was possible for some to believe that he might not after all do more than assimilate German minorities and that there was still some faint hope of a return to decency in international relations. When the rape of Prague, which it must be emphasised has never in any sense belonged to Germany, was followed by the assertion of Germany's rights to intervene decisively in the affairs of other nations "in accordance with the principle of self-preservation" disillusionment was complete. British public opinion was shocked by a claim which could be used to justify hegemony over the whole of Europe. But the more cynical critics of the British Government are asking whether its conversion to the policy of a Grand Alliance against aggression is sincere or likely to last. The timetable of events leading up to the Czech coup is worth study. On January 1, Hitler's speech in the Reichstag was regarded as "modest" and featured prominently in the Conservative press. Throughout February, official statements to journalists were in optimistic terms. By March 9, the British Intelligence Service knew of Hitler's plans for the coming week and on March 11, M. Bonnet drew Chamberlain's attention to German troop move-

²⁸ Cf. a moving and terrible description in Konrad Heiden's "*New Inquisition*."

ments. Yet the press continued to be optimistic, reflecting official views. On Monday March 13, a delegation of British industrialists left for Germany to negotiate a trade-pact. Next day President Hacha was summoned to Berlin to receive his country's death warrant. On Wednesday all that the Prime Minister of England had to say was "that the Munich settlement had not proved final" and that he "did not wish to associate himself with charges of breach of faith." The same day in Parliament, Sir John Simon strongly attacked the idea of a defensive league or any commitments on the continent. On Thursday, the British industrialists at Dusseldorf signed an agreement with their German "opposite numbers." Then came the change. The press on Thursday and Friday presented the German coup as a violation of international law and a threat to British security. By Friday, Conservative M.P.s. were beginning to attack the Prime Minister and a leading financial paper attacked the Dusseldorf pact as a flagrant breach of the Anglo-American trade agreement. But on the Friday night in his native city of Birmingham Chamberlain delivered a "stiff" speech condemning Germany for a Breach of the spirit of Munich and promising stern opposition to any further aggression. The press took their cue and in the House of Lords on Monday Lord Halifax declared that principles of self-protection pointed to the necessity of a collective-security pact to which every nation menaced by Nazi aggression could adhere. The whole press welcomed this declaration with the exception of Lord Beaverbrook's isolationist "Daily Express" which bitterly attacked the proposed "encirclement" of Germany. The next day a draft "declaration of solidarity" was sent to Paris, Warsaw and Moscow for consideration, the governments of Yugoslavia, Turkey and Rumania also being informed of its contents. France declared herself willing to participate though with M. Bonnet as Foreign Minister nobody could be certain of France. Poland demanded a 100 per cent undertaking to attack Germany if Poland were the victim of aggression, while the Russians approved in principle but very naturally wanted to be certain that in the event of USSR going to the help of Rumania or Poland there could be no loophole for the Western powers to proclaim their disinterestedness in an anti-Bolshevik war conducted by the Reich.

The German press under Goebbels' instructions has since then conducted a vehement campaign against Britain for "encircling" Germany and produced every unpleasant episode in the history of the British Empire, presumably on the basis of

the pot calling the kettle back. Actually this complaint of encirclement means an objection to obstacles being put in the way of Germany expanding at other people's expense. The contention that Germany is overpopulated and needs "*lebensraum*" is baseless. The density of population at the last censuses was 276 Belgium, 270 England and Wales, 252 Holland, 130 Germany, 76 France and 72 Europe as a whole without USSR (this per square Kilometre).

In the months that followed the events mentioned above formal efforts have been made to secure a Soviet alliance but there have been delays which the British of course have laid at the door of Russia and on June 8, Lord Halifax made overtures to Germany which caused dismay in France and the Paris correspondent of the "*Manchester Guardian*" wrote that there was a tendency in Paris to take Mr. Chamberlain's last statement on the Russian talks and the dispatch of Mr. Strang to Moscow "... as so much window-dressing." But it looks as though the British Government will have to swallow a Soviet pact. Daladier and his colleagues with the exception of Bonnet want it and it is demanded by the General Staff which is now demanding strict control of the friends of Hitler in France. Furthermore, the Anglo-Turkish alliance might collapse if no agreement was forthcoming with the Soviet. Now, a military mission has gone to Moscow representing members of the French and British General Staff. But this must not be understood as the complete conversion of Chamberlain to collective security. There is no reason to suppose that he has abandoned the hope of another Munich over Poland. Unfortunately, the Pacifists in England can be utilised in this direction and the policy of appeasement has a considerable following among the ranks of the Second International (the European Labour Parties) and the Trade Union Federation. It must not be forgotten that the British Labour Party and the French Socialist Party voted for the ratification of Munich and thus became accessory to the destruction of Czechoslovakia. The *Munichois* and the Pacifists are putting their hopes in an International Conference such as was suggested by President Roosevelt in his message to Hitler on April 15th. Actually, Roosevelt did not propose a conference but "discussions" on two points only, namely, relief from the burden of armaments and a practical way of opening avenues of international trade. Further, this proposal was to be conditional on the consent of Hitler and Mussolini to certain assurances which they refused to give. Hence one may presume that the proposal no longer stands. Indeed much of the talk of Germany's

lack of raw materials is as shallow as the talk of overpopulation, for it is largely due to the exclusive spending of money on armaments.²⁹

The long drawn-out conversations with Russia may have encouraged Hitler to believe that once more he has nothing to fear and thus he may proceed during the next month or two to seize Danzig. It is very doubtful, however, whether the Poles will consent to follow the Czechs. The men who control Poland are in a difficult situation. They came to power in 1926 under the wing of Pilsudski and largely under the control of the feudal aristocracy. Colonel Beck has had to seek international support for a reactionary internal system. The gap between rich and poor in Poland is very great and there is probably fear of a revolution here more than anywhere else. The condition of the workers is bad and of the peasants still worse. No attempt has been made to raise the standard of the still mediæval villages. In 1921, about 3 per cent of landlords owned no less than 44 per cent of the land. Since then about 15 per cent of the feudal estates have been broken up; no more. These conditions have engendered revolutionary movements which even terror has been unable to crush. The jails are filled with political prisoners but strikes are frequent occurrences. The stay-in strike was born in Poland and the peasantry has in the past struck by withholding food from the cities. A further problem for the ruling clique is that almost a third of the population is not Polish and a good proportion of them is held down by the bayonet. There are about 5 million Ukrainians, about 3 million Jews, close to two million Ruthenians as well as Germans, Czechs and Lithuanians. Instead of conciliating them the régime has oscillated between bitter persecution and attempts to turn them into Poles. Terror has not stamped out revolutionary organizations among the minorities and the Ukrainians look not a little hopefully towards the Ukrainian peasants in the Soviet Union, with whom it is said some organizations are in close contact. Economic discontent and disgust with the corruption and inefficiency in government offices have made even the Polish workers look towards the Soviet. Facing such a situation the feudal aristocrats and the political chiefs have tried to overcome social discontent by canalising it into extreme nationalistic and anti-semitic channels and by setting up a semi-totalitarian state apparatus powerful enough to crush all opposition. It was this exaggerated nationalism which

²⁹ But cf. for a general discussion of Germany's economic condition G. W. Guillebaud, "*Germany's Economic Recovery 1934—1938.*"

led to the indecent Polish demand of Teschen from the harassed Czechs last year. The totalitarianism has become more pronounced; elections are a mockery and the country is largely controlled by the Supreme Army Council which is in reality Rydz-Smigly.

It was to gain support for these internal policies that friendship with Hitler and Mussolini was cultivated. The trend away from France began when France moved closer to Russia.

Despite the fear of the ruling clique for Russia it would seem that the very real danger to Polish independence, if Hitler should seize Danzig, has now completely destroyed the possibility of a revival of an alliance with the axis. Public opinion is intensely against it. After all extreme nationalism has been fostered and the Poles are a proud people who remember with hate the former oppression of Prussia. When the Polish Jews were expelled from Germany there was such an outburst that the Government was compelled to tell the German embassy that the Poles would reply in kind. The Poles who do not normally love the Jews rushed to the assistance of the refugees. It certainly seems as if Polish sentiment both in the army and among the civilians will prevent any attempt at a *rapprochement*. One thing is certain and that is the crucial character of the developments during the next few weeks.

It is extremely likely that if Hitler is allowed to seize Danzig and destroy Polish independence it will effectively detach USSR from any connexion with Europe and, however much the pro-fascists may hope that Hitler will proceed to take the Ukraine, it is much more likely that he will turn his attentions to the West and renew in no uncertain terms his demands for the return of the African colonies.

The question which is occupying us all is, Will there be war? It is by no means easy to answer. Certainly Danzig is a crucial issue. There is no doubt that Hitler intends to re-incorporate it. He stated as much in a speech on April 28, and this has been reiterated by ministers and party leaders in subsequent speeches. But the actual moment for action has not been decided. The Polish ministers have equally expressed their intention to resist this with all their might. The British-Polish guarantee and the Franco-Polish pact together with ministerial declarations in both countries—especially those of M. Daladier and Lord Halifax—leave no doubt that armed resistance on the part of Poland would be the beginning of a general European war. The only possibility of peace is if Poland gives in, and

recent history shows that such a surrender is possible, but it is not very likely.³⁰

The choice of ground gives Hitler a very great advantage. If the Poles resist it is suggested that four German armies will march and endeavour to smash Poland in three weeks. Effective help could not arrive from England or France in time to prevent some of the expectations of the German General Staff being fulfilled. Otto Strasser suggests that Hitler would then offer a 50 years peace to the Western Powers in return for the Polish districts of Danzig, the Corridor and Upper Silesia and the "peaceful" settlement of German and Italian claims in Africa. Hitler reckons on the intense love of Peace in the democracies and the fear of "communism" (i.e., any change of the social *status quo*) in the hearts of their leaders. If such hopes were fulfilled and after all Hitler's other plans have succeeded up to

³⁰ Since these words were written the spot-light has moved over to Yugoslavia, though the tension is still great in Poland. The German army needs two things above all others—oil and wheat. And these things are found in abundance in the Balkans. There has been an economic "ultimatum" to Rumania and trade talks with Yugoslavia last April. Such economic penetration would help to provide not only fuel for Germany's mechanised forces but also the means to last out against any allied blockade.

Yugoslavia becomes the key-point since the Italian occupation of Albania. Domination of this state might mean the break-up of the Balkan *entente* and it must be remembered that the *entente* includes both Turkey and Greece. Thus a threat to Yugoslavia involves two of Britain's allies. It is worth mentioning that the country is under a Regent Prince Paul and that the present government is more liberal than that of Stoyadinovitch which preceded it. It has conducted negotiations with the Croat Nationalists who have not up till now been allowed freely to express themselves.

It has been suggested that Germany plans to secure Belgrade and the South-Eastern areas as her zone with a great German road and railway system through Belgrade to Salonika, which would give Germany a port on the Mediterranean . . . Croatia and the Adriatic coast would then be left to Italy as her zone of influence. The Croats might well learn a lesson from the fate of the Slovaks and be wary of Hitler's suspicious interest in minorities. Actually the dismemberment of Yugoslavia would hit the Croats most. Their best Port, Zara, is already in Italian hands. The Slovenes hate the Italians, for their nationals have been treated badly in Italy. But leaders may still stir up the 1,500,000 Slovenes and the 3,500,000 Croats against the Serbs and encourage them to break away. There can be no doubt that the danger-signals glow red in the Balkans.

For the background cf. M. Fodor, "South of Hitler;" Hutton, "Danubian Destiny;" Gedy, *op. cit.*

date, his strategic position together with his allies Mussolini and Franco would be overwhelming.

As this is undoubtedly realised in London and Paris as well as Moscow the General Staff unlike Hitler are reckoning on a rejection of these peace plans. The war beginning with Poland would rapidly take on world dimensions. Italy would take Corsica and a German-Italian army would march on Egypt and the Sudan to gain possession of the Suez Canal, while Spain would demand the surrender of Gibraltar and the Mediterranean would be closed at either end by the axis powers. The plan would further provide for an attempt to threaten England directly from Holland, the occupation of Denmark and Rumania and the instigation of revolt among the Arabs and the people of India. Japan would, it is hoped, hold Russia in check.

Whichever way one looks at the situation it seems desperate and it is the more appalling because it was so entirely unnecessary. The strategic advantages of the Axis powers have all been gained through the weakness and the treachery of the Democratic powers either through fear of war or, more cogently, through hatred of socialism on the part of the powerful oligarchies who for so long protected Fascism.³¹

More cannot be said but it is worth considering for a moment some of the deeper implications of this situation, for in such a rapid survey of the strange and depressing kaleidoscope of the contemporary world it is easy to lose the wood for the trees.

First of all let us dispose of certain facile errors in judgement. The issue is not between rival ideologies. For a long time there were many in England who regarded it as such and thought it could be dealt with by a "plague on both your camps" and non-intervention. Thus the "anti-comintern" Pact is more obviously directed against the British Empire than against Russia. We are back in the purest atmosphere of power politics and in England it would seem that the Foreign Office which has always thought in terms of power politics is prominent again rather than the "appeasers." For such people there is no such thing as an ideology but only potential allies or enemies. So we find Mr. Churchill eager for an alliance with the Russians against whom he once assisted intervention. Secondly, the Pacifist belief which is still largely accepted by some Labour people and intellectuals like Prof. Joad or Bertrand Russell as well as by certain religious groups has its chief weakness in a reprehensible neglect of the economic factor in the present situation. It is

³¹ Vigilantes, *op. cit.*

extremely unlikely that under existing conditions anything would be achieved by an international conference and the psychology of the Nazis is such that they are hardly amenable to reason and tend to regard any peaceful gesture as sure proof of the "weakness" and the "decadence" of the older democracies. It is also unfortunate that many of these elements are committed to the ideal of solving the colonial problem by extending the system of international mandate. The tragic situation in Palestine is not a good advertisement for the Mandatory system to say the least of it and recent conditions in British colonies and dependencies such as the West Indies and Newfoundland or Syria suggest that the whole colonial problem cannot be solved without a new sense of justice to the colonial people and a steady progress towards self-government rather than mandates. The democracies in their attitude to colonies are still complacent and not a little hypocritical. One of the difficulties is that Hitler is able with some justice to say "Physician, heal thyself" and it is far easier to organise a meeting to protest against Hitler's treatment of the Jews or the Japanese atrocities in China than to direct attention to the deplorable conditions in the West Indies.³²

Thirdly, it is essential that it should be realised far more fully than it is now that if Democracy is to survive it will only be as the result of drastic self-criticism and a readiness to abandon established precedents if necessary. The great weakness of both Britain and France is that Democracy only too often proves to be a veiled oligarchy of the plutocratic minority, which is more concerned to maintain the existing social order at any cost than to further the welfare of the broad mass of the people. M. Blum once said bitterly that only the workers are patriots in France to-day and there is much truth in this contention, if one studies the political decisions of the last few years.

It must be realised that Democracy is more than a mere question of collecting votes and parliamentary procedure or even of cherished civil liberties. It may be that the Fascist menace was needed to waken up Democracy to its own weakness. The danger of democracy is the humane illusion that Fascism can be won over to the idea of peace and collective reconstruction by forbearance, friendliness and concessions; it is a dangerous illusion, for Fascism and democracy live in different worlds. The Fascist interpretation of the world and of history is in terms

³² Cf. Macmillan, "Warning from the West Indies" and on the general question of colonies Barbara Ward, "The International Share-Out" and Leonard Barnes, "Empire or Democracy."

of absolute force, divorced from morality and reason. The thoughts of democracy and Fascism cannot meet because while Fascism is occupied with conceptions of power and hegemony, democracy has come to realise that peace is preferable to power. But democracy is still bound up with that imperialist development which we outlined above and it is unlikely that it will be able to prevail or, even if it wins in an actual war with Fascism, succeed any better than the Statesmen after the Great War unless it is able to liquidate the whole fatal conception of Imperialism and National Sovereignty.

Both at home and abroad, Democracy, if it is to survive and prevail over Fascism, will have to abandon capitalist modes of thought and of production. The conception of freedom so essential in a world obsessed by totalitarian principles will have to be pushed farther into the economic as well as the ideal world. The trouble is that the word 'socialism' is no longer safe; it like many other good things has been captured. Movements begun in the interests of the most reactionary kind call themselves socialist to-day.

Perhaps the main issue is, Can liberal democracy adapt itself to a new world and become effectively social democracy? There is a sense in which the activities of the French Popular Front and of Roosevelt in America were in the best sense of the word 'conservative.' Fascism is not new; it is only an old crudity in a new dress. What is new is what may be called economic humanism and it is hardly yet born. "It is not our duty to preserve an inhuman social order, but on the contrary every effort must be made to establish in its place a more humane order which will create a true hierarchy of values, put money in the service of production, production in the service of humanity and humanity itself in the service of an ideal which gives meaning to life." These are the words of a French Catholic conservative.³³

The economic conditions of a world such as ours are such that old methods are no longer valid. National sovereignty, economic nationalism, customs barriers are obsolete and dangerous. A good deal of interest has been evoked in the English-speaking world by Clarence Streit's "Union Now." Though there are dangers in the book, such as the neglect of the vicious aspect of the colonial question, which is passed over with a vague suggestion that they and India when they were fit for self-government might join the Union! Again the Soviet Union

³³ Quoted by Mann, "Coming Victory of Democracy."

is not thought sufficiently democratic to be one of the inaugurators of the Union. But the book is a serious bit of work. It suggests that 15 founding democracies should form a Union on the analogy of the United States of America. I must not go into a discussion of this suggestion but the value of it is that it does abolish national sovereignty while in no way interfering with internal administration of any participating state. It is only by some such scheme that war and economic chaos can be eliminated (but cf. the cogent criticism of the book in H. G. Wells, "*Fare of Homosapiens*").

Again one must emphasise that the crisis is environmental in that it involves a rapid adaptation to new conditions, or collapse. Finally, I would like to say a word about the deeper spiritual significance of the European and World crisis.

There are some who are tempted to say that the crisis is merely the expression of the "materialism" of the West. I must confess that this use of the word materialism means little to me; the "spiritual" East seems in little better case. Actually the trouble with the world is not materialism but an insensate idealism which sacrifices men to false Gods.³⁴ This tendency to turn politics into rival forms of dogma, into Churches, may express man's need of a dogma, of a worship. The various secular political faiths have arisen as the result of the shrinking away from the totality of human life of the Christian Churches since the Reformation. The result has been a secular humanism divorced from the religious consciousness.³⁵ As the Nazis have

³⁴ "The men whose activities automatically widen the gap between the diminishing few control and the increasing many who are dependent on their policy are not the sensual worldly, idle rich depicted in some political papers but the ascetic, hard-working idealists with a philosophy of the 'big idea' in business or finance."—Demant, "*God, Man and Society*."

Demant goes on to point out that the submerging of personality in the sweep of an impersonal "march of events" or the "inevitable trend of the machine-age" again shows that the problem is not material only; for "the machine is not matter, it is an idea using matter. . . . The machine-age . . . does not bring men into direct contact with the material world of substance, form and colour . . . we do not suffer from a surfeit of materialism but from an insane and inhuman devotion to a set of abstract ideas concerning prosperity which apparently means not plenty of goods but the power of incurring indebtedness."—*Op. cit.*

³⁵ It is impossible to discuss the European crisis and omit any reference to Christianity. European civilisation is rooted and grounded in Christianity and its crisis is in a very real sense a religious crisis as well. Even Russian Communism cannot be understood without some

recognised more fully than others Communism is closely connected historically with liberalism and liberalism sprung from

knowledge of the background of Russian religion with its Messianic and apocalyptic dreams of a new Heaven and a new Earth. Lenin merely gave Russia a new Messiah in the idealised proletariat (cf. Berdyaev, "*Origins of Russian Communism*"). The extreme hostility to religion displayed by the Bolsheviks, largely the result of the appalling decadence of Russian religion which was closely bound up with the Czarist régime, has been a serious weakness in the propagation of communism in the West; for in the West the development of socialism has been closely connected with Christianity. Since the adoption of "United Front" tactics the Communists have somewhat changed their tone and there are many Christians to-day who when faced with a choice between Fascism and Communism would gladly choose the latter but the Roman Catholic Church continues to regard Communism as the chief enemy and this has led her to accept at their face value the protestations of the Fascists. The Roman Catholic Church has played no minor rôle in recent political developments. She concluded a concordat with Hitler and with Mussolini and gave her blessings to the Abyssinian War and accepted Franco and his allies as the saviours of Christianity in Spain. Notwithstanding, many Catholics dislike this policy and reiterate their belief in democracy. To-day the Catholics realise that Fascism may be as great if not a greater enemy than Communism which they have to commit remains pacific, internationalist and opposed to any discrimination of race. Credit has to be given to the last pope for a brave attack on the Nazi racial doctrine and it must be said that to-day Catholics as well as Protestants are being persecuted in Germany. It is not generally realised that the Roman Church has her own social philosophy which Oakeshott in his "*Contemporary Social and Political Doctrines*" thinks important enough to include. This social philosophy has largely been borrowed and used by Fascism in its idea of the corporative state but there is every reason to suppose that gradually Catholic social thinkers will abandon their uneasy alliance with Fascism. Some have already done so, e.g., the strong condemnation of the brutality and methods of Franco in Spain by the writers Bernanos and Mauriac as well as Maritain.

Franco Spain is proving itself to be another brand of fascism which is by no means likely to remain the obedient servant of a still feudal church.

On the other hand Protestantism has been bound up with the rise of liberal capitalism. The question of the relation between religion and the rise of capitalism has been fascinatingly treated by R. H. Tawney, "*Religion and the Rise of Capitalism*" and Max Weber "*The Protestant Ethics and the Spirit of Capitalism*." To-day protestant thinkers are looking back to the uncompromising religious negation of Luther rather than to the liberal thinkers of the last century, except in America. Prof. John Macmurray in his valuable "*Clue to History*" points out the way in which Christians have betrayed the essential relation between the

Christianity and Christianity from Judaism.³⁶ Ultimately in its pure form Judaism dreamt of a world community and of social justice. All that is good in the European story would seem to be a variation on the theme of a just order of society. Since the Reformation Christianity has tended to become subjective and individualistic, less concerned with saving the world than with saving souls out of the world. The abandonment of the world as incurably evil led to the progressive secularisation of society. In the immediate post-War world a form of liberal Christianity grew up, progressivist and optimistic, but the grim facts of the actual situation when they became clear withered this naïve belief and Continental Protestantism largely took to the revised Calvinism of Barch with its uncompromising negation of any human possibility. Apart from this the Protestant world has thrown up nothing but the rather distressing revivalism of Dr. Buchman. It is largely from Catholicism, the original faith of Western Christendom, though not necessarily from the Roman Catholic Church, that new inspiration for Christians is likely to come.

One of the tragedies of the present situation is that the only two effective opponents to Fascism equally oppose one another—Communism and Catholicism are bitter enemies. Thanks to the failures and weaknesses of the Christian Church in regard to the social order, Marxism grew up bitterly hostile to Christianity and the Popes have made no bones about their dislike for Socialism. The anti-bolshevik propaganda and the ambiguous religious attitude of the Fascists led to considerable Catholics

world and religious faith and have fallen into an extreme dualism which divorces two things which cannot truly be separated. He shows clearly and, I think, convincingly the connexion of this with the present-world situation.

³⁶ This has actually been said by certain writers who make no bones about their bitter hostility to Christianity. Whatever criticisms may be made of German theology it must be confessed that they are putting up a magnificent stand against tyranny. Pastor Niemöller is still in a concentration camp and both Catholics and Protestants are suffering. Cf.

M. Bendiscioli, *"Nazism versus Christianity."*

Duncan-Jones, *"Struggle for Religious Freedom in Germany."*

Frey, *"Cross and Swastika."*

N. Micklem, *"National Socialism and the Roman Catholic Church."*

This last book is published under the auspices of the Royal Institute of International Affairs.

supporting Fascism and the most distressing example of this may be seen in Spain but, actually, the purest expression of Catholic belief is to be found not among the official clergy but among lay thinkers such as Jacques Maritain, whose *"True Humanism"*³⁷ recently published deserves most careful study. For a long time Humanism has meant emancipation of man from God and Swinburne was able to write

"Thou art smitten, thou God, thou art smitten; thy death is upon thee, O Lord.

"And the love-song of earth as thou diest resounds through the wind of her wings—

"Glory to Man in the highest! for Man is the master of things."

Poor, poor Man! Luther robbed him of all virtue in the name of theology and Freud in the name of science, while Rousseau's optimism relieved him of the burden of original sin. He was on top of the world, yet to-day how all this superficial humanism has cracked in the face of a tyranny which makes man a mere cog in the industrial machine, a mere function in the omniscient state. It is quite clear that we are faced with something much more fundamental than a mere political crisis. It is a fundamental human crisis which is going to bring us face to face with the vital issue of the nature of man. The Catholic humanism of Maritain restores an adequate picture of man which preserves his dignity without giving him cause for pride. Maritain doubts whether it is possible to defend the 19th-century bourgeois man and this is the one thing that unites Catholic, Communist and Fascist! "True Humanism" like the very different schemes of Karl Marx and indeed of Karl Barth is not for those who still dislike to face the veritable fact of the cataclysmic character of our contemporary world. There are still men who say that there is nothing wrong with the world but the existence of extremists! They are likely to be rudely awakened. We are as Nicolas Berdyaev puts it "at the end of an age."³⁸ Nothing can ever be quite the same again.

³⁷ For an outline of Maritain's teaching and a general survey of modern theological views cf. W. M. Horton, *"Contemporary Continental Theology."* This includes some consideration of the new religious movements which have sprung up in Nazi Germany. Cf. also Maritain, *"Freedom in the Modern World."*

³⁸ Berdyaev is an exiled Russian Christian philosopher, who, despite his criticism of Communism from a religious standpoint, has given one of the most magnificent indictments of bourgeois society and capital-

Whatever may be said of the *philosophy* of Communism, it cannot be ignored and the Marxist critique of capitalism is essential to the understanding of our situation and indeed many who are not Marxists, still less Communists, are bound largely to accept it.³⁹ If one looks on the European situation from the deeper point of view one can but be pessimistic but it may be that out of the sense of "the axe being laid to the root of the trees" can arise a new initiative and, as I still dream, amidst the ruins of an old world, a new alliance between scientific socialism, concerned with the freeing of man from the domination of nature and material things, and a new and living Catholic Christianity, concerned with the true nature of man and the right ordering of society that out of the present hatred and chaos the "beloved community" may yet arise, for "hope is a citadel built on the edge of despair."⁴⁰

POSTSCRIPT

This essay was written early in August and the war has now begun. It is necessary in the light of this to revise one or two of the statements made, though the general analysis remains unaffected.

ism that I know. Cf. his "*Christianity and Class War*," "*Fate of Man in the Modern World*," "*The End of Our Time*" and "*The Destiny of Man*."

³⁹ Cf., for example, "*Christianity and Social Revolution*" and "*Towards the Christian Revolution*," two books of essays published by Gollancz.

The position of religion in India is a very different matter from Europe and this is not the place to study it but, in so far as India is vitally affected by the world crisis, the same problems are likely to crop up. Actually in India an extreme form of religious idealism coincided with an amazingly static and stable system of stratified social order. It is necessary that at some time a comparative study of Indian socio-religious forms should be made in their relation both to political theory and to modern tendencies. For instance, Does Indian religious idealism and social forms lend themselves to a Fascist interpretation? What sanctions can be found in Indian tradition for Democracy? These questions must be asked at some time for India cannot continue to exist precariously on the basis of imitation. I am more and more convinced that, despite its admirable realism and critique of the existing order, Marxism has failed in some degree because of its neglect of tradition and its exclusive occupation with economic factors. Though both Marx and Engels emphasised the importance of the philosophical and religious superstructure their followers have not.

⁴⁰ A striking phrase of Reinhold Niebuhr.

The most important factor in the events which led up to the actual declaration of war by Britain was the conclusion of the Soviet-German pact. This seems to have taken many by surprise and there have been many expressions of pained displeasure that the Soviets should do such a thing but such a possibility was inherent in the situation, as we have pointed out above. The Pact made war inevitable; if Poland should resist aggression, for it made it clear that the policy of turning Hitler eastward with the expectation that he would ultimately attack the Soviet Union was no longer tenable. Chamberlain has never made a more honest statement than when he expressed his sorrow that all his work had been destroyed. Appeasement was no longer possible. On the other hand the Soviet-German pact secured certain positive advantages for Russia. It weakened the anti-comintern agreement to breaking-point and exposed the policy of "appeasement," but it also made great difficulties for the communist parties in other countries such as France where the Party has lost many of its members and is virtually outlawed. Italy and Japan were obviously shocked by this new orientation and there is some likelihood of a new Anglo-Japanese agreement, unless the unforeseen once again happens and the Soviet secures Japanese neutrality but this is most unlikely.

What is the fundamental Soviet policy? It is certainly not as some seem to suppose any friendliness to Nazi ideology or practice. The deep-rooted antipathy to Russian socialism is coming out in the form of statements such as, "After all there is not much difference between Nazism and Bolshevism." Actually Russia by the Pact made it clear that she was not prepared to be a pawn in a British game. It would seem that Russia hopes to maintain neutrality and then largely control subsequent events when both sides are weakened. One cannot blame Russia for coming to the conclusion that she could not risk any all-in alliance with Britain and France. The future is incalculable. The new contact between Germany and the Soviet may result in increasing Russian influence and the rise of the disgruntled elements in Germany and the transformation of the Nazi régime into a Socialist régime on the Russian model and with Russian assistance. Much of the preliminary work of destruction has been performed by the Nazis who have left very little of liberal capitalist elements in Germany. In this process Hitler would receive the liquidation which he so thoroughly deserves.

It is by no means fantastic to prophesy that the war may develop into a war between British Imperialism and the Soviet with a ruined Germany virtually eliminated from the scene.

Such a war would bring in the whole world and would be long and cruel. Another possibility is that Germany will overrun Poland and sue for peace which will be accepted. Such attempts will be made, possibly by the Pope and other elements who are horrified by the way in which their trusted Nazi bulwark against bolshevism has become its associate, but such attempts will almost certainly fail and the war will proceed. It is very difficult to say much about the war at this stage. Poland is holding her own remarkably well but it is well-nigh impossible for either Britain or France to send actual troops to Poland. Britain has bombed the Kiel Canal in an attempt to injure the German fleet while on the Western front the hostile armies sit behind their fortifications and watch one another like Kilkenny Cats. The war is likely to be largely one of attrition and as such long. Much depends upon the internal conditions in Germany, which as the war continues are likely to deteriorate rapidly.

Italy and Spain have declared their neutrality, while Japan is likely to follow the same plan. It cannot be said that the Soviet pact has helped Germany greatly, if this result follows. But Italy neutral or active will battle up the British Fleet in the Mediterranean. The critical moments will be when Poland is subdued. We referred to Yugoslavia in the essay. The government has brought in the Croat leader and is now very united. It has declared neutrality. Turkey and Egypt are behind Britain, it would seem. Hungary's attitude remains ambiguous as does that of Rumania.

It is only a matter of time before the large-scale bombing of cities begins, though both sides have declared their intention to refrain from bombing non-military objectives but it is almost bound to come. Economic blockade will also materially effect the course of the war. These brief notes are only aimed at bringing the material up-to-date. It is quite impossible and even undesirable to attempt any further analysis at this stage.

One last word. It is essential that all progressive-minded people, radicals in the best sense of that word, and socialists should try at all costs to maintain a certain calm and to refuse to fall victim to the madness and emotionalism that war engenders. It is quite certain that those whose inept policy has let war once more afflict the world will be unable to make a peace which will make war impossible in the future. To get rid of Hitler is not enough. We have tried to show something of the background. The real issue for the future will be the abolition of national sovereignty and the creation of some kind of International Government for the world with its own laws,

armed forces and elected officers. The economic development makes it impossible to envisage the continuance of the present political systems with their pettifogging local administrations, customs, barriers and limitations upon the vast economic possibilities which science has made possible. There must be men of goodwill all over the world who will work even in the midst of war to prevent that outcome of brutality and chaos which Mr. Wells has so terribly and warningly prophesied in the "*Fate of Homo Sapiens*." But is there that vision and intelligence which will make this possible? Time will show. The future and the initiative may lie with India and China, and it behoves us in this land to put our own house in order that we may play a distinguished part in the difficult but infinitely potential and significant events which lie ahead.

FUTURE OF SINO-JAPANESE WAR

BY

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(I)

CAN JAPAN WIN IN CHINA ?

World-Opinion with China.

World-opinion was with China from the beginning of the hostilities. Dr. Hu Shih, now Chinese Ambassador in Washington, after being in America three months, told a friend of mine, that Americans were 90 per cent pro-Chinese. After another six months of touring the U.S.A., he said he had been mistaken. America was 99 per cent. pro-China.

Japan is the only country in the world which has been so unanimously condemned by the organized tribunals of world opinion. In February 1933, she was condemned by 42 states for violating the League of Nations Covenant, America taking part unofficially in this condemnation. In September 1937, the League Assembly unanimously adopted a resolution condemning the air-bombing of civilians in China. On October 3, of the same year, a League committee reached the conclusion that Japan invaded China contrary to her obligations under the Nine Power Pact and the Pact of Paris. Three days later, the League Assembly recommended supporting China.

* * * *

In the same month, the Brussels Conference of the Nine Powers decided that Japan's use of armed force in China was unwarranted. Japan's arrogant refusal to participate in this Conference, which aimed at a peaceful solution of the Sino-Japanese conflict, incensed world opinion still more.

Japan's answer to these protests and appeals for a peaceful solution was to enlarge the area of conflict by greatly increasing her armed forces in China. She continued to bomb civilian industries, universities, hospitals and refugee trains. She machine-gunned the British ambassador, bombed the Panay, and

everywhere violated Third Power rights, not only by military action in an undeclared war but by a monopoly of shipping and trade in the areas occupied by her military forces.

New Policies Must Prevail.

Protests against these violations of treaty rights only brought the response that Japan's sacrifices have created new responsibilities, and that under new conditions new policies must prevail. Thus Japan used her original violation of the Treaties as an argument for further violations. The violation of Chinese rights by invasion is used to justify the further violation of Third Power rights.

Japan's illogical arguments and her lack of a sense of humour have often incensed world opinion as much as her illegal actions.

Japan especially offended the U.S.A. by her claim that our action in China was only establishing a Monroe Doctrine for Asia, similar to America's Monroe Doctrine for Latin America. American statesmen indignantly replied that the American Monroe Doctrine was to guarantee the independence of the South-American Republics and not to invade and destroy them, and that the Monroe Doctrine for China was the Nine Power Treaty, which Japan had so ruthlessly violated.

The fearful atrocities at Nanking, the rape, the loot and the massacre of prisoners, the bombings and the return of opium under official protection, in occupied areas, also aroused the indignation of the world.

In spite of declarations that she had no territorial aims in China, it became increasingly clear both by Japan's actions toward Third Powers and by her proposed Peace Terms that she aimed at the complete control of China's economic, political and international life. She clearly aimed at controlling everything which made territory worthwhile. Whoever controls the heart, brain and soul of a person, controls the body as well. Whoever controls the economics, politics and foreign policy of a nation controls the territory as well. As Japan's imperial aims became clear, democratic world-opinion rallied more and more to China.

League and Sanctions.

Due to the international situation in Europe, the League of Nations felt she could not give corporate help to China, but in

February 1938, and again in May, the League Council recommended that individual nation members give all possible help to China and in September 1938, the League agreed to apply Art. XVI (Sanctions) against Japan. Each nation to apply sanctions as it could. In January 1939, in answer to China's appeal for financial aid and for a boycott of war materials to Japan, the League Council again appealed to Member nations to give all the possible help they could.

A host of other national, social, religious and international organizations have condemned Japan and have given or advocated help to China. Some of these are The American Federation of Labour and Its Rival in the U.S.A.; The Committee of Industrial Organization; The American Student Union; American Negro Congress; Canadian Federation of Labour; six of the largest American Chain Store; the Indian National Congress; The Friends of China Associations in America, Canada, Great Britain and in the Philippine Islands; and The International Peace Congress; representing 14 nations and including 800 delegates. This Congress included some of the greatest men in England and continental Europe as Lord Cecil, Sir Norman Angell, Sir Arthur Salter, Henri Rolin, Leon Jouhaux, as well as Krishna Menon of India.

Recently the American, British and French governments have taken a stronger attitude in the East. No doubt this is due to or at least made possible by the rising anger of public opinion against the widening of the Japanese invasions in China and by the growing aggressions against Third Power Treaty rights.

* * * *

On October 6, 1938, the U.S.A., protested against Japan's violation of the Open-Door policy and later declared Japan's reply to her protest entirely unsatisfactory. On January 4, 1939, President Roosevelt, in a fighting speech, declared that the democracies could not always let pass without protest acts of aggression against sister nations, "which undermine us all." On January 15, 1939, an exhaustive British note supported the earlier American note and emphatically denied Japan's right to economic and political domination in China. On January 18, France sent a similar note to Tokyo.

The Japanese War Minister, Gen. Itagaki's statement on January 31, 1939, in the Japanese Diet, that Japanese forces would remain in Hankow, Kiukiang, Nanking and Wuhu in the Yangtze Valley, and in Amoy and Canton in South China, for a

long period of reconstruction, after the war is over, hasn't allayed the suspicions of western democratic nations nor increased their goodwill for Japan.

(II)

STIFFENING RESISTANCE IN CHINA

After eighteen months of war, China is still paying all her financial obligations. Her finance did not collapse with the fall of Hankow and Canton. China is still able to get loans, which Japan is not able to do. In fact, China has been able to get loans since the fall of Hankow, which she unfortunately was not able to get before. It is reported that China has recently received or will receive in the near future about U.S. \$75,000,000 from America and England, and that another loan, so large that an act of Parliament would be required, is being considered in England.

China's friends, the U.S.A., France and Great Britain, control the World's gold. Soviet Russia's production of gold has made such strides that to-day she has a larger gold reserve than the totalitarian states combined, including Japan.

Although she controls the China seas, Japan's trade has suffered more than China in comparison. Her exports have suffered from the boycotts and much of her imports are war materials and thus unproductive. Japan admits now that she has lost over 500,000 soldiers in China. Her national debt has increased over Yen 7,000,000,000, which is huge compared to China's increased debt. In February 1938, Japan voted Yen 4,300,000,000 for the China incident for 1938. In August, due to the threat from Russia, she had to raise another war loan of Yen 350,000,000. The summer floods of 1938 cost her Yen 420,000,000. Her budget for 1939 is £353,000,000 which is £59,000,000 more than in 1938. It is reported that the new budget to be presented in February will exceed 6 billion Yen of which Yen 5,400,000,000 will be for the military. This is Yen 1,600,000,000 more than that of the previous year.

Japan's economic machine must stand the strain of a double war-front, the war with China and a possible war with Russia. She needs nearly half a million troops to keep down the unwilling people of Korea and Manchuria, a population almost equal to her own. To these she now has to add another million troops to subdue what she has unsuccessfully occupied in China.

China's potential resources are much greater than those of Japan. Guerilla warfare and the "scorched earth" policy will, however, render these unprofitable for Japan in "occupied areas." In free China development will go on encouraged instead of hampered by the war.

When the Japanese army marched into Canton, they found to their disappointment a forsaken and burnt-out city. Instead of profits, a vast expense. Wherever the Japanese come into control, the economic basis for profit has already been destroyed.

Guerillas in Control.

Even now in the "occupied" territory of North and Central China, the Japanese military only hold the great cities and the trunk-lines of communication. Ten miles from the railways, guerillas are in control. The Japanese military dare not venture into these areas except in great numbers. The Japanese invasion, guerilla warfare, the burning of hundreds of villages as reprisals, floods caused by nature and by man and the "scorched earth" policy has turned "occupied" China into vast famine districts.

It will likely be a long time before the would-be conquerors will be able to consolidate, reconstruct and make profits out of the famine areas which their so-called "friendly co-operation" has created. When the fall of Hankow and Canton did not bring China to her knees, Japan probably lost her chance of making a peace, profitable to herself, with China.

Now time works for China. Prolonged resistance will force Japan to keep a vast "army of occupation" in China. It is probably not so much the will of the Japanese military as the determined and growing will of Chinese resistance that will make it necessary to keep huge Japanese forces in China. But it will not be as Gen Itagaki says for a prolonged period of reconstruction but for a prolonged period of war, which will make profits for Japan impossible, and which may finally break the economic back of the Japanese industrial and military machine.

As far as territory is concerned, two-thirds of China is still unoccupied, but even the occupied one-third is two-third unconquered. The unoccupied territories can be divided into two parts, the north-west and the west and south-west.

The Chinese North-West.—We will deal only with the Communist north-west, the north-west of the 8th Route army; and the Muslim north-west, the north-west of the so-called pro-Japanese Mohammedan Federation.

Concerning the Communist north-west, there is no doubt. They are heart and soul with the National Government. They

have organized the students and the peasant villages *en masse* against the Japanese invasion. With almost no arms, except those they have been able to capture from the Japanese, they have wrecked troop trains, torn up railways and kept great armies out of vast areas in the north-west.

The courage and achievements of the 8th Route Army are beyond dispute. When its soldiers are seriously wounded, they lie silent in the grass. At dusk, little peasant boys find them. After dark, strong peasant women carry them across the mountains to "hospitals" in caves. Here on straw, often without bedding or clothes, half-trained youth try to care for them. Here in that great co-operative called the 8th Route Army, money for medical care is most needed and can be made to go the farthest. Here \$7 Chinese money will save a patriot-life for his country.

Patriots to Humanity.

In the 8th Route Army, soldiers are not only patriots to their country but to humanity. Peasants are not only taught better agriculture but socialist politics and high patriotism. Thousands of students are studying in the National Salvation Colleges. Their classrooms are in deep caves far beyond the reach of Japanese bombs. Wherever Japanese soldiers might come, slogans appear, the like of which have never been seen before in any war. "Japanese brothers, you love your homes, why burn ours?" The 8th Route Army of peasants believes that the Japanese peasant soldier is as much a victim of Japanese militarism as invaded China is. A common enthusiasm for a great cause fills this part of China. That is why all roads for thousands of courageous youth lead to the 8th Route in the north-west.

But there is another north-west, that of the Muslims. Can the millions of Muslims in the north-west be induced by the Japanese to make a pro-Japanese state? Owen Lattimore, one of the best foreign students of China, answers with an emphatic "No."

The two outstanding characteristics of the Chinese Muslims are their toughness and their solidarity. The Muslims have survived because they are tough and have stuck together. They have also proven again and again that they are ready to do what other Chinese rarely do, that is, fight for their religious faith.

These Muslims are loyal to the wider world of Islam, which implies no disloyalty to China. Just before the outbreak of the

Sino-Japanese war, 170 Muslim pilgrims sailed in one ship from Shanghai to Mecca, and 18 Chinese students went to the great Muslim University at Cairo.

III

ALLEGIANCE OF MUSLIM MILLIONS IN CHINA

Even ten years before the present hostilities, the Japanese tried to win the allegiance of the Muslim millions in China. Japanese military agents cultivated the friendship of Muslim leaders suspected of disloyalty to Nanking. Chinese Muslim students were encouraged to study in Japan. In 1935, beautiful new mosques were opened in Kobe and in Tokyo. On January 30, 1938, in answer to a question in the Diet concerning the cultivation of friendship with Muslims, the Foreign Minister, Mr. Koki Hirota, answered, "We are giving full consideration to the problem of cooperating with Muslims. The exchange of Ministers with Iran had that object behind it."

After the conquest of Manchuria, the Japanese began to cultivate Muslim leadership there. After the occupation of Tientsin and Peiping, they did the same, and when in February 1938, the pro-Japanese Muslim Federation was set up, it is reported that the first chairman was a Muslim from Mukden.

But these Muslims are intelligent as well as tough and Chinese as well as Mohammedan. In 1938, a commission of distinguished Chinese Muslims, with the full support of the National Government, made a tour of Muslim lands to enlist support for China's struggle on behalf of her National independence. In August of the same year, the Turkish Government rebuked the Japanese ambassador for holding a five-day conference of Near East Japanese diplomats in Istanbul, and Japan's attempt later to form an anti-Communist bloc of Asiatic Muslim states was not well received in Angora.

No doubt the tour of the Chinese Muslims, and the sympathy for China created by it, had something to do with the frustration of the plan to create a pro-Japanese Anti-Communist bloc in East Asia. Chang Fa-kwei is a Muslim and recently has done much to rally Muslim youth to the cause of China.

Those who have studied the Muslim question believe that the majority of the Muslim leaders in the pro-Japanese Federation are unwilling members or are temporarily in it for personal reasons. To-day the National Government of China and the Communists in the north-west are in complete agreement to give

full religious liberty and political self-determination to all Muslims. The former causes of pro-Japanism are thus entirely removed. The Muslims need no longer fear religious persecution nor race domination. The Muslims in China have now every reason to be pro-China, where all tendencies are toward democracy and self-determination, rather than pro-Japan, where every tendency is toward fascism and rigid military control.

Integrity of Muslims.

Lyman Hoover, in the December 1938 issue of "*Asia*," tells of a conversation he had with a Muslim known for his integrity and good judgment. In answer to the question "Does one Muslim out of ten take the new (pro-Japanese) federation seriously?" he answered, "Do you think we are as foolish as that . . . One out of a thousand would be more like it." Hoover thinks that the Japanese are more likely to be useful to the Muslims than the Muslims to the Japanese.

It is believed that 90 per cent of the Muslims are for China, secretly if not openly. Another year or two of Japanese exhaustion at the hands of the guerillas, a few more really generous loans to China from abroad, and one or two real military victories on the part of the new armies in the west and south-west, would probably turn the Muslims' secret loyalty into an open rebellion against the Japanese military in the North-West.

For over a year, China's intellectuals and thousands of her best Middle Class have been travelling West. Never has there been such a migration in China before. Whole universities have been moved bodily into the West and South-West. Industries, churches, educational institutions, scientists, statesmen, evangelists, educators, dramatists, literary scholars and students in an unceasing stream have gone West. Driven by Japanese bombs, Chinese culture is on the march.

A new China has come into being on the far-way frontiers of Burma, Tibet and Indo-China. China's backdoor has become the front-door of a new civilization. New roads! new industries! new churches! and with them a new spirit and a new unity! In the great West, Sun Chung Shan's handful of loose sand is becoming a rock of granite.

Barriers Swept Away.

Everywhere provincial barriers and prejudices are being swept away. The national language is becoming universal. One leader, one purpose and one enemy have united the 100 million.

in the West and South-West into a nation. Free China has gained more by the war than she has lost. It may even be that unoccupied China, the great West and South-West, have gained more than "occupied China" has lost, great and tragic as that loss has been.

It may be that even to-day the new China of the West and South-West is stronger than the old China ever was.

The blows of military aggression have pounded China into a nation. Even Nanking was only a government of a party and of a class. The Chungking government, however, is a government of all parties and of all classes. It holds the undivided loyalty of the Right and of the Left in "occupied" as well as in "unoccupied" territory. This was proven by the letter of loyalty signed by 400 leading Chinese and given to the British ambassador in Tientsin recently. Chungking is China's first real government by the people, of the people and for the people.

The Probable Outcome.

China will, no doubt, fight on. If, immediately after the fall of Hankow and Canton, the Chinese armies had capitulated or the Chinese spirit had collapsed, or a large number of traitors or leaders, sincerely loyal, but hopelessly discouraged, had gone over to Japan, or if a single general of note, with an army of considerable size had surrendered, Japan might have been able by foresight and generous terms to have achieved a peace, if not just to China, at least profitable to herself.

Now four months have passed. China has adjusted herself to the loss of Canton and Hankow. No peace terms have been accepted. Wang Ching-wei's defection met with no response in China. Not a single man of international note has been willing to become a "puppet."

China's spirit remains unbroken. Great new highways to friendly frontiers are being built. China's finance has not collapsed. New loans are becoming available. Resistance is stiffening on an increasing far-flung front. Mobile units harass the ever-lengthening Japanese lines. Half a million guerillas threaten the Japanese forces in occupied territory, and a million newly organized troops, many motorized, are getting ready to attack from within the frontiers of the New China.

Chinese Loyalty.

With Chinese loyalty rallying to the Generalissimo, with world-opinion rallying to China, with international tension

growing, with economic strain increasing, and with Chinese resistance stiffening, it is not likely that the Japanese military can go on to conquer the vast territories and the reorganized millions of the West and South-West. It is even extremely doubtful whether Japan can really subdue and consolidate the territories she has only partially occupied but has not been able to conquer.

It does not seem probable now that Japan will ever be able by force to conquer, consolidate and make profitable the vast population of an unwilling and resentful China. If Japan cannot make her conquests profitable, no matter how many cities she bombs, no matter how many battles she wins, she will still have lost the war. China has not yet won the war, but it may be that the Japanese militarists have already lost it.

When Japan failed to achieve peace in China after the fall of Hankow and Canton, she may have missed the train and lost the war. The war itself is Japan's tragic failure in China. No nation, with all the military force in the world, can permanently subdue a whole continent containing one-fourth of the world's population. It may be that Japan has already lost the war, but there is no doubt that without a complete change of heart and of policy, she will never be able to win the peace.

THE INDIANS ABROAD

BY

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When the Rt. Hon. Sastri told the League of Nations that Indians in Tanganyika were worse treated in 1921 than in 1914, he was not instituting a comparison between Germans and Englishmen; what he meant was that in spite of the mandate prohibiting discrimination, the position of Indians grew worse. If the colony is now returned to Germany our plight will become still worse. All over the world the position is steadily deteriorating.

Each year brings its quota of humiliation and sorrow. This year South Africa has passed the segregation scheme and categorically refused to reopen the issue. It was only a few years ago that a similar but milder bill was dropped and an assurance given that such measures would never again be thought of; but the Gandhi-Smuts Agreement and the Cape Town Agreement have been buried; and the fact that Indians were brought out in the past to save the settlers from bankruptcy has been completely forgotten. Kenya has followed South Africa with equal thoroughness: the Kenya Highlands Order in Council has been passed. Anarchist Jews professing no nationality have been welcomed but the brown citizens of the Empire are debarred. The establishment of the Kenya Immigration Advisory Board and Immigration Restriction Bill are further expressions of the same spirit. Fiji has passed a Lands Trust Ordinance; Jamaica is repatriating Indians, and Indians in British Guiana who form 42·4 per cent of the population have reasons to dread the Royal Commission which is to report on social and economic conditions. In Burma there were picketings of our shops and bloody riots; Ceylon passed the Village Communities Ordinance and dismissed Indian wage earners; and in the F.M.S. the minimum wages were again lowered. Only the Zanzibar clove decree was modified owing to K.P.S. Menon's strong report, our boycott of cloves, and Mr. Bozman's embassy.

When we glance at these anti-Indian measures our first impression is that the position in each country is due to peculiar circumstances, and that no generalisation is possible. But it

seems to me that, allowance being made for sporadic outbursts of racial and political prejudices, the problem is everywhere economic; and that different countries are only at different stages of what may be regarded as one unbroken process of exploitation of Indians.

This process has five stages. The first was indentured labour. The practice of raiding African villages for slaves having been given up, the Government of India became the licensed slave vendor of an expanding empire. Those were days when there was a shortage of labour all over the world including India, and it was necessary to restrict the worker's personal liberty in order to exploit him. But when certain countries established monopolies of certain resources, it was no more necessary to prevent workers from leaving service. Then indenture gave way to the variety of freedom which has been aptly described by Dr. Norman Leys as the 'New Slavery.' The slave owner of old had to maintain him during off-seasons, illness or old age, but the countries employing Indians were not so burdened. The slaves had no incentive to effort, but the Indian coolie worked overtime. The third stage was reached when parts of the economic structure raised by the Indians became stable, and their presence was no more essential for its maintenance. For example, when the construction of the strategic railway was completed, Uganda began training blacks and whites to replace Indian unskilled and skilled workers. Natal went on bended knees to India in 1860 for labour, and money and land were freely granted in order to induce Indians to settle down; but in 1894 a special tax was levied on Indians to force them to leave certain professions and localities. Indentured labour, however, continued to be obtained from India till 1911 because some parts of the economic organization had not been stabilised yet. The fourth stage of exploitation is expropriation. Over and above this there is a variety of exploitation caused by the mere monopoly of natural resources. It may be of two kinds. The first is the dog-in-the-manger variety. Australia, for example, will neither develop her resources nor allow others to enter. The second is like the snake in the fable who allowed the rat to make a hole and then occupied it. When Indians had created wealth in Africa, the white settler made it his.

Thus there are six phases of exploitation. To illustrate this general theory we may study the history of Indian labour in Ceylon.

Though it was the Government of Madras that conquered Ceylon in 1795, Ceylon became a crown colony in 1798, and

Madras was under no obligation to provide labour for the development of Ceylon. Yet in 1802 Madras acceded to Ceylon's request for labour though South India was in sore need of labour in those days. Besides estate labour, there was organised a Pioneer Force in 1821 which worked under "military" discipline in "jungle or marsh, and deserted or unhealthy area." As a result of this the Ceylonese were exempted from forced labour in 1831. The flow of Indian labour to Ceylon estates steadily increased. With a spirit of self-sacrifice worthy of a nobler cause, they enabled the estates to survive many a crisis including the blight of coffee in 1880. In years of boom Indian labour was responsible for 90 per cent of the export trade of the island, and we must remember that "almost all the entire resources of the country except paddy are directed towards the preparation of products for export." Though the Indian labourers formed only 1/5 of the population they contributed 4/5 of the visible wealth.

As already explained, this kind of exploitation is rendered possible by the labourer's absence of freedom. Estates detained labourers by refusing the discharge certificate, claiming the repayment of debts real or imaginary, or by insisting that the recruiting agent alone had the right to give notice. These obstacles were removed by the Indian Emigration Act of 1922 and the Ceylon Minimum Wages Ordinance of 1927; but by that time exploitation had advanced to the second stage so that the worker's freedom became the employer's advantage. During the last slump, 100,000 Indians were sent back so that Ceylon escaped the unemployment she had created. Thus, India is burdened during slumps and depleted of labour during booms. India serves as Ceylon's pinjrapole for the incapacitated, the decrepit, the unfit and the unwanted.

The worst feature of this stage is underpayment. The Minimum Wages Ordinance was circumvented in many ways. Some estates levied deductions, some calculated two days' work as one, and some used false weights. Mr. Hydari, I.C.S., detected some cases. At last Government itself legalised underpayment by reducing wages twice. Not till the Government of India stopped assisted emigration in 1937 and removed surplus labour were the old wages restored.

Even during the second stage there were localities where the freedom of workers was checked. In one estate, when labourers demanded discharge, an Inspector of Police and an armed constable came, chased the labourers, fired shots, and forced the workers to accept low wages. An enquiry revealed

this, but the Government of India could offer no redress because the labourers could not get employment elsewhere owing to the combination of employers.

The significant feature of the second stage, then, is the combination of those who control means of production and the disorganized state of workers. In the words of a Sinhalese member of the Council, the Indian labourer is recruited and brought "just as a prisoner is brought by the police." Any person who tries to visit an estate is an intruder, and there have been cases of guards opening fire on intruders. Though the Ordinance empowers persons authorized by the Indian Agent to enter estates and conduct enquiries, the Planter's Journal contained a secret circular advising estates not to allow the Assistant Agent to conduct enquiries. For trying to organize estate labour, Mr. Bracegirdle was arrested and ordered to be deported, but the Chief Justice pronounced the order illegal. The Secretary of State, thereupon, passed an Order in Council empowering the Governor to enact any legislation he liked by a mere message to the State Council. The Jayatilaka cabinet called this slavery and threatened to resign, but finally preferred their own slavery to the loss of the facility to keep Indians as slaves.

The political status of Indians deserves more than a passing notice, because economic exploitation is effected through political power. Of the 700,000 Indians in Ceylon at the end of year before last, 677,897 were estate labourers. The literacy and income tests operated against them. If many of them voted, it was only because "domicile" had not been defined when the rolls were prepared; but, in 1935, "domicile" was defined as descent from those who had settled in Ceylon for two or more generations. Indian labourers had never an opportunity to settle, and the Land Ordinance of 1935 made settlement impossible. Thus 99 per cent of the Indian workers in Ceylon lacked domicile, income and literacy qualifications. As a test case, 1571 Indian votes in the Colombo Central Constituency were challenged and 1550 were deleted. It may be noted that knowledge of Indian languages like Hindi is not recognized as literacy. The recent Village Communities Ordinance disqualified 100 per cent of the labourers. Thus the Indian in Ceylon became a political zero.

Political discrimination helps economic discrimination which is the essence of the third stage of exploitation.

The recent repatriation of daily paid workers illustrates the third stage. Take the harbour, for example. Who maintains the harbours? Three-fourths of the harbour revenue is derived from exports of tea and rubber made by Indian labour, or coconut

made saleable in India through preference; imports of articles consumed by Indians or employers of Indians; and the use of Colombo as the port of South India. Equity demands that 80% of the jobs should be given to Indians; but even Indians born in Ceylon are summarily debarred. Not a pie out of the 2 million rupees goes to Indians. Only as coolies are Indians tolerated; and even there, discrimination exists. Trimming of coal which fetches Rs. 2-8 per day is monopolized by Sinhalese, but the carrying of bags on the head which Sinhalese dislike and which brings only Re. 1 is done by Indians. The way Indians are being replaced is sinister. In 1928 Goonesinghe incited labourers handling cargo to go on strike. The employment of Indians was not one of the points for consideration, indeed nearly all the strikers were Indians. Yet Goonesinghe called off the strike when a percentage of jobs was reserved for the Sinhalese! This type of vile propaganda was used by Government as an excuse to send circulars for the replacement of Indians by the Sinhalese, and now has come wholesale dismissal. The story everywhere is the same. Whenever the Sinhalese feel that any part of the economic structure raised by Indians can be comfortably occupied, the Indian is driven out. The Governor of Ceylon assures us that estate labour is not affected, but His Excellency forgets that this discrimination is India's grievance. Estate labour contributes, directly or indirectly, 40% of the revenue of the island, and barely 1% is spent on their welfare. This is expropriation.

From partial expropriation to wholesale expropriation is an easy transition, so that the advance of exploitation from the third stage to the fourth is but a question of time. A dozen years ago there was a riot in some islands of the Palk Strait to scare away Indian Muslim divers, and the Ceylonese got a monopoly of the profession; but, Ceylonese divers were inefficient and inducements had to be offered to Indians to come back; but now Ceylon can manage without Indians and an Ordinance has been passed. In this way Ceylon wants to evict Indians group by group.

This raises the general question: Is it right for a country enjoying natural resources to close her doors? If the part of England containing coal and iron had prohibited the entry of people from other districts, would it have been in the interests of England? The free movement of peoples, as Guiseppe de Michelis puts it, is the automatic regulator of world economy. If Indians hit by Canadian wheat cannot migrate to Canada, how can India join Canada's scheme to raise the price of wheat? The Canadian has only to reclaim new land, but the Indian has to

buy, which implies that the person who sells also gets maintenance. An industry which shirks the duty of maintaining life cannot be allowed to compete with the industry which supports life. India cannot afford to cooperate with American wheat, Australian butter, Java sugar, Burmese rice or Ceylon coconut, if the right of free migration is denied. Many a conference recommended the free movement of peoples and raw products, but prejudices shelved the issue. Economic nationalism rose as a protest, and the problem has become political and military.

In short, though the treatment of Indians varies in different countries, there is one principle which can guide our policy everywhere. Whether they are being sacked or segregated, given land or deprived of it, recruited or repatriated, all are phases of one process of exploitation, aspects of one major injustice.

A study of this should, *as pointed out by me at the Political Science Conference*, be an antidote to communal, provincial, and parochial feelings.

LAW AND ADMINISTRATION IN THE MADRAS PRESIDENCY (1937—39)

BY

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Several important laws have been enacted during the last two years when the Congress party has been in power.

I

Prohibition.

The pride of place naturally goes to the Prohibition Act which was passed in 1937. Opinion in the Province is not yet unanimous that abstinence from liquor is a good thing and, that, if it is a good thing, prohibition is the best or right means of realising it.

The Prohibition Act in Madras has been the forerunner of similar measures in other Provinces. "The Act penalises the manufacture of, traffic in, and consumption of, liquor and intoxicating drugs in the areas in which it is introduced, but contains provision for the grant of exemption in cases where liquor or drugs are required for medicinal, scientific, industrial or such like purposes." Permits to obtain liquor are granted to a certain class of addicts, under strictly controlled conditions.

To start with, prohibition was introduced in one district, viz., Salem, on October 1, 1937. A year later it was extended to the Chittoor and Cuddapah districts. On the 1st October of this year it will be introduced in the North Arcot district. This means that a compact area of 23,819 square miles or 1/5 of the area of the Presidency will come under Prohibition. The loss of revenue arising therefrom will be no less than 2/3 crores of rupees per year.

Enforcement of Prohibition is a difficult question anywhere in the world. In India, however, as the bulk of the people are definitely averse to drink and the principal religions of the land prohibit the consumption of liquor, enforcement has not been an insuperable difficulty. The Police Department has been entrusted

with the task of enforcement rather than the Excise staff, which is being gradually absorbed into other departments. Committees consisting entirely of non-officials have been formed to assist the Government in "(1) giving information to the police, (2) reporting every month to the Collector regarding the working of the Act in their taluk, and (3) assisting the campaign in a variety of ways, particularly in maintaining touch with the village prohibition committees, keeping a watch on places in which breaches of the Act might take place, organising amusements and counter-attractions to drink and encouraging thrift."

Offences against the Prohibition Act have been comparatively rare. Illicit distillation and illicit tapping have been brought under control. The Sweet Toddy Rules in Salem District have been tightened so that under the guise of tapping sweet toddy, fermented liquor may not be manufactured. In Cuddapah and Chittoor districts there is no consumption of even sweet toddy.

A few cases of persons using denatured spirit, ganja, and opium have been brought to light. But there is no evidence to show that there is an increasing tendency to take these dangerous substitutes for liquor. Drink and drug addicts sometimes cross the borders of their districts to places where prohibition is not in force in order to satisfy their craving. To combat this menace liquor shops in the belt areas are placed under severe restrictions. It is gratifying to note that in co-operating with the Madras Government in stamping out ganja, the Mysore Government has agreed to restrict issues to the shops of the State bordering on prohibition districts to the average of the previous five years.

The moral and material progress of the people living in the prohibition area is clearly marked. Serious offences against law and crimes of a violent character are on the decline. In one section of Salem town where an economic survey was recently undertaken it was found that whereas in the pre-prohibition days 32.2 per cent of income among stone workers was spent on food and an equal amount on drink, since prohibition came into effect the amount spent on food has shot up to 48.1 per cent. More money is also spent on clothing, housing, amusements and the like. Thrift and co-operative societies have been started in several centres. "Day deposit" schemes are in force in the Chittoor district.

Many of the tappers who were thrown out of employment have been absorbed in the work of cultivation and other similar occupations. Several are being taught to manufacture jaggery or *gur* from palmyra and date juice. In all the three prohibition districts, co-operative societies for the manufacture of jaggery

from sweet toddy have been founded. In the Salem district there are sale societies in addition. Several cottage industries have been introduced, such as bee-keeping, tape making, net weaving, and the manufacture of ink and paper.

Recreations and counter-attractions have been provided; but much still remains to be done. Indigenous games and rural sports are receiving increasing attention. Street dramas, folk dances, and "kathakalakshapams" are most popular among villagers.

The Government's communique reviewing the work says: "The Prohibition Act continues to be viewed with great favour in all the districts in which it is in force and its working has been smooth. The position is considered to be satisfactory and the progress on the ameliorative side is specially gratifying."

II

Measures for the Amelioration of the Condition of the Masses.

Besides Prohibition, several important measures have been passed to ameliorate the condition of the agriculturist and peasant. The most important among these is the Madras Agriculturists' Relief Act which came into force in March, 1938. The object of this measure is to help indebted agriculturists by the scaling down of their existing debts, by reducing the rate of interest on their future debts and by writing off the arrears of rent due to zamindars, janmis and other landholders. Dues to the Government and local bodies and dues to co-operative societies and to certain joint-stock banks do not come within the scope of this Act. As regards other classes of debts, incurred before 1st October, 1932, no interest will be "allowed on the principal, and if more than twice the amount of the principal, whether by way of principal or interest or both, has been paid to the creditor, the debt including the principal is to be deemed to be completely discharged." As regards debts incurred after 1st October, 1932, interest is allowed at the stipulated rate or at 5 per cent a year whichever is less. On such scaled-down debts the future interest is at the rate of $6\frac{1}{4}$ per cent per annum. Up to the end of March 1939, debts amounting to Rs. 2,86,67,677-0-4 were scaled down by courts to Rs. 1,52,09,419-3-4. A sum of Rs. 50 lakhs was set aside during the year 1938-39 to be given as loans to agriculturists to clear off their scaled-down debts. The amount set apart during 1939-40 for the same purpose is Rs. 75 lakhs.

Debt Conciliation Boards have been set up in every revenue division of the Presidency to enable the agriculturists to pay off the debts as scaled down under the Act. Several difficulties have been experienced in the working of the Act, and a bill will shortly be introduced in the Legislature to remove them.

In view of adverse seasonal conditions, liberal remissions of land revenue have been made. The remissions so made during the last two years amounted to Rs. 71.4 lakhs each year. The Standing Orders of the Board of Revenue have been so amended as to enable the ryot to pay his land revenue in any taluq or district other than the one in which the demand arises. Co-operative credit societies have been reorganised in order to increase the credit facilities of agriculturists. The guarantee of the debentures of the Central Land Mortgage Bank has been increased to Rs. 200 lakhs. At present there is no district which is not served by one or more land mortgage banks.

During the period under review, famine, flood and cyclone were responsible for much damage and widespread unemployment. In the district of Bellary alone Government was responsible for 16 relief works and two test works in 1938 in combating the effects of famine. Over 20,000 persons received gratuitous relief. In the Anantapur district, Government opened road and tank works to relieve unemployment. The District Board also started road works with the help of the aid given by the Provincial Government. Relief works and test work were undertaken in parts of Kurnool district also where the situation was unsatisfactory. To combat the scarcity of fodder in these three districts hill grass was collected and sold to ryots at concessional prices. Seasonal conditions, however, began so to improve by July 1938 that by the middle of October all the road works were closed.

Failure of crops in the Coimbatore district necessitated the opening of nine relief centres and the lending of nearly 4 lakhs of rupees to those in distress. During the first half of 1939 alone 7 lakhs of rupees were spent on famine relief.

The Government is considering the report of a committee of officials and non-officials set up some time ago to recommend changes in the provisions of the Famine Code and to make suggestions for the prevention or mitigation of famine conditions.

During the two years under review relief was also given to those who suffered loss as a result of heavy floods and cyclone. Government relief was supplemented by funds subscribed by the public in response to appeals made by the Prime Minister and the Governor of the Presidency.

Among other measures adopted for the amelioration of the condition of the masses mention must be made of a well-planned scheme spread over ten years for supplying pure drinking water to rural areas. The scheme is financed entirely out of public funds and in order that it may not be held up for lack of funds the Government has set aside a special fund of Rs. 18 lakhs with which to make a start. Out of this fund some 400 wells have already been bored in different parts of the Presidency.

Measures have also been adopted for the rendering of rural Medical relief, for the providing of radio sets for villages, and for the revival of indigenous games in the villages.

The system of employing honorary medical officers has been extended so as to save money for the Government as well as to provide facilities for private practitioners of medicine to acquire training and experience in State hospitals. Local bodies have been advised to adopt the same system for the medical institutions in their charge and with the money so saved to provide extra beds for in-patients. The tenure of office of honorary medical officers has been limited to five years. Whether this transference of State responsibility to the shoulders of private individuals is a step in the right direction or not remains to be seen.

Invidious distinctions between different classes of medical practitioners have been minimised by making it possible for all medical practitioners to be classed together in a common register. The medical schools in the province have been closed in order that a uniformly high standard of medical education may be given in colleges.

An important act known as the Public Health Act was passed in 1938. This act provides for "the proper enforcement of suitable measures in regard to epidemics, protected water-supply, sanitation and similar matters." In order to bring quinine within the easy reach of the poor, the price of cinchona febrifuge tablets has been reduced from Rs. 10 to Rs. 8 per lb. and that of quinine sulphate tablets from Rs. 19 to Rs. 17. There is under consideration a scheme of Health Co-operative Societies which will conduct public health and sanitation work in the rural areas with the help of young volunteers in the village.

An influential committee of the two Houses, presided over by the Revenue Minister of the Province, has prepared a monumental report suggesting important tenancy reforms which, if adopted, will give the tenant "the proprietorship of the soil and . . . full rights of ownership subject to the liability to pay rent to the landholder." One of the recommendations of the

Committee is that "the rate of rent fixed in the year previous to the Permanent Settlement should be adhered to . . ."

III

New Taxes.

The enactment of prohibition, remission of taxes, famine and flood relief and the like have meant a serious inroad into the revenue of the province with the result that new sources of income have had to be discovered.

One of the important taxes to be passed in 1939 is the Madras General Sales Tax which "imposes on every dealer a tax of five rupees per month if his annual turnover exceeds ten thousand rupees and a tax of one-half of one per cent of such turnover if his turnover exceeds twenty thousand rupees." An agriculturist who sells the produce grown on his land does not come within the purview of this Act. Exemption is also granted as regards "the sale of bullion and specie, of cotton, of cotton yarn and of any cloth woven in handlooms and sold by persons dealing exclusively in such cloth." The sales of hides and skins are to be taxed only at one point. As regards finished articles of industrial manufacture 50 per cent rebate on the tax is allowed when such articles are sold for delivery outside the province.

The tax is a very light one and bears not only on the merchant but also on the consumer. It is expected that the yield from this tax alone will be enough to make good the loss that will be entailed when Prohibition is introduced throughout the Province.

Among other taxes passed in recent months, mention must be made of the Madras Sales of Motor Spirit Taxation Act, 1939, which imposes a tax at the rate of one anna six pies per gallon in the case of petrol and at the rate of six pies per gallon in the case of motor spirit other than petrol. The tax is collected by the retail dealers.

The Madras Electricity Duty Act, 1939, imposes on licensees in the Province a duty of six pies per unit of energy when sold at more than two annas per unit. A graded tax is imposed on tickets sold in places of amusement by the Madras Entertainment Tax Act, 1939. The tax ranges from three pies to two rupees per ticket. Municipalities and other local bodies which previously levied an entertainment tax are compensated for their loss.

The Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, "imposes on every retail or wholesale dealer in manufactured tobacco, such as cigars, cheroots, beedies and snuff,

a tax at rates based on the turnover. A wholesale dealer, manufacturer, broker or commission agent has also to pay an annual licence fee at specific rates."

The amounts which are expected to be realised out of these taxes during the current year are:

15.84 lakhs from the tax on the sale of motor spirit.

5.09 lakhs from the Electricity duty.

3 lakhs from the tax on entertainments.

33 lakhs from the General Sales Tax.

After making the necessary deductions for the collection of these taxes, the net income to the Government is expected to be 65 lakhs. When the taxes are collected for a whole year, the yield may be about Rs. 134 lakhs. But this amount is only a drop in the bucket when it is remembered that the total revenue of the Province is 16 crores per year and that the land tax and excise revenue which have contributed as much as 9 crores per year hitherto will hereafter be on the decline.

IV

Harijan Uplift.

It is a notorious fact that the Madras Presidency for many long years now has been a caste-ridden Province. This being so, the work of Harijan Uplift is a peculiarly difficult task. In spite of this difficulty during the year 1938 two important measures were passed for the amelioration of the condition of the scheduled castes. One of these was the Removal of Civil Disabilities Bill introduced by Rao Bahadur M. C. Rajah. This bill provides that "no Harijan shall be prevented merely by reason of his caste from enjoying any social or public amenity to which other classes of Hindus have access or which is maintained for the use of the public or out of State or Local funds and that no court of law shall recognise any such disability."

The Malabar Temple Entry Bill provides for the throwing open of Hindu temples to the excluded classes if the measure is favoured by the majority of the non-excluded castes who are voters for the general constituency of the Madras Legislative Assembly in the revenue taluq in which the temple is situated. At the time this measure was passed it was considered to be revolutionary in character and there was considerable opposition

to it. But it has been thrown into the shade by the amount of public enthusiasm which has lately been exhibited in favour of temple-entry. On July 8, 1939 a party of Harijans and caste Hindus entered the innermost shrine of such an important temple as the Sri Minakshi Temple at Madura and offered puja there amidst the rejoicings of the Hindu population of the town. This unprecedented measure has been followed by the throwing open of the temple in other orthodox centres such as Tanjore. It is true that some of the orthodox Hindus have not taken kindly to these innovations and have instituted civil and criminal proceedings against the temple authorities and the reformers. To condone the technical breach of the law involved in this reform Government has published an Indemnity Bill which aims at protecting the participants in the event. In order to prevent harassment by interim proceedings at law courts an ordinance has been promulgated in terms of the Indemnity Bill which takes effect immediately.

It is recognised by all that temple-entry alone cannot solve the age-long problems of the excluded classes. Even more than such a reform they require educational facilities, economic opportunities, and legal equality.

In order to break down the barriers of caste the policy of the Government has been to secure the admission of scheduled class children into the ordinary schools. Only where this has been found impossible or where there are no ordinary schools, special schools have been provided for the scheduled class pupils. Ordinary schools which refuse admission to such children can do so only on the pain of losing Government recognition as well as their claim to Government aid or grant. The Government also runs a large number of special labour schools. It has been pursuing the policy of granting scholarships to scheduled class pupils for elementary, secondary, collegiate, special, commercial, professional, and industrial education. Scheduled class pupils need pay no fees in elementary schools and can obtain half-fee concessions in secondary schools and colleges and full-fee remissions in Arts colleges if they can produce certificates establishing their poverty. Further educational concessions are made by some local bodies. Some of them supply books and slates to scheduled class pupils free of cost. Pupils of this group pay no fees for the Secondary School-Leaving Certificate Examination. "The Government make boarding grants, run five hostels to give free board and lodging to scheduled class students and subsidise twenty-eight hostels run by private bodies for this purpose."

In order that members of the scheduled classes may have a fair share in Government appointments, the general educational qualifications required for particular posts are lowered in their cases; also the age-limit is raised to 27. According to the communal rotation in operation, the scheduled classes are entitled approximately to one in every twelve appointments.

Various amenities are extended to members of the scheduled classes. House sites are secured for them on easy terms, and considerable extents of land are reserved for them in various places. "They are also given concessions by being allowed to pay land value for wet land at a price fixed by the Collector and in instalments." Co-operative societies are specially organised for them to enable them to secure loans for the acquisition of house sites, agricultural, and general purposes.

The welfare of the scheduled classes is a function which comes under the direct control of the District Collector, subject to the general supervision of the Commissioner of Labour. To make suggestions for the improvement of the condition of the scheduled classes there are District Advisory Committees and a Provincial Advisory Board working under the chairmanship of Collectors and the Labour Commissioner respectively.

A sum of Rs. 11.24 lakhs was spent in 1938-39 in ameliorating the condition of the Scheduled classes. The amount set aside for this purpose in the current budget is Rs. 12.43 lakhs.

V

Education.

Many important changes are contemplated in the field of education. At the moment of writing, the Education Minister has summoned a conference of experts to consider the re-organisation of secondary education. The Wardha Scheme of Education is being tried in a few localities. A training school on the Wardha Model was opened at Coimbatore in July this year. Additional teachers are being appointed in Panchayat schools, the Government giving a grant of Rs. 180 per annum in respect of each teacher.

By an Act of the Legislature District Educational Councils were abolished with effect from 1st June, 1939. Their place has been taken by Taluk Advisory Educational Committees to advise the Educational Department with regard to elementary education in the taluk.

Rules have been framed to safeguard the interests of teachers in aided schools and to give them greater security of tenure. One of the important rules is that not less than 85 per cent of the teaching grant to a school should be paid to the teachers in the form of salary. Deductions from salaries are not allowed except towards provident fund benefits or for disciplinary reasons. Every teacher employed in an elementary school is to be provided with a service register setting forth terms of appointment, reasons for the termination of service, etc.

In the sphere of secondary education, high schools in uni-lingual areas have been instructed to use the mother-tongue as the medium of instruction beginning with the fourth form, corresponding to the eighth class in some of the other Provinces. Schools in bi-lingual and multi-lingual areas and certain types of girls' schools are given time to make the necessary adjustments before instruction can be given in the mother-tongue.

Against a storm of protest, Hindustani has been introduced as a subject of study in forms I to III in 225 High Schools in the Presidency. While there are some who have a genuine fear that the compulsory teaching of Hindustani will undermine the importance of Tamil and other vernaculars of the Province, others are opposing the teaching of Hindustani on party grounds.

The rules of the Grant-in-Aid Code have been amended as to make it obligatory for the managements of Aided Institutions to have their accounts scrutinised by a recognised Auditor. Previous sanction of the Director of Public Instruction is necessary before opening a new educational institution on a new course of study in an existing institution.

VI

Local Self-Government.

Nominations to district boards have been abolished. Where women and minority communities are inadequately represented through election, provision is made for co-optation by the elected members of the boards. Many of the bifurcated district boards have been amalgamated.

The electoral rolls to the legislative assembly have been adopted for the purpose of elections to local bodies also. This means that all adult literates can vote for district board and assembly elections. The system of coloured boxes has been introduced in order to enable illiterate voters to vote secretly.

To avoid expenditure, local bodies are prohibited from spending money on the purchase of photos and pictures other than those of their Majesties and of Mahatma Gandhi. If addresses are to be presented, the expenditure involved should be met by public subscriptions.

With a view to checking misappropriations of Panchayat funds which have been on the increase, Panchayat Presidents have been warned that they will be removed from office if at any time they do not produce the cash balance before any inspecting officer even in the first instance.

To combat nepotism in the matter of contracts, a well-defined set of rules has been framed and put into operation, calling for open tenders and the acceptance of the lowest tender subject to considerations of efficiency. The Assistant Engineers who are closely connected with contracts have been constituted into a provincial service.

A Bill to amend the Madras City Municipal Act (1919), the Madras District Municipalities Act (1920) and the Madras Local Boards Act (1920) has recently been published in the Fort St. George Gazette. Among other things this Bill provides for triennial elections to the Madras Corporation. Under the present Municipal Act, 15 out of the 45 divisional councillors of the Corporation retire from office every year on the 1st day of November by rotation. The vacancies so caused are filled at annual elections. Such a clumsy procedure necessitating annual election campaign, it has been found, is not in the best interests of the city. Therefore, the bill provides for triennial elections to all the 45 divisional seats with effect from 1940. The advantages accruing from such a change are so obvious that the bill is not likely to meet with any serious opposition. It will save the time and energy of a considerable part of the municipal staff, do away with the fractional representation of public opinion from year to year in the Corporation, and afford the tax-payers a chance once every three years to assess the work of the Corporation.

A further change which is worthy of consideration is the lengthening of the period of Mayoralty from one year to three years. As it is, the annually elected Mayors come and go without leaving any mark on the city they serve. A period of one year is really too short for any one to leave any permanent mark behind. Besides, the principle of communal rotation does not always make for the best possible candidate to be elected as Mayor.

CONSTITUTIONAL DEVELOPMENT THROUGH CONVENTIONS: SOME RECENT RULINGS IN THE BENGAL LEGISLATURE.

BY

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An attempt is made in the following pages to give a concise summary of some of the questions of privilege and procedure raised on the floor of the Bengal Legislative Council and the Bengal Legislative Assembly. The writer's object is to bring these to the notice of publicists and legislators in other provinces. All of these constitutional 'niceties' are not reported in the press: and the developments in various provinces should be comparatively studied not merely in Speakers' and Presidents' conferences but in academic circles as well.

The Upper Chamber.

A few introductory remarks on some features of the Bengal Legislative Council may be made. The Bengal Cabinet contains no member from the Upper House. The Upper House, however, is partly elected (27 out of 63 members, including 6 nominated by the Governor) according to a system of single transferable vote by the members of the Provincial Assembly. The President of the Upper House at the time of his election belonged to the Congress group and has to his credit experience extending over several years of the Indian Legislative Assembly of which he had been a member.

Leaderless House.

One of the first questions that cropped up was as to who was the Leader of the House in the Council. On July 30th, 1937, when the President called upon the Leader of the House to speak, the then Leader of the opposition Dr. Radha Kumud Mookerji raised the issue "Who is the Leader of the House?" The Premier, Mr. Fazlul Huq, sought to submit that (i) it was "open to any member of the Government to reply and state the view of the

Government," and (ii) the Minister in charge of the Department concerned, while a matter was under discussion, was to be "for the moment, the Leader of the House." On being pressed by the President to reply to the general question as to who could be considered the Leader of the House, the Premier took upon himself the "self-imposed" responsibility to fill that position. Naturally, arising out of this statement came the question as to whether Ministers and the Advocate-General, unless they were members of the Council, could be regarded as "members" of the House under Sec. (64) of the Act.

Objections were raised not only on the ground that in the Lower House there could not be as many Leaders as there were Ministers, but also on the ground that a non-member could not be the Leader of the House. The issue, again, was of significance, because, as the President observed, "there are specific duties of the Leader of the House." Giving his ruling on August 9, 1937, the President observed *inter alia*: "The right of Ministers to address the legislature of which they are not members, is not of course contested. The Ministers in some countries are not members of either House, yet they have the right to address it, while in several countries they have also the right to speak and participate in discussions in the House of which they are not members. The primary function of the Leader of the House is to represent Government and also to announce the programme and order of business and specially of Government business of the House, from time to time, and generally to speak on behalf of the Government. Though the Ministers have a statutory right to attend and address the House, the House has no right to compel their attendance, but they are equally subject to the Standing Orders and authority of the House with its members. It is not inconceivable that in future both the Houses may be sitting simultaneously and it is natural that the Chief Minister and his colleagues will have ordinarily to attend the Lower House of which they happen to be members. So I rule that the Leader of the House must be a member of the Council."

Ministers: members of both Houses?

The complications arising out of the provision of Sec. (64) again cropped up on August 12, 1937, when a Minister rose to oppose the introduction of a non-official Bill. A point of order was raised by Mr. Kamini Kumar Dutta, the present leader of the Congress opposition, on the ground that under Sec. (51) of the Rules and Standing Orders objection to the introduction of a

Bill could only be raised by a member, and a member was defined as being a member of the Council. What was the significance of the phrase "to speak in and otherwise take part in the proceedings?" Did it mean the exclusion from voting power alone? Would a Minister or Advocate-General be entitled, because of Sec. (64), to all the privileges of members? Would such a position, on analogy, be extended to the Governor's official spokesman who may be appointed under Sec. 57(2)? Would a Finance Member, for instance, be prevented from presenting his Finance Bill in the House of which he was not a 'member'?

The opinion of the Advocate-General was to the effect that a Minister's right "would cover everything except voting." The Maharaja of Santosh, a former President of the Bengal Legislative Council under the Act of 1919, whose views naturally carry weight, observed that if a rule made under Sec. 84(1) of the Act conflicted with Sec. 64 of the Act, the provision of the Act should prevail against the rule. He submitted that Sec. 64 "gives to a Minister all rights and privileges of a member in respect of the proceedings of the Council." But in that case arose the question, Could a Minister be a member of both Houses, a position prohibited under Sec. 68?

The issue was, however, resolved by a Government Notification dated August 13, 1937, issued in exercise of the powers conferred by Sec. 84(3) on the Governor, which provided that a member under the Rules and Standing Orders of the Council "includes a person referred to in Sec. 64 of the Act."

The matter, however, was not allowed to rest here. On September 17th, 1937, the Leader of the Opposition raised the point of order whether a non-member Minister had the right of moving a bill for consideration. It was contended that the initiation of proceedings was not covered by the language of Sec. 64 of the Act of 1935, and also that the rules framed by the Governor on August 13 were *ultra vires* as they were inconsistent with the provision of Sec. 64.

The Acting Advocate-General in giving his opinion, submitted that the meaning of the phrase "Proceedings of the Legislative Assembly" could be found by reference to not only Sec. 64, but also Secs. 66(2), 87 and 86(2). The whole Act should be taken into consideration while giving an interpretation. From phrases used in the several sections the Acting Advocate-General came to the conclusion that all rights and powers of members except voting, inhered not only in the Ministers and the Advocate-General but also in an official appointed under Sec. 57(2). He did not accept any "academic" distinction of pro-

ceedings into three parts—initiation, discussion, and decision. He also submitted that the notice of a motion given initiates the proceedings, otherwise against the intentions of Sec. 87, the legality of the part of proceedings prior to the motion in the House might become the subject-matter of an application by way of a writ of *Mandamus* or a writ of *Certiorari*. He did not, however, deal straight with the issue as to whether the several limitations on membership, placed on Ministers and the Advocate-General by the Governor's notification, dated August 13, 1937, of the wide interpretation of the Acting Advocate-General were accepted, were repugnant to the statute.

The President's ruling *inter alia* laid down that on the principle of *ejusdem generis* (i.e., the principle that the general term which follows particular and specific words of the same nature as itself, takes its meaning from them, and is presumed to be restricted to the same genus as these words) 'otherwise taking part in the proceedings' "would mean something in the nature of speaking and participating. Non-members would not thereby have other rights beyond that of speaking or putting questions, or moving amendments or so-forth." The rights enjoyed by Ministers and the Advocate-General, *ex-officio*, "were thus of a peculiar nature, and not those ordinarily enjoyed by the members of the Council." This ruling based on a strict construction of the language of the statute, in the writer's opinion, was the least that could be done to protect the rights of the Council and its members (and as a corollary in the converse position of the Assembly and its members) from undue encroachments.

Right of Interpellation.

Another important issue was raised, again in the Bengal Legislative Council, on September 17, 1937, when a Minister sought the protection of the Chair because underlying the supplementary question there was a request for action. Characterising the right of interpellation as a very important right, the President quoted Campion in support of the contention that there was nothing in the rules barring request for action. "To be in order" observed Campion, "a question should be genuinely directed to seeking information or for pressing for action, addressed to a Minister who is the official responsible for the matter with which he deals. . . . the object of a question is to obtain information or pressing for action."

The Maharaja of Santosh informed the House that a question requesting action used to be allowed by him in the old Bengal Legislative Council,

The President, while leaving the decision of the matter to the House through its Rules Committee, drew attention to the remarks of Sir Frederic Whyte in the Indian Legislative Assembly on September 5, 1931, to justify his own contention that "in putting a question the object need not be confined merely to eliciting information but that more latitude should be given for putting pressure for a request for action." May I suggest that without allowing the right of questioning the latitude of a French interpellation, a liberal interpretation thereof should be considered by the Speakers and the Presidents of our Legislatures as one of the essential safeguards for minority groups and as one of the means open to the opposition for keeping a close watch upon the activities of the Ministry?

Governor's Control over Finance.

An important ruling relating to the scope of Sec. 82* was given by the Speaker of the Bengal Legislative Assembly, Khan Bahadur Azizul Haque, on August 23, 1937. Not only does that section lay down the limits to the rights of members on financial Bills but, "on its true and correct exposition depend the Bills that can or cannot be originated in the Legislative Council." It is worthy of note that the White Paper proposed that "money

* SPECIAL PROVISIONS AS TO FINANCIAL BILLS

I. A Bill or amendment making provision:—

- (a) for imposing or increasing any tax; or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or
- (c) for declaring any expenditure to be charged on the revenues of the Province, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.

II. A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered.

III. A Bill which, if enacted and brought into operation, would involve expenditure from the revenue of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.

Bills" should be initiated in the Legislative Assembly only and that a recommendation of the Governor will be required for any proposal in the Provincial Legislature for imposing taxation, for the appropriation of public revenues or for any proposal affecting the public debt of the Province or for affecting or imposing any charge upon public revenues.

The Joint Committee approved the principle behind the proposal of the White Paper in regard to the financial procedure which they said, was "based upon the principle which must... always be the foundation of any sound system of finance that *no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues*, can be made without recommendation of the Governor, that is to say, it can only be made on the responsibility of the Executive." They also definitely approved the principle that "in those provinces where the legislature is bicameral, money Bills shall be initiated in the Legislative Assembly alone."

The Speaker's ruling laid down that excluding the exception in Sec. 82(2), any duty, rates, tolls, fees, whether local or Provincial or 'special,' is a tax within the scope of Sec. 82, and that "in view of the word 'special' in the definition clause, both land revenue and irrigation rates will come within the term tax, as both of these are imposts on special basis."

On the significance of the phrase "amending the law" it was ruled that "the law" means the body of laws. Repealing, amending or affecting any Act or any provisions of an Act "is as much amending or affecting "the law" as the passing of a new Act." "The phrase 'amending the law,' therefore, means not merely to bring about any change in any existing law, ordinance, order, bye-law, rule or regulation but also to make any new law or any new provision having the effect of law."

The distinction between "financial obligations" and "involving expenditure from the revenues" was explained by means of illustrations. If any act or its provision provides for the acceptance of a financial liability, immediate or intended, by its own effect and operation, it is in the nature of a financial obligation. "On the other hand anything in the nature of bringing expenditure in, not by its own operation but only as a *direct consequence* involves expenditure from the revenues; it does not mean direct or definite or immediate appropriation, sanctioned by the legislature but something that must necessarily mean or involve expenditure as its direct consequence." It would be for the Speaker to decide as to whether a Bill or an amendment comes

within the provisions of Secs. 82(1) and 82(3). In the course of a previous ruling (August 12, 1937), the Speaker had laid down that Sec. 82(1) required the recommendation of the Governor, on the analogy of money Bills in England, acting, on the advice of the Executive Government. This ruling safeguards the constitutional rights of the House.

There is no bar to any amendment being made to a Bill, otherwise duly brought up before the Legislative Council, *without changing its character*, even though the amendment contains any of the provisions enumerated in Sec. 82(1), but all such amendments also must have the Governor's recommendation. The arguments leading to this exposition of the Upper Chamber's power seem to be convincing but would come as another shock to those who seek a hundred-per-cent analogy to British precedents within the circumscribed provisions of the 1935 Act.

Arrest of M.L.A.'s and the Privilege Issue.

The arrest of Mr. Niharendu Dutta Mazumdar, a member of the opposition, was the cause of a debate on privileges initiated by Mr. A. R. Siddiqi, significantly a member of the Ministerial Coalition party, on February 14, 1938. This debate brought into relief the difficulties of drawing upon British analogies and depending on May for guidance.

A privilege motion was moved over "the arrest of a member of this House and his detention in custody during the present session of the Assembly and the consequent inability of the said member to attend the sittings of the House to which he was duly summoned."

The Speaker in the course of his ruling observed that though there was no specific provision for attendance, the provision regarding vacation of seats in case of 60 days' absence without permission led to the constitutional implication that "it is the inherent right of a Chamber to have the information if a member is absent and it also follows that, if any member is unable to attend the meetings of this House for any reason outside his own free will, the House can always claim the right to get the information as to the reason of such compelled absence."

This right might not have existed, as held in the Punjab, under the old Act, when the right of declaring a seat vacant lay with the Governor; but under the Act of 1935 that right has devolved upon the Chamber of the Legislature, and in order to exercise that right it is imperative that "whenever a member of this House is detained or arrested, which may enforce his

absence from the House, the fact should be immediately communicated to the Speaker." The validity of any arrest, of course, would not come under the purview of the House.

Similar discussions on the floor of the old Councils and cases before law courts will occur to every mind. But under the present constitution, Sec. 71 gives effect to the proposal of the Reforms Enquiry Committee to empower the Legislatures to define their own powers, privileges and immunities." The section, it may be noted, does not contain the restriction which the Muddiman Committee sought to impose "that they (privileges etc.) should not exceed those for the time being enjoyed by the British House of Commons." Most of the provincial Legislatures have not yet been able to give final shape to their privileges: and in Bengal also committees have been working on them. One remarkable fact about the privileges question is that in the Bengal Assembly the Home Minister sought to draw upon May largely to curtail and tone down the claims of privileges made on the floor of the House and particularly to remove the impression that "immunity from arrest during the session of the Legislative Assembly or Council is one of the privileges enjoyed by the members." It is true that in Great Britain to-day, some of the privileges sought for, and valiantly fought for, when Royal autocracy was being challenged, are being toned down when the issue is no longer one of assertion of rights but one of the exercise of rights. In India to-day conventional developments are largely in a stage of flux, and hence the assertion of rights is not only necessary but should be vehemently done. This is all the more called for in view of the danger of majorities in the Legislature being utilised for the purpose of a short-sighted narrowing down of rights and privileges by a Ministry, due, it may be, to the exigencies of circumstance. Another point that came out of the debate was that just as foreign analogies might not exactly fit into the present situation because of fundamental differences, similarly the contents of the privileges may well differ from province to province, and at least, need not be uniform.

NEW CONSTITUTIONAL REFORMS IN GWALIOR

BY

MR. B. NARAIN,

Gwalior Government.

Evolution of Representative Institutions.

Inaugurating the 14th session of the Majlis-i-Am—Gwalior's Popular Assembly—His Highness the Maharaja Jivaji Rao Scindia Alijah Bahadur said,

"I have every hope that this meeting will pave the way for a more intimate and closer contact between myself and my legislature and that this gathering will open a new vista of life, for this Assembly."

Gwalior, like the rest of India, has during these years witnessed important and far-reaching political and social changes. At this occasion when the people of Gwalior are being granted reforms, it will be in the fitness of things to make a rapid survey of the evolution and growth of representative public institutions in this State.

Legislature.

Corresponding to the Legislative Assembly of British India, there were two Houses in Gwalior—the first called the Majlis Qanoon or the Legislative Assembly and the other the Majlis-i-Am or the Peoples' Assembly.

The Majlis Qanoon was a chamber, whose business was restricted to pure legislation, while the Majlis-i-Am dealt with matters of general interest. Both these institutions performed the functions of a Legislative Assembly in British India.

Twenty years after His late Highness was called to the great responsibilities of a ruler when he had built up more than half the structure of the modern administration in Gwalior, he laid the foundation of the Majlis Qanoon in 1912. This institution was a purely legislative body, its activities being restricted to the consideration of new laws and the amendment of existing ones.

The Assembly consisted of official and non-official members. The latter were representatives of different interests among the people of the State, mostly elected from the Majlis-i-Am.

Non-Official Members.

As years passed, functions other than those purely legislative were not added to this Assembly as has been the case with similar institutions in British India. It is even today a purely legislative body. Such is the spirit that pervades the Assembly that there is no diversity of interest or purpose between the official and non-official members. This fact is due to the sound advice given by His late Highness, which forms an integral part of the enactment that embodies the constitution, the functions and the rules of procedure of the Assembly. We could do no better than quote this provision:—

“The non-official members are naturally in a much better position to gauge the real effects of the laws in force and to ascertain the true condition of public affairs than are the official members. For the latter are, as a rule, exclusively given to the duties of their office and are naturally prone to look at things from the Government's point of view alone. The non-official members, therefore, have the great opportunity of rendering a twofold service to the Government and the public. They can keep the Government constantly informed of the effects of the laws, on the one hand, and can help the public by bringing their hardships to the notice of the Government on the other.

“Viewed from this standpoint the responsibilities and duties of the non-official members are very great indeed and His Highness expects them to discharge those duties faithfully. In short, the non-official members are expected to do all they can to impart stability to the administration of the State and to make it prosper, for the objects of the members and the Government ought to be the same. Add to this the fact that the more efficient and prosperous the administration becomes the more do the non-official members benefit by it and the more they add to the dignity of their position.”

Since the creation of the Assembly it had consistently been the practice to place all legislative measures before it for its opinion excepting those which were emergent and admitted of no delay and such minor amendments in existing laws as had no relation to the general public. Though in theory the functions

of the Assembly were advisory, in practice there had probably not been a single instance in which a legislative measure passed by the Assembly had not received the assent of the Ruler.

Ever since its coming into existence the achievements of the Majlis Qanoon had been neither insignificant nor unimportant.

After the Majlis Qanoon had worked for nearly nine years, a scheme for an institution which would, on the one hand, help the Government to gauge public opinion on important matters and to shape their policies, and on the other, would give opportunities to the people to make suggestions for improvements or the remedy of defects, was thought of. The Majlis-i-Am—Peoples' Assembly—was accordingly inaugurated by His late Highness in 1921, the announcement being made in November 1920.

To understand the spirit and the ideas which prompted His late Highness to concede rights and privileges even before there was any demand for them can best be understood by referring to the inaugural address delivered by him in 1921. This was before the Montford reforms came into full operation in British India. The fact that agitation in Gwalior is always at a discount can be fully understood when this progressive policy is taken into consideration.

“Gentlemen,” said the late Ruler of Gwalior, “I regard as bad the practice of conceding to people their rights when they are so tired of demanding them that they become desperate and prepared to create trouble. What virtue is left in a gift then? Demands which are fulfilled only after agitation and threats, give an incentive to the spirit of revolt. Gratitude is not found in such circumstances, but rather people are encouraged to adopt illegal means to achieve their objective.

“In my humble opinion it is *the* part of true statesmanship to concede, at a time when people have not formulated their ideas, part of what is ultimately to be conceded after agitation. Keeping the changing times in view and working with foresight, one should act so that people have sympathy with the Government and do not lose confidence in it. I regard joint responsibility as better because it reduces the responsibility of the Government.”

These wise sentiments have been fully implemented in the public life of Gwalior. As a result, there are no institutions of

234

B. NARAIN

mushroom growth nor are there ephemeral publications which cater to public agitation. The body politic is based on general co-operation and solid achievement in the interest of all.

Usually matters discussed in the Majlis-i-Am covered a very wide scope. Members could move resolutions on topics covering a very wide scope which included, 1. Maintenance of peace and order and police, 2. General laws, 3. Education, 4. Medical Relief and Sanitation, 5. Means of transport, 6. Combating epidemics, 7. Fighting diseases of animals, 8. Co-operative movement, 9. Panchayats, 10. Aukaf work, 11. Zamindar Committees and Conferences, 12. Cattle ponds, fairs and Exhibitions, 13. Development of Commerce and Industries, 14. Post, Telegraphs, Telephones and public needs concerning them, 15. Municipalities and Town Committees, 16. Reformatories, Orphanages, Asylums, etc., 17. Public morals, 18. Agricultural Improvements and Colonisation, 19. Public subscriptions and arrangements concerning them, 20. Orders of the Durbar for the benefit of the public.

His Highness the Maharaja Scindia was the President of the Majlis. When His Highness could not preside, the President was nominated.

The Electorate.

The members of the Majlis-i-Am included Government members (who did not exceed 10) and non-official members elected by several constituencies representing diverse interests. An idea of the comprehensive nature of the constituencies can be had by a perusal of the list. Important constituencies were:—

1. A zamindar, a cultivator and a sahuکار elected member from each of the District Boards, 2. One elected member each from each of the Municipalities and Town Committees, 3. Representatives of Board of Sahukaran, Jagirdars, Aukaf (Religious Endowment Trust) Committees, chambers of commerce, Vakils, the Ashrit Mandali, Hindu Religious heads, Anjuman Islam, Registered graduates, etc.

All these members were elected representatives of different interests and held office usually for three years.

The medium of speech was Hindustani; *verbatim* reports were published in Hindi. Government members usually gave information when necessary and did not take part in voting.

The proceedings were open to the public. Due to limited seating accommodation admission to the visitors' gallery was by permits.

The Majlis-i-Am had done very useful work during its life. Several useful social laws like the Child Marriage Restraint Act, Hindu Widow's Remarriage Act, Nukta Act and numerous other measures had their origin in Majlis discussions. Besides there is a formidable list of resolutions and recommendations which have received Government approval. In 13 sessions held during 18 years the Majlis passed 203 resolutions of which 114 were accepted by the Government and orders were passed.

Reforms Committee.

Following His Highness' speech in the Majlis-i-Am a Committee was appointed to consider the question of Constitutional Reforms and increasing association of the people with the State administration. Sir Manubhai N. Mehta, Home Minister was the Chairman, while official members were Major Sardar C. S. Angre, Foreign and Political Minister, Rao Bahadur L. B. Mulye, and Lt.-Col. Rao Bahadur Bapu Rao Pawar. Later on Col. Sardar M. N. Shitole was appointed to represent the Jagirdars while Messrs. T. D. Pustake, Takhatmal and G. P. Hirve were appointed on the Committee as representatives of the people. In nominating non-official members to the Committee His Highness took every care to ensure that only leaders of public opinion were included.

The New Constitution.

The New Reforms were announced on 14th June, 1939, by His Highness the Maharaja Scindia at the Birthday Durbar.

The Majlis-i-Am and Majlis-i-Qanoon have been replaced by two Houses of Legislature known as Praja Sabha (Lower House) and the Samant Sabha (Upper House) each of which shall enjoy a life of three years at the end of which each shall be reconstituted. The Praja Sabha will consist of 85 members, out of whom 50 members will be duly elected and 35 members, including not more than 15 officials, will be nominated. The Samant Sabha will consist of 40 members, of whom 20 will be elected and the rest nominated (including not more than 12 officials).

The method of election to both the Houses of the Legislature will be direct. A Franchise Committee has been appointed to frame rural, urban, vocational and institutional constituencies. Nearly 20 per cent of the adult population will be enfranchised.

The Praja Sabha will have the right of:—

- (1) asking interpellations coupled with the right of putting supplementary question,

- (2) passing resolutions,
- (3) initiating Legislation, and
- (4) discussing the main heads of the State Budget,

subject to the exclusion of any interpellations, resolutions, legislation or discussion of any nature regarding:—

- (1) The Ruler, his family, the Household and the Privy Purse,
- (2) Foreign and Political affairs, which shall include relations with the Paramount Power, Jagirdars and the Budget connected with these subjects,
- (3) the Army including its Budget,
- (4) Ecclesiastical affairs, and
- (5) the Constitution.

The Samant Sabha will have the right of:—

- (1) asking questions and supplementary questions,
- (2) passing resolutions,
- (3) initiating and revising legislation,
- (4) discussing the State Budget,

subject to the same restrictions as imposed on the powers of the Praja Sabha.

The powers so delegated to the two Houses of Legislature shall not, however, affect the inherent powers and privileges of the Ruler, which shall include:—

- (a) the power of amendment, suspension and repeal of the constitution,
- (b) the vetoing of any Act passed by the Legislature and suspending the progress of any Bill or resolution,
- (c) passing of any legislation at any emergency or otherwise, or of any ordinance, and
- (d) the certifying of any Bill.

Legislation initiated by the Samant Sabha will become law if assented to and in the form assented to by the Ruler.

The two Houses of Legislature will be presided over by Speakers and, in their absence, by Deputy Speakers. The Speakers will be, if possible, independent of the executive authority of the Government and the Deputy Speakers will be elected from the members of the respective Houses.

The subjects of Gwalior Durbar are entitled to the fundamental rights of good citizens and shall possess the various civic liberties which shall include:—

- (1) liberty of speech and liberty of the Press,
- (2) liberty of conscience (freedom of religion, which has always remained the guiding principle of the Scindia Government), and
- (3) liberty of association.

REVIEWS

PARLIAMENTARY GOVERNMENT IN ENGLAND—A COMMENTARY, by Harold J. Laski. Published by George Allen and Unwin Ltd., London. Price 12s. 6d. net.

I

"Parliamentary Government in England" is not a text-book on the English Constitution. It is a penetrating and a challenging study of the working of the whole machinery of government in England and a discussion of the ultimate foundations on which all democratic government rests. It is the result of wide reading, mature experience and constructive and purposeful thinking.

The main thesis of this remarkable book is that parliamentary government has been working successfully in England for the last two-and-a-half centuries on account of the general agreement in the country on what Lord Balfour had called "the foundations of society" and the consequent "mildness" of English party politics, to use Walter Bagehot's phrase. The two great historic parties have been as if they were the "two wings" of a single party—with no "qualitative" but only "quantitative" differences between them, as Professor Laski puts it. He writes:—

"Neither has ever moved so far from *each other* upon any vital question as to bring an ultimate disharmony into view. Each has always remained convinced that the private ownership of the means of production could not legitimately be called into question. The men who directed the destinies of both circles came, broadly, from the same social environments; they spoke the same language; they moved in the same circles; they depended upon the same common stock of ideas. They thought in the same way because they lived in the same way. Members of either wing could cross to the other without any alteration of fundamental doctrine. A Tory democrat like Disraeli could be more advanced in matters of social legislation than a Liberal like Gladstone or a Radical like John Bright. A Conservative aristocrat like Lord Cecil could have more cosmopolitan conceptions of foreign policy than a Radical "man of the people" like Mr. Lloyd George. A Liberal like Sir Herbert Samuel could take the same view of the problems of Indian self-government as a high Tory like Sir Samuel Hoare."

This is, however, not true of the two, present-day, bigger parties in England. The Labour Party has for its main objective the substitution of the Socialist economy in place of the Capitalistic system, and, as Professor Laski points out, no one now believes that this transformation can be brought about by means of parliamentary legislation through

achieving Labour majority in the House of Commons, as the Fabians had believed in the last quarter of the 19th century. Professor Laski's conclusion is:—"The ability to find a new basis for unity then becomes the condition for the survival of parliamentary government."

II

In this book Professor Laski has submitted each part of the parliamentary machinery—the party system, the House of Lords, the House of Commons, the Cabinet, the Civil Service, the Judiciary and the Monarchy—to a searching examination. He has discussed the working of each of these parts with great insight, ability, scholarship, foresight and wisdom and has put his finger unerringly on the weak spots. He has mercilessly exposed the drawbacks and inadequacies of the solutions urged by Mr. Ramsay Muir, Sir William Beveridge and Professor Keith. Professor Laski does not believe that proportional representation or the creation of the third Centre Party or appointing men with expert knowledge as ministers, as suggested by Mr. Muir, can mend matters and lead to the lessening of Cabinet control over the Commons or to a decrease in the influence of bureaucracy or to the relieving of the tension between the Right and Left parties in England. Nor does Professor Laski approve of the device suggested by Sir William Beveridge of establishing an Economic General Staff on the analogy of the Imperial General Staff for long-time planning and research. And he combats strongly the proposal of Professor Keith of assigning to the Monarchy "the final duty of preserving the essentials of the Constitution."

III

Professor Laski directs the attention of his readers, with remarkable courage, to the dangers of the existing situation and he boldly points out the consequences of the developing cleavage between the Labour Party and the parties of the Right. What will happen when the Labour Party wins a General Election? Will the House of Lords and the Monarchy allow it to carry through its programme peacefully and without struggle? Will the Civil Service cooperate in the task of working out details and making the programme administratively feasible? Will the Judiciary apply the new laws in the spirit in which they are enacted? Professor Laski discusses all these questions with great candour, courage and ability. His own views are clear but he leaves the actual formulation of the answers to his readers.

IV

In discussing the defects of the various parts of the existing machinery of parliamentary government Professor Laski makes many valuable suggestions for removing them, e.g., the association of committees of the House of Commons with the various government departments; the appointment of Special Secretariat to each Minister—"the need of sur-

rounding the minister with men who are able to look at official arguments from the angle he has adopted and not from the departmental angle;" and the creation of the Committee on Civil Research. However, such improvements, Professor Laski insists, cannot solve the central problem, which challenges the very foundations of the existing society.

Professor Laski appears to me on very sure ground when he argues that the House of Lords, the Monarchy and the Conservative (nationalist) Party will not allow "the Will of the people" to prevail without struggle if that Will demands a socialistic transformation in England and that the machinery of parliamentary government is likely to come to a standstill in the event of a decisive Labour (Socialist) victory. But is such a Labour victory imminent in England? I am afraid, "the nationalist forces" will strive to the utmost and successfully to prevent a decisive Labour victory unless they meet a disaster in War or till conditions have changed to such an extent that the Labour Party returns to its older reformist policy and pushes to the back as practical only in the distant future its socialistic programme. Even when the prestige of a Conservative-cum-Liberal Government sinks to the lowest level it will help a fascist revolution rather than allow the Socialist Labour Party to come into power. In any case, it is not necessary to argue so elaborately as Professor Laski has done that a Socialist revolution cannot be brought about in England peacefully or through the use of the parliamentary machinery.

In regard to the actual arguments employed by Professor Laski I have only one slight difference with him. It is on the question, whether the King can refuse a dissolution to a Prime Minister of a Minority Government. I think he may if an alternative government on the support of the majority is possible particularly if there has been no important change in public opinion since the last General Election.

In conclusion, it need hardly be added that "Parliamentary Government in England" is a book which deserves careful study by all those who are interested in the problem of government. It is a masterly survey of the working of parliamentary government in England and is sure to rank as a classic in times to come. At this juncture in India it is specially opportune and Indians interested in practical politics and particularly Congressmen and Congress ministries will find it most useful as it throws a flood of light on many of the problems with which we are faced in this country. The book is an outstanding contribution worthy of being a successor to "A Grammar of Politics," "The State in Theory and Practice," "The Rise of European Liberalism," etc.

—GURMUKH NIHAL SINGH.

THE INDIAN STATES IN THE FEDERATION OF INDIA, by D. N. Naravane, Karnatak Publishing House, 1939.

Here is another analytical survey of the position of Indian States under the Government of India Act, 1935. The book is divided into two parts: the first, devoted to a general discussion of the position of a unit state in the leading federal constitutions of the world, is meant to serve as a background for the second, which purposes to be an analysis of the implications and the possible repercussions of the new Federation upon the internal and external politics of the Indian States. The author, however, has not considered the financial aspect of the federal scheme at all.

A subject and employee in the Political Department of Baroda, the author can claim to understand the viewpoint of the States, and he has clearly stated it in the last chapter. He has, for instance, explained that the hope that had prompted the Princes to declare their warm support for the idea of Indian Federation was that it might limit Paramountcy and yet succeed in maintaining the notion of the sovereignty of the Indian States against the Federal Government. This the Princes have failed to secure, and that is why Federation, which was heartily agreed to by the Princes at the Round Table Conference, now 'knocks at the door of the States as an unwelcome guest and intruder.' Mr. Naravane proceeds to analyse how the scheme creates a Legislature wherein the representatives of the States are in a perpetual minority and wherein the individual State is merely a drop in the ocean; an Executive, in the formation and the policy of which the States are not likely to have any effective voice; and a Judiciary which is impotent not only to prevent the States from the pressure of Paramountcy outside the federal sphere but even the interference of Paramountcy within it.

All this would be very sound criticism of the new constitutional scheme, if we can only assume that the Indian States are going perpetually to maintain their isolation of interests from British India, or even that the Indian States are going perpetually to remain the five hundred odd feudal and semi-feudal chieftainships that they are today without any regard to the rights or wishes of their people. But our belief is that the future developments in India would inevitably obliterate the group conflict between the populations of the British Indian Provinces and the populations of the Indian States and drown it in the abyss of national solidarity; so that an emphasis upon the group rights of Indian States as against British Indian Provinces seems to us anachronistic and inevitably wrong.

One particular argument in the book needs to be specifically contradicted. Mr. Naravane argues, and Sir Manubhai Mehta supports the argument in his Foreword, that there is nothing in the federal theory to warrant that a federal union should be indissoluble and that if any protected clause of the Act is at any time in the future amended, the Instruments of Accession of the States would, in the words of the Secretary of State, be "voidable, though not void." That there is absolutely no substance in such a plea was conclusively stated by Professor Morgan in his advice to the Chamber of Princes, and the Indian

States need to be reminded of that advice again. Professor Morgan said, "The States acceding to the Federation have no right of secession. Secession is only possible if the British Parliament, at the request of the States, amends the Act to that effect. This, it may be taken as certain, the Imperial Parliament will, as a matter of constitutional practice, never consent to do. To do so would be to negative the pledge of the ultimate grant of Dominion Status made by the Secretary of State during the passage of the Bill through the House of Commons. The failure of the Petition of the State of Western Australia for secession from the Commonwealth may be regarded as a precedent fatal to any chances of such a petition by the Indian States being granted and implemented by the Imperial Parliament. In that case, of which I can speak with particular knowledge as Counsel for the State of Western Australia, the Judicial Committee not only rejected the petition but decided that it could not even go into the merits of the case. The ground for their decision was that the established constitutional conventions of the Empire put it outside the competence of Parliament to give effect to such a Petition."

On the whole, Mr. Naravane's treatment of the subject is careful and serious and deserves study.

—BOOL CHAND.

INDIAN ADMINISTRATION, by M. R. Palande. Revised 8th edition. Oxford University Press. Pp. 506. Price Rs. 3.

This book is primarily intended by the author to meet the requirements of the Intermediate Arts students of the Bombay University. Of its five hundred and odd pages, about 300 are devoted to the discussion of the development of the Indian constitution, about 85 to the growth of policy relating to local self-government, land revenue, public services, education, etc., and finally about a hundred pages describe the constitutional changes introduced by the Government of India Act, 1935. Thus it is more a book on the constitutional and administrative history of India than one on its present administration. In it, the past dominates and eclipses the present instead of serving merely as an introduction to it.

Presumably due to its briefness, the discussion of the new Indian Constitution is occasionally marred by over-simplifications amounting to mistakes. On page 311, for instance, it is said that in case of a conflict between federal and provincial legislation on an item of the concurrent list, the federal legislation prevails. Now, this is inaccurate, for under Sec. 107(2) the provincial law in question, if reserved and assented to by the Governor-General or His Majesty, overrides the federal law in that province. Similar inaccuracies occur in the discussion of federal finance too.

Apart from a few oversights like these, the author's treatment of the subject is both concise and clear. The printing and get-up of the book are excellent. It should prove useful to those for whom it is intended.

—MAHADEO PRASAD SHARMA.

LA PENSÉE—Editions Sociales Internationales, Paris. 1st Year, No. 1.

La Pensée is a new quarterly journal which has made its appearance in the Editions Sociales Internationales, Paris. It contains articles on various subjects—philosophical, scientific, technical, literary and artistic—and reviews of books.

For readers of the Indian Journal of Political Science the first issue provides a number of interesting items. Rousseau's article entitled "La Patrie fonde sur le justice" which was contributed to the Encyclopædia in 1755 has been reproduced with comments. George Cogniot writes on the ideas which directed educational policies of the French Revolution. He explains the humanist ideal which inspired the discussions on education of the revolutionary assemblies, describes the plan of Lapeletier, and the contrast between the Fascist policies to-day and revolutionary principles a century and half ago.

Pierre Villar surveys in the section on Human Sciences recent historical literature on Spain published in France. Pierre Arquand discusses two new aspects to pan-Germanism, J. S. reviews the school of economics founded at Lausanne by Walras, and Henri Mougin notices Henry Delpech's researches on the family budgets of different classes of people in Toulouse.

The Journal describes itself as a review of modern rationalism, its outlook is objective and scientific and its tendency leftist and radical.

TARA CHAND.

DEMOCRACY TO-DAY*

BY

PROFESSOR N. SRINIVASAN,
Andhra University, Waltair.

“Democracy may have become more difficult owing to technical developments, but it has also become more important.”

Russel: *Power*, p. 32.

That democracy in the Western World is experiencing an unprecedented crisis is a fact that needs no emphasis. It is “on its last legs” observes a keen student of contemporary affairs.¹ Its theoretical foundations as well as its institutional apparatus are challenged. From without the Fascists and the Communists assail its ideology and have set up alternative systems of government which have great attractions for a world still suffering from the terrible after-effects of the Great War which democratic states have been unable to mitigate. From within, intellectuals, mostly literary men and psychologists, are spreading doubt about the wisdom of the “common man” on whom democracy is necessarily based, while businessmen question the efficiency of democratic government that does not come up to their standards of scientific management and talk of its failure.

The threat is imminent. Communism is established in an area which is a sixth of the earth’s habitable surface. Fascism is triumphant in Italy, Germany, Japan and in a number of other countries. It is insidiously making its appearance in every country in the world—ours not excluded. The end of Czechoslovakia as a free republic, the war in Spain and China are but incidents in a great conflict between rival ideologies, the Fascist and the Democratic, for the mastery of the world. Which of these will win? Which of them *should* win? These are questions we must be anxiously posing as the struggle which appears to be far-off and remote is really of vital and immediate significance to us. Thanks to science, there is no isolation in the world of to-day.

* A Paper read at the First Indian Political Science Conference, Benares, December, 1938.

¹ Jawaharlal Nehru.

Besides, we are beginning a democratic experiment, when the horizon is apparently so gloomy for democracy. It seems, therefore, doubly necessary that we should examine the present-day challenge to Democracy and reconsider its postulates.

Fascism rose by exploiting the psychological and economic conditions born of the Great War.² Wounded nationalism and economic distress were the tides on which Mussolini and Hitler rode to power. Italy had been disappointed in her ambitions for a Mediterranean Empire while France and Great Britain had vastly increased their empires at the Peace Conference and Germany had been condemned to a permanent inferiority in the European State-system. Italian nationalism wanted its 'place in the sun' and German nationalism aspired for an equality of status with the Western Powers. Markets were contracting due to the wave of economic nationalism that swept the world and led to the erection of impassable tariff walls over every frontier. Unemployment was rising. Socialist parties grew in strength and began to challenge the State. They were threatening social revolution. Democratic Governments were utterly unable to face the situation. The multi-party system that obtained on the continent rendered impossible stability of government or coherency of policy. Reason and pacifism availed little to win justice from the Western Powers which were determined to maintain the advantages that victory in the Great War had given them. The failure in foreign affairs of democratic governments and their inaction in the domestic sphere were landing the countries in Civil War. Under these circumstances, it was easy for Fascism to make democracy the villain of the peace and destroy it.

Fascism describes democracy as "decrepit, decaying, stale and out of date." Democracy is a false ideal. Democratic government is incompetent. The system of representation on which it is based rests on false assumptions and leads to the rule of demagogues who are expert in the art of manipulating elections. The legalised party warfare of democratic states is the consecration of anarchy. Parties are selfish, corrupt, and hypocritical; they make a show of principles but act on the basis of none. In a word, democratic government is impossible.³

It would be observed that there is nothing new in these criticisms. These have been made and answered before. We

² See especially H. W. Schneider: *The Making of the Fascist State*; E. A. Mower: *Germany Puts the Clock Back*; Morsten-Marx: *Government in the Third Reich*.

³ J. S. Fulton and C. R. Morris: *In Defence of Democracy*.

shall not attempt to examine them at this stage, but shall consider them with the similar "higher criticism" which we shall have to analyse later. These criticisms derive a new and ominous significance in their new company with the alternative ideal of a dictatorship in combination with the Party and the People. Here is a new ideology which we must understand. It is, above all, the exaltation of the nation. Before the nation the individual's claims and rights vanish. The individual has the sacred duty of serving even unto death the cause of the nation, exclusive, superior, pure and militant. Fascism asserts the inherent superiority of class, of the élite in the nation who constitute the Party, Fascist or Nazi, who have the mission of leading the people. "The people, which is like a child, needs points of orientation, cannot afford to be without the political élite of the Party."⁴ Within the State the requirements of unity predicate a single party. This is one of the fundamental principles of Fascism. The nation is incarnate in the born-Leader, the Duce or the Fuhrer. "Authority from above as the result of leadership conscious of its responsibility, and discipline and confidence from below—these traits of a creed which is essentially that of a soldier—indicate the nature of the modern Fuhrerstaat." This is the dictum of Hitler. The Leader combines in himself the People, the Party and the State. "The law from which the Leader of the National Socialist Party derives his authority and his policies, emanates from the national soul." Because the Leader alone is aware of the dictates of the 'national soul' he is raised to the Leadership and it should be noted that the knowledge comes to him in some mystical way. It is by no process of election that he is chosen; it is by no necessity to answer to the people that his policies are related to the needs of the people. Inevitably, therefore, the National Socialist has to admit that "the emergence of genuine Leadership is an act of grace." But, none the less, these dictatorships claim to be genuine democracies.⁵ The State built on these principles is the People's State (Volkischer Staat). Italian Fascism conceives the State as a mystical unity of the

⁴ Dr. Ley: quoted by Morsten-Marx: *Government in the Third Reich*. Further quotations in this paragraph are from this invaluable book.

⁵ "Fascism, it is stated in Signor Mussolini's *La Dottrina Fascismo*, is the purest form of democracy, provided that the people be conceived, as it should be, not quantitatively but qualitatively and provided, accordingly, the quality of the people's will be regarded as actively manifesting itself in the Thought and volition of the Few, or even of the One. A German Professor has recently said the same of National Socialism:

generations that are dead, of the living and of the generations that are unborn. Both systems preach discipline in obedience to the State and the moral excellence of war and the cowardliness of peace.

This ideology is the result of improvisation. The way of Fascism has been "to act first and then philosophise." The necessity of winning intellectual assent to its actions has led to the elaboration of this "Philosophy" and like all social philosophies in support of absolutism it has a large element of the mystical and transcendental in it. There is no reasoning against its postulates which speak of the 'emanations of the soul' and 'act of grace.' We cannot escape the conclusion that its ideology is merely "a trick for justifying the privileges of the holders of power,"⁶ a philosophic garb for an unamiable reality.

And this reality is an unmitigated absolutism. Perhaps no other rulers in history have been so much beyond popular control and influence as Hitler and Mussolini and no other rulers have enjoyed such a plenitude of power as these. Power and irresponsibility have never before been combined in such ample measure. We see that the purpose of the power is the preservation of the existing social structure in the name of the greater glory of the nation.

The exaggerated emphasis placed upon notional unity by Fascism is, in fact, the measure of the depth of the economic and social fissures in Society. The social problem cannot be solved by saying that it has no existence. The fostering of a sense of artificial unity cannot bridge economic gaps. Temporarily, of course, they may disappear. But when it becomes impossible to maintain the feeling of unity, the fissures will reappear and the solution will be more difficult. Men certainly will be unable to live on bread alone; but equally certainly they will not be content to live on illusions for ever. National glory may be a satisfying prospect in the brief period, but in the long run if it is not organised on national welfare in economic terms, it must vanish into thin air.

True representation is the personification of the will of the people in a representative who feels himself one with the people."

Barker: *The Citizen's Choice*, p. 51.

Nazism is "the most ennobled form of European democracy."

—Dr. Goebbels.

Morsten-Marx: *Government in the Third Reich*.

⁶ B. Russel: *Power*.

The nationalism of the Fascist is not the mellow ideal of Mazzini, but is the "absurd and criminal doctrine" that Lord Acton dreaded. It is based in the case of Germany on a racial theory that elicits the contempt of the biologist and serves as the support of a monstrous persecution. It is "a religion of exclusive and militant nationalism in the name of which any inhumanity becomes an act of humanity."⁷ It expands naturally into imperialism and the pursuit of power politics in the region of international affairs with war, actual or threatened, as its inevitable method.

Within the nation Fascism regiments the people in a ruthless discipline, the discipline of the existing social order and war. It destroys all worker's organisations and its corporativism is either non-existent or is merely the caricature of the free associations of a democratic regime. Its process of government is propaganda supported by violence. The State alone speaks. It seeks to create "one single public opinion" the sum of which is in the words of the Propaganda Minister of the Third Reich: "we all approve always what the Leader does."⁸

Dictatorship is not a new thing in history. It has been known to be the inevitable concomitant of war and civil strife. If any generalization could be made about it, it is that it is ephemeral. No method has yet been found of perpetuating a dictatorship.

The professions of dictators cannot be taken at their face-value. Their professions of public interest are apt to be as hollow as those of parties in the democratic state. There is no guarantee of the integrity of dictators. A more vital reason why we should reject this system of government is the fact that men are not (whatever may be their professions) infallible. The "wisdom" of the dictator is often only loudly trumpeted quackery.⁹

Both Fascism and Communism have a profound lesson for the democrat. Their success points to a signal failure of post-war European democracy. Democracy has been unsuccessful in solving the problem of social justice which constitutes the challenge of the twentieth century. We must admit that both the desire and courage of facing the issue have been absent, to a considerable degree, in all democratic countries. The most important lesson of Fascism is that we must face it and solve it

⁷ Gandhiji.

⁸ Quoted by Morsten-Marx.

⁹ See Leonard Woolf: *Quack, Quack*.

if we desire to preserve the democratic way of life. Our failure will leave us with the alternatives of Fascism or Communism. The essence of Fascism is the maintenance of the social and economic *status quo* by methods of extreme violence, while Communism is the attempt to resolve our difficulties, again, by methods of extreme violence. Neither of these is a pleasant alternative.

The Communist challenge to Democracy is not a challenge of the ends or values of democracy. It is a criticism of actual democracy, not of ideal democracy. Communism professes to be itself the latter. Justice, freedom, equality, the abolition of violence and subjection of one man to another are its ideals. But it holds these to be unrealisable through parliamentary democracy in a capitalist society.

Capitalist democracy, the Communist asserts, is empty, hollow and unreal for the vast majority of the community. Its apparent political equality is merely "the protective shell of capitalism. It is a democracy only for the rich for the reality of power is in their hands. The coercive apparatus of the state becomes their engine of war against labour. The real essence of parliamentarism is to be found in the choice every few years by the masses of the persons of the upper classes who are to oppress them. The will of the majority of workers never finds expression through universal suffrage.

Freedom is likewise the privilege of the few. "Freedom in capitalist society always remains just about the same as it was in the ancient Greek republics: freedom for the slave owners. The modern wage-slaves owing to the condition of capitalist exploitation are so crushed by want and poverty, that democracy is nothing to them; politics is nothing to them; that in the ordinary course of events, the majority of the population is debarred from participating in social and political life."¹⁰ There exist, further, numerous restrictions on the freedom of the worker which subtly remove him from the arena of politics and from any active share in government. In short, we have in capitalist society a democracy that is "curtailed, poor, false;" a democracy only for the rich, for the minority."

¹⁰ "There is no such thing as democracy in the abstract. Great Britain, France and America are capitalist democracies as opposed to capitalist dictatorships. But they are only democracies for the ruling classes of those countries. They are most effectively dictatorships of the whole property-owning class. And the moment that democratic forms of government endanger the dictatorship, the real power of the property-owning class, these forms are scrapped."—John Strachey: *The Menace of Fascism*—Note on p. 244.

We are justified in speaking of a community as a democracy only when the actual power is in the hands of a majority. Mere forms will not suffice. The dictatorship of the proletariat will alone produce such a democracy. "Communism alone is capable of giving a really complete democracy and the more complete it is, the more quickly will it become unnecessary and wither away."¹¹ It is under conditions of perfect equality and the absence of the subjection of man by man that we can speak with propriety of freedom.

The central point of the criticism is the alleged ineffectiveness of political democracy to assure the worker the substance of power and freedom. There is no progress towards greater and greater democracy as the bourgeois professors assure us, but only the stern dictatorship of a class preventing the realisation of such an end. It is a "philistine illusion" to believe that the transformation of the present capitalist society into the socialist society of the future will be achieved peacefully. The replacement of the bourgeois state by the proletarian state can come only through a violent revolution. To the Communist, "force is the midwife of every old society which is pregnant with the new; it is the instrument with whose aid the social movement forces its way through and shatters the dead, fossilized political forms." Parliamentarism is useless for the purpose of the reformer and he must turn to force to resolve the irreconcilable class antagonism of capitalist society.

We must not fail to notice certain admissions made by Lenin in the course of "*The State and Revolution*" as the above résumé of the communist position is largely a summary of the views expressed in that book. The possibility of the State attaining a neutral character is allowed, at least, on occasions when there is an equilibrium of the forces contending for mastery in the State. In the new system to be set up by the social revolution on the ruins of the old parliamentarism, representative institutions are to be a vital part, either as communes or in their modern form of soviets. Says Lenin: "Without representative institutions we cannot imagine democracy, not even proletarian democracy; but we can and must think of democracy without parliamentarism." True representation is a system in which the representative combines in himself the functions of the legislator and administrator. This fact, according to Lenin, will ensure the accountability of the representative and free the people from deception. There is a third admission that parliamentary democracy is, with

¹¹ See in general Lenin: *The State and Revolution*.

all its unreality, still the best form of government for the worker under capitalism. It is "the nearest approach to the dictatorship of the proletariat." This is high praise indeed! Parliamentary democracy, it is recognised, admits the formal equality of the worker in the political sphere. It accentuates the class struggle, and provides the agitational opportunities for welding together the working class as a revolutionary body.

These admissions, partially at least, take the sting off the criticism. It is not quite true to assert as Henri Barbusse does that "there are two worlds: the socialist world and the capitalist world. Between the two there hovers the absurd mirage of a third world, democratic in name, but feudal in fact."¹² Democracy is not mirage; nor is it feudal.

It is the Marxian dialectic and the theory of the class-war that are at the back of this criticism. As an intellectual exercise, Marxism may be stimulating. A rhythmic movement of history, working out through periodic struggles of classes towards the final synthesis of a classless society is pleasant to contemplate, but the facts of history contradict it. History is as much willed by the mind as the latter, in its turn, is orientated by economic circumstances. The action of the mind on the environment and of the environment on the mind is mutual. We might quite conceivably will not to have the class-war even if the economic conditions are all in favour of it. It takes two clearly demarcated parties in society, determined not to abdicate or compromise, to make a war. While the parties in society are willing to adjust their differences by compromise it is difficult to see how class-war is inevitable. The adjustment of competing interests can be made and steady evolution towards an admitted goal can quite conceivably be assured. Further, it is the conclusion of sociology that there is no such sharp division of classes as the theory assumes.

We cannot admit the charge that democratic governments cannot be impartial in the conflict of interests in Society. It is, in fact, the very impartiality that has given rise to criticisms of democracy. Even Engels was forced to admit that when economic forces are nearly at an equilibrium, the State rises above classes. The State has always been regarded as the guardian of the interests of the community and not of any one class. The possibility of the State being the guardian of the interests of the community is at a maximum in the democratic State.

¹² Barbusse: *Stalin*.

The only way, the communists assert, of transforming our society is by the method of violence ruthlessly applied by a dictatorship of the proletariat exercised on its behalf by its vanguard. This is the admission of the right of an oligarchy to rule despotically, because the cause it serves is the cause of the largest class in society. It is the purpose to be served that provides the justification of the method to be employed. There is no alternative method we are told, as the psychology of the dominant class does not allow it to admit peaceful change. Democratic theory must insist on the man of goodwill prevailing, and on the adequacy of the democratic method to bring about the changes sought by a majority. Democracy, when it is truly one, is the safest custodian of the interests of the majority. It is also necessary to insist that the perfect democracy that the Communist hopes to create by such methods cannot be created by anti-democratic methods.

The Communist may contend that the means are purely temporary and the ultimate end is a society without subjection and violence. But the ultimate end is so far removed from our actualities that to have faith in it is only possible for the incorrigible optimist and dreamer. The belief in a society without government is certainly unfounded and since we must have government at all times that we can foresee, it seems only reasonable that we should insist that it should be democratic.

We must say a word on one more point in this theory. True representation, we are told, consists in the combination of administrative and legislative functions as this would make the representative a responsible functionary, and transform parliaments from "talking shops" into "working bodies." This is an unworkable scheme in modern communities where the State takes the form of a colossal-public service corporation performing the most varied services to the community and requires administrative skill in the highest degree. We shall be making a muddle of the whole problem of government if we were to accept this theory of the functions of the representative.

Communism, in practice, has meant a totalitarian state, not a classless society. Every aspect of man's life is brought under the vigilant control and constant direction of the State. The free society, i.e., the society in which the exercise of authority is brought into a just relation to liberty is yet to be evolved. The desire for power manifests itself in new forms and privilege is reintroduced in a new garb as the membership of a party with the vocation of Leadership. Even if we admit that substantial equality has been achieved in the economic sphere in Soviet Russia, it

has been at the cost of liberty and spontaneity. The price of equality has been regimentation. The "artists in uniform" cannot be the creators of a new civilisation, though drilled workers may turn out more goods. The need for liberty is vital and we must reject the totalitarianism as well as the authoritarianism of the Soviet State.

All this, however, is not to deny that there is a very large element of truth in the Communist indictment of contemporary democracy. It cannot be claimed that democracy has meant a happier and fuller life for the mass of men that the improvements of science and technology have made possible or that democracy has successfully solved the problem of social justice on its economic side. The Communist challenge demonstrates that a democracy that fails to bring the good things of civilisation within the reach of the mass of men will forfeit its claims to men's allegiance.

We need not attempt any lengthy review of the Socialist critique as it is substantially on the same ground as Communism in its attack upon democracy. It holds the property relations in a society to be the ultimate determinant of all other relations in society. "In the marriage between capitalism and democracy which has given us our system of parliamentary democracy, the capitalism is more important than the democracy, because the relations of property that it imposes gives to democracy its constitutive principle. The democracy cannot deny that principle without, as it were, dissolving the marriage that gave it birth. It may survive but that will be on the condition only that it is a divorce by consent."¹³ It doubts, that is to say, if the parliamentary system can be successfully employed to make inroads upon the institution of property which it was devised to protect. In the present system "the rights of democracy halt at the doors of private property." No class which has been in the enjoyment of privileges can be expected to abdicate them voluntarily and without a struggle. The mental constitution of mankind has not changed so much for us to entertain that hope. But still, Socialism will hold fast to democracy in the hope that it may be able to make it serve its purpose.¹⁴ The reactions to the extension of public social services on the upper classes and the emergence of a temper that is hostile to liberty and obstructive of democracy makes it urge that the forces of democracy should be strengthened and that a dictatorship of the Right or even of

¹³ H. J. Laski: *Parliamentary Government in England*.

¹⁴ *Labour and the Nation*.

the Left should be avoided. The failure of democracy in the Socialist's eyes is the failure "to bring the relations of production into harmony with the forces of production," to bring "liberty into a just relation with equality," i.e., to realise equality of opportunities.

The issues raised here have already been discussed. The critique only adds strength to the view that will be urged in this paper that we must enunciate a philosophy of democracy that is not one-sided, but would include the several aspects of man's life that are of significance to him and devise the methods that will secure its realisation. Thus alone shall we create the assurance that any object desired by a majority and manifestly in its interests is capable of fulfilment by democratic methods. Such an assurance is now fast disappearing and it is the duty of the democrat to revive it.

Hitherto we have been concerned only with revolutionary criticisms. We must now turn to the intellectual scoffers and the reactionaries. In the post-war period there has been a veritable flood of criticism from these. In our age of anti-intellectualism it is no wonder that the simple beliefs of democracy should be subjected to biting sarcasm. The "average man" and the politician are the targets of attack. The man in the street is a cretin, an eternal infant, incapable of rising above the mental level of ten; has no judgement, borrows his opinions from his neighbour or the newspaper; is the creature of impulses; a devouring envy is the motive of all his actions. Nor is this all. He is slothful and indifferent; he is more concerned with his amusements and livelihood than with politics. He wants bread and circuses, not liberty. The politician is the vilest thing on earth; he is the "courtier or courtesan of democracy," pandering to the vulgar passions of the mob; the docile creature of the man of business; the compromiser of honour and dignity; always a mediocrity as none else can prosper in a democracy. Government by the people is impossible; government means organisation; organisation implies leadership, i.e., oligarchy. There is an "iron law of oligarchy" which is fatal to the belief in democracy as government by the people. The intellectual critic would ask us to bury democracy and turn to the wise aristocrat who knows the business of government and would lead us to better state. This is the substance of all the intellectual criticism that has been made during this century.¹⁵

¹⁵ H. L. Mencken: *Notes on Democracy*; A. Ludovici: *A Defence of Aristocracy*.

These criticisms, besides being gross exaggerations, are misconceived. The "political man" is as much a myth as the "economic man." Democracy is not desired because it is scientifically the best way of administering our common affairs; but rather because it is the only method yet discovered, which is in any degree effective for the protection of the governed. It is not the thesis of democracy that the common man must continuously direct the government; but it is its claim that occasionally he should have the power of interfering effectively to prevent misgovernment. The value of democracy is more negative than positive. It is the claim of democracy that the ends to be pursued by government should be set by the people according as it is able to judge for itself and choose from among the various schemes placed before it by competing political organisations. It is its claim, again, that participation in the political process has a beneficial effect on the building-up of character. It is its faith that the problems of society are capable of intellectual solutions.

These criticisms assert the superiority as a form of government of aristocracy or monarchy to democracy. But the fact is that democracy originated when these forms of government had proved their incompetence. The failures of democracy have been less conspicuous in history than those of alternative forms.

One further aspect of the criticism of democracy must be finally noticed. Democracy is pronounced to be unworkable in our technological age and is said to have failed. Mr. Gordon Selfridge speaking before the American Chamber of Commerce in London declared that "as an American he spoke to fifty representative men in America, and did not find one who disagreed with his view that democracy in that great country could not possibly succeed as a system of government a country should be managed as a great business was managed."¹⁶ This is evidence for Prof. Laski's conclusion that there is emerging a temper that is distrustful of the methods of democracy because it dislikes its ends.¹⁷

Government in the modern social service state, it is true, is an infinitely complex business needing all the administrative talent in the community for its efficient functioning. It is the recognition of this fact that has led to the development of a science of public administration, which draws so much upon the practices of large-scale business. But this increasing complexity does not

¹⁶ Quoted by Osborn: *The Psychology of Reaction*.

¹⁷ Laski: *Parliamentary Government in England*.

prove that there is no place for democracy. The system of values to which government should be harnessed must always remain a problem, not for the expert, but for the layman to determine. This makes democracy not less, but more important to-day than it was in the past.

There is another objection to the view that government should be modelled on business. Even in industry a discipline which is the product of a willing co-operation is more fruitful than a discipline that is commanded. Without a democratic control of industry and the sense of responsibility that it breeds, active co-operation cannot be secured from workers who are men and not mere automatons. What is needed is not the elimination of democracy in the political field, but its extension to the industrial. That way seems to lie the future.

That democracy has failed is a familiar cry. Its successes are, of course, forgotten. All that we account as progress to-day, we must remember, was an accompaniment of democracy. The failure alleged in these criticisms is a fact, if by it is meant the failure to stand as the policemen of the dominant interests unquestioningly. If political democracy is set in the direction of achieving a democratic society, it is its logic. It cannot be called its failure. It is its fulfilment.

In the criticisms that we have analysed Democracy has been used in three different senses. It has meant a form of Government, a form of the State, and also a way of life. We must make clear the meaning now. In its original sense Democracy was the people's power, the word being a transliteration of the Greek word, *demokratia*, which was a combination of two other Greek words, —*Demos*, the people, and *Kratia*, power. "A democratic state is a community in which the masses are powerful."¹⁸ As a form of government, it means that the legal power in the community is vested in the people as a whole and rule belongs to the majority in the Electorate in communities which act by voting.¹⁹ The third of the senses in which the term is used is, in a sense, the fundamental use of the word. In this use it signifies a "way of life" and implies a social philosophy. "Democracy," says Prof. E. Barker, "is two things. It is a principle of the action of the human spirit—the principle that free spirits, in the area of social and political as well as of individual, life, should freely guide themselves to freely determined ends. It is also a system

¹⁸ Ivor Brown: *Democracy*, p. 25. Also Sun Yat Sen: *San Min*

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¹⁹ Bryce: *Modern Democracies*, p. 25, Vol. I.

of institutions, operative in a political community, which enables the principle to be realised and serves as the means of its realisation. . . both these things are essentially interconnected; and both of them must be present in order to constitute democracy in the full and general sense of the word."²⁰ These senses are not mutually exclusive, but are complementary. Democracy must be regarded as both a social ideal and a political method.

Democracy as a social philosophy has possessed from its beginnings in Natural Law in the course of the seventeenth and eighteenth centuries a libertarian and egalitarian aspect. It found its classic formulation in the American Declaration of Independence 1776, and the Declaration of the Rights of Man and Citizen of the French National Assembly in 1789. The doctrine of popular sovereignty and inalienable natural rights of man "to liberty, property, security, and resistance to oppression" have been its core. In the possession of these rights men have been deemed to be inherently equal.²¹ Political philosophy during the century and a half that have elapsed since the French Revolution has alternated on its emphasis between the two aspects of Democracy. To-day we are witnessing a great egalitarian wave sweeping it and transforming it into a passionate plea for equality. Whether the concern is for equality or for liberty, the deep and inner objective of every philosophy that can be called democratic has been the Individual. The affirmation of his personality, of its inviolability and of its dignity and the recognition of the fact that every individual has the right to life, the right freely to achieve the purposes he freely determines, such have been their content. It is this fact that gives to Demo-

²⁰ Barker: *The Citizen's Choice*, p. 25.

The same is the meaning in which Thomas Mann uses the term in *The Coming Victory of Democracy*: "Every definition of Democracy is insufficient—insufficient for belief in it—if it is to be confined to the technical political aspects. It is insufficient to define the democratic principle as the principle of majority rule and to translate the expression literally, all too literally, as government by the people, an expression of double meaning which could also signify mob-rule, for that is more nearly a definition of Fascism. It is even inadequate, correct as it may be, to reduce the democratic idea to the idea of peace, and to assert that the right of a free people to determine its own destiny is the best guarantee for the creation of a community of nations and for peace. We must reach higher and envisage of the whole. We must define democracy as that form of government and of society which is inspired above every other with the feeling and consciousness of the dignity of man." Pp. 21-22.

²¹ *The Declaration of the Rights of Man and Citizen*.

cracy as a social philosophy its humaneness, its finality and its eternal youthfulness.

We cannot discuss at length the means that have been proposed to translate into reality the dignity of man. Every social philosophy that is democratic attempts to formulate the conditions of the "expansion of personality in the widest commonality spread." Utilitarianism, Socialism, the New Individualism, and even Idealism are such attempts. The changed circumstances of the twentieth century require that the means proposed should take into account the economic system, and the relations of property as well as the conditions of world politics and peace. The democratic ideal therefore includes liberty, equality in the economic sphere as well as the sense of the obligations to the Community,—the Nation and Humanity. To-day the democratic way of life is possible only if besides political democracy we have social and economic democracy. That is the lesson of the great challenge to democracy in this century, and of the experience of an industrial system under Capitalism.

Democracy as a system of institutions is inseparable from democracy as a social philosophy. The system of institutions implies a theory of organisation as well as a technique of social decision. As an organisation it seeks to base the State on the people, so that it may be in reality the neutral and impartial agent of social progress that it claims to be. This means in the modern state a system of representative institutions.

It is in this aspect that Democracy has been subjected to the most violent criticism. Does representation merely mean the enthronement of *sottise* (stupidity) into a principle of government? Is it merely quantitative or arithmetical and not qualitative as urged by fascism? Is voting tantamount to the assertion "that nothing plus nothing plus nothing" is something profound? We must say that it is none of these things. It is on the contrary a way of providing for the responsibility of the holders of power, indeed, the only way. It does not claim to place the intellectual and moral cream of society in control of government. But to secure the responsibility of government no better method has yet been found. Representation to be useful, must be representation, and not mere delegation. The representative must be given the opportunity of contributing as Burke observed his time and his judgment. We must reject spurious forms of representation and adopt its better forms.

In representative government the people is recognised as the source of all power. Governments are elective and are answerable at stated intervals to the people. The suffrage is the right

THE NATURE OF SOVEREIGNTY

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There is nothing more remarkable in the political thought of the last fifteen years than the attempt on the part of political theorists, who cannot by any means be regarded as lawyers on the one hand or idealists on the other, to restate the doctrine of legal sovereignty in a form free, not only from the classic objections to the Austinian theory formulated by Maine and Bryce and their school, but also from the difficulties emphasised by the pluralistic realists even of the position taken up by the comparative and historical school of lawyers. Of course there is no agreement even among these dissidents to dissent, but they agree at least to differ from what is decidedly the fashionable school of politics and law. Thus it has been held that, while Austin and his followers of the nineteenth and twentieth centuries may have granted to a definite person or body of persons what St. Thomas denied even to God, the legal conception is still useful and must be kept; for 'la loi fondamentale' will be found at the back of every sovereign organ, whether it is the work of ages or struck off the mind of a constitutional convention.¹ Or it is maintained that while sovereignty is indeed not inherent in the nature of things, something existing at all times and places, it is nevertheless a key element in a pattern of possible organisation, and indeed the only type of organisation capable of sustaining a regime of law; we also want a word to designate the articulate mouthpiece of the rules we call laws, though indeed that mouthpiece may be as much a system of organs geared together as a single organ of the Austinian type.² Or legal sovereignty is located, in our modern States, not in a body of persons, but in the constitution itself; for in our constitutional governments we obey laws, not men.³ And if that rather evades than answers the question, we

¹ C. H. McIlwain, 'Sovereignty Again,' *Economica*, November, 1926.

² J. Dickinson, 'A Working Theory of Sovereignty,' *American Political Science Review*, 1927-28.

³ A. D. Lindsay, 'Sovereignty,' *Proceedings of the Aristotelian Society*, 1923-24.

are invited to conceive of the human legal sovereign as a superlative, not as an absolute. Political sovereignty is indeed on Monday in the hands of Parliament, on Tuesday in the hands of the executive, and Wednesday sees it slipping into the hands of the statesman who spoke on Tuesday night; but legal sovereignty is different, it is a superlative term, and it can exist and is useful.⁴ That excommunication, bell, book and candle complete, of the concept of legal sovereignty from the science of Politics, so anxiously proposed by the indefatigable Mr. Laski, has therefore been not quite carried with acclamation.

The 'return of sovereignty' in recent years is noticeable even in the non-legal sense of the term. Some time back Professor Dewey argued that the only sovereignty is of social forces.⁵ Now we have a theory of the different degrees of sovereignty of the General Will, of the State, and of the Government, in the same community;⁶ or another, of sovereignty as really a static-dynamic legal-political concept, the common error being to launch a fratricidal war among its component parts when what is required is an effort to achieve a harmonious blending of them.⁷

We are even told that everybody since Austin has been mistaken in thinking that he was looking for the legal sovereign; his so-called mistakes or inconsistencies strike us so only because we do not see that his was really a study in social statics. 'Back to Bodin,' says Professor McIlwain; 'back to Hobbes' replies Professor Manning. The wheel has come full circle. The credit of having at least attempted, however unsuccessfully, to disentangle the legal problem from all others, is at last denied to Austin,—and in praise.⁸

There seems to be no doubt, however, that the problem down from Bodin through Hobbes to Austin and later is that of the nature of legal sovereignty. Therefore the second tendency mentioned above, while it has its value in re-emphasising the relationship of legal facts to non-legal, must at the same time, in the terminology used, be regarded as unfortunate exercises in intellectual ingenuity if not in methodological reactionarism.

⁴ R. Emerson, 'State and Sovereignty in Modern Germany,' *New Haven*, 1928.

⁵ J. Dewey, 'The Austinian Theory of Sovereignty,' *Political Science Quarterly*, March, 1894.

⁶ R. M. MacIver, *The Modern State*, London, 1926.

⁷ D. W. Campbell, 'Austin Today,' *American Political Science Review*, October, 1934.

⁸ C. A. W. Manning, *Modern Theories of Law*, London, 1933.

of everyone for it is the lesson of history that exclusion from political power means the exclusion from the benefits of its exercise. Democratic government decentralises power to make it responsive to the needs of the people. It creates local centres of administration and allows individuals and groups the widest possible autonomy. The principle of the attachment of power is the performance of social service. Responsibility is inseparably bound up with the exercise of power. The ultimate power is always retained in the people, a reserve as it were, and is brought into operation when exceedingly difficult questions have to be decided. It seems that in a democratic system of government this power should be recognised and made to play its part in Referenda on important questions.

The essence of the democratic method is that social change should be based on the consent of the largest possible body of citizens freely given. The consent is assumed to exist when confidence is expressed at an election in a government by returning it to power. Normally, that is between elections, it is effective in the uniform deference of the government to the trend of public opinion. This is the reason for the fundamental character that the freedom of the Press assumes in a democratic Society. Not that public opinion is an unfailing reservoir of wisdom, but it is certainly an indicator of the preferences of the people. It has been aptly said that democratic government is government by discussion, or by public meeting, and by the counting of heads instead of by breaking them.

The use of the method of discussion, farcical as it may be on occasions, has nevertheless the supreme merit of reducing the area of resistance to social action and the application of coercion to enforce the policies of the State to the narrowest possible limits. The importance of the means employed in the achievement of a socially desirable objective has been stressed by Gandhiji, who has insisted that the means employed by societies no less than the means employed by individuals should conform to the moral standards of humanity. The democratic method is a true non-violent method of social reform.

As a non-violent method the democratic way of reform has the advantage of stabilising reform. As Aldous Huxley points out, it is the lesson of history that the application of violence has never produced lasting results over any length of time. The triumphs of violence unaccompanied by acts of a non-violent character have been short-lived. The aphorism of M. B. de Ligt, "the more violence, the less revolution" is fully borne out by history. If our object be lasting social peace and reform

the road does not lie along the path of violent revolution. Violence makes the realisation of our objective more remote. Our path must be the path of democracy.

The road of democracy is not an easy road; nor is it a short-cut. To succeed as a method democracy requires great qualities. It needs a temper of reasonableness, the essence of which is the happy toleration of differences, or as Prof. Barker has called it "the agreement to differ." It needs on the part of majorities forbearance and respect for the rights and even the susceptibilities of minorities and a willingness on the part of the minorities loyally to accept the decisions of the majority. These cannot exist where society is divided into two great camps with conflicting interests and fundamentally opposed objectives. The experience of western democracies would seem to suggest that we must have a substantial agreement on the purposes to be served by our democratic institutions. Fundamental differences render unlikely their successful working. This is perhaps the chief lesson of the failure of continental democracies. The general objective of an extending civilisation must be accepted and we must accustom ourselves to the ideal of abrogating economic privilege and social distinctions that have no basis in merit. The machinery of government should be constructed on the basis of the average individual's capacities and not on an idealised picture of him as the Fundamentalists have done. Weimar Democracy is a warning to us.²² Perfection of a theoretical sort does not mean the practical success of institutions. We should expect the man in the street to contribute only what is possible for him. We should educate him to the level that he will be able to judge independently of men and affairs. The means should be present of keeping him objectively informed of affairs to enable him to judge of things for himself. With these prerequisites the democratic method can be expected to assure better government than any other.

²² See Mowrer: *Germany Puts the Clock Back*.
F. 3

MacIver especially would make new kinds of sovereignties grow where the field was already overgrown. And it would not be difficult to show that Professor Manning's theory, while ingenious, is not Austin's. Theories which distinguish between constituent and legislative sovereignty,⁹ or between legislative, executive and judicial sovereignty,¹⁰ keep closer to the historic problem but not close enough. Significantly enough, what we have today is, on the one hand, a denial of the value of the concept, as by Laski, and on the other hand, an assertion of its value with an analysis of its nature by writers like McIlwain, Lindsay, Dickinson and Emerson.

And it must be confessed that the neo-sovereigntists are not in every way satisfactory. It has been claimed for the Master of Balliol's theory that it makes it possible to move the plane of discussion at last from the centre to the periphery in political theory.¹¹ What it maintains is that in modern times the constitution and not a determinate body, as Austin thought, is sovereign. The political psychology of the days of Bodin and Hobbes was different and simpler, and their theories were adequate to their times. But we obey laws, not men. Is this, however, the whole truth? Even in the days of Bodin and Hobbes obedience to some extent at least was given to an individual only as his actions conformed to a rule; that is, even then, there was a constitution, however elementary, in virtue of which the sovereign was obeyed. Even then the 'government' accepted 'a principle of limitation,' that is, 'law of some kind.' To Dr. Lindsay, any sovereign who is more than a single individual can be obeyed only if the decision to which they come by some method—e.g., a majority Vote—is to be regarded as what they command. That means, to him, that there must be a constitution. But even in these early modern monarchies, were there no rules of succession, and no rules of royal procedure? No, the distinction he makes between the two periods is far too rigid and simple. On the other hand, as Emerson has pointed out, the law or the constitution cannot act by itself. It is true that we accept as legal the decisions made in the prescribed manner by an amending body because that procedure and that body are prescribed by the constitution which we accept. Nevertheless the problem of the "determinate human superior" so clearly seen by Austin remains. We are

⁹ W. Y. Elliott, *The Pragmatic Revolt in Politics*, London, 1928.

¹⁰ J. Salmond, *Jurisprudence*, London, 1924.

¹¹ L. Rockow, 'The Theory of the Sovereignty of the Constitution,' *American Political Science Review*, August, 1931.

still, it would seem, in the centre of the problem; the periphery is not yet.

If Dr. Lindsay's legal sovereign is a disembodied ghost, Mr. Dickinson's is a whole regiment. Sovereignty, to him, is not indeed something which is inherent in the nature of things at all times and places; but when it exists as in the U.S.A., it may be a whole system of organs geared together,—the sovereign here is the federal and State legislatures, including the President and the Governors and the amending organs and the courts, all being geared together and all acting together as one system undivided, conflicts being resolved by the Supreme Court, undivided. But how far can the executive and the judiciary be said to share the sovereign power with the legislature? And within the legislative sphere itself, how far can the constituent body and the ordinary legislatures be placed on the same level? There would seem to be no escaping the position that the amending body in the U.S.A. stands in a uniquely superior position to the rest. But, American writers, as Professor Goodhart has pointed out, are loath to find their sovereign in the body which can amend their constitution.

It is needless here to go into more of these theories. McIlwain seems to take up a position similar to that of Lindsay and Emerson to that of Dickinson. The defence of the concept of legal sovereignty seems to have been more active than successful. But it is nevertheless significant of the present confusion that while many politicians defend it, a lawyer like Jenks can regard legal sovereignty as a useless concept and unwarrantable extension from English facts, while another like Jennings can question the applicability of the concept even for England.¹²

Whether legal sovereignty exists as a matter of fact, and consequently whether the concept is a useful and descriptive one, and if it exists, what its nature is—are questions best approached from the angle of an analytical examination of the State rather than of the concept itself as is too often the unacknowledged method. And much less useful certainly than the latter is it to begin by finding out what Austin said in 1832, which after all cannot be more useful to us in political theory than the classic 'what Mr. Gladstone said in 1865' can be in political practice. Things and not names are, after all, what we are primarily concerned with, though too often we forget this. Nor let us forget that in a social science like Politics there is a certain advantage

¹² E. Jenks, *The New Jurisprudence*, London, 1933; W. I. Jennings, *The Law and The Constitution*, London, Revised Edition, 1938.

in retaining words in common use as long as in one way or another we can give a precise meaning to them. Lastly, though it is true that, as McIlwain has pointed out, a true theory of sovereignty must fit all times and all places, we may for the time being confine our attention to the situation of the modern State.

Now, an analysis of the modern State reveals certain characteristics in which it differs from earlier types of states. The organisation of government has become progressively more complex. The legislature, the executive and the judiciary are clearly distinguished from each other. Within the legislature itself, a separate constituent body has usually been created in all States, and the people are sometimes associated as a third House of the legislature. The executive has become enormously important with the development of new functions of government and the creation of a civil service. This executive has at the same time been securing semi-legislative and even semi-judicial powers, thus breaking down the old rigid distinction between the legislature, the executive and the judiciary. Federal States have been created with complete and complex governmental systems within a governmental system. Local governments have everywhere been created with their own legislatures, executives and even judiciaries. Then there are semi-public and purely private organisations all sharing in some way or the other in the work of 'government.' But it is not only that the organisation of government has become very complex. The foundations of obedience have also shifted. With better education, a growing sense of right, and an increasing share of the ordinary individual in government, obedience has on the one hand become critical and on the other hand to oneself. And, lastly, there is the problem, notwithstanding temporary aberrations, of a growing international society with its law and organisation.

We shall leave the question of international law and organisation for the time being. Within our typical national State, is there any legal sovereign? Now there is not the least doubt that there is none in the Bodin-Hobbes and even the Austinian sense. There is no person or body of persons in their sense 'habitually' 'obeyed' by the rest, and itself (or themselves) obeying nobody else. Legal power has been too much distributed for that to be true. Mere legal power is also too much suspect as the basis of obedience. That is the truth, on the one hand, of Dickinson's location of sovereignty in a great complex of governmental organs, and, on the other, of Lindsay's location of it in a constitution, not any set of men. The Austinians, how-

ever, discovered their sovereign in the modern State in the body which can amend the constitution, and so can lay down the law for the rest, though Austin himself made the elementary mistake, *pace* Professor Manning, even for his own country, of regarding the electorate, the Lords and the King as this body. No, Austin made a real mistake. And to argue that the Professor of Jurisprudence was really—almost secretly—engaged in an exercise in social statics is to strain agreement too far. But both in England and in the United States, and even by distinguished lawyers, the corrected and intended solution has been rejected. An examination of the objections, it is here suggested, will indicate the lines of a solution of the problem.

There may be no amending body at all in a constitution; then there would be no sovereign in that State. Or the powers of this body may be legally limited. Even the powers of the now legally omnipotent Parliament of England were limited, in the Middle Ages, in the Courts' view, to the making of statutes not contrary to reason and to the law of God. But even in modern times a similar limitation in a particular case is not logically inconceivable. We may dismiss the problem of majorities and minorities in a determinate body raised by Professor Dewey as impossibly hyper-logical, as we may dismiss that King Charles's Head of anti-Austinians, the Sheikh-ul-Islam, as at any rate irrelevant to the modern problem; but the hypothetical character also of the constituent body needs an emphasis which even the critics of Austin have insufficiently given. Thus in the U. S. A., such sovereign as may exist can be of four kinds, since there are two alternative methods of initiation and two alternative methods of ratification.

Much of what Professor Manning says in defence of Austin is quite true. As he points out, to interpret a statement that some people obey the sovereign from fear as meaning *only* from fear would be as true as saying that what we mean by a remark that the more advanced people at a meeting came in red ties is that they came in ties and nothing further. Does it strain language, as Sidgwick said, to say that during sixty years the citizens of the United States 'habitually obeyed' an inert composite entity which never met? So likewise does it strain language to say that you have received a letter from your cousin in Australia when the truth is that you received it from the postman. It is all delightfully put,—almost too delightfully.

Nevertheless the general force of some objections to Austin's Theory must undoubtedly be admitted. Legal sovereignty may not exist in a particular State. When it exists, it may be limited

or divided or both. Nevertheless, it is submitted that if there exists a constituent body with acknowledged legal power to make laws regarding all other bodies in the State, that constituent body is the legal sovereign in the state. In so far as it has the legal right of laying down the laws for all others, that obstinate fact is best described as sovereignty, with whatever qualifications that may be necessary. One may try to expel the word from political science and jurisprudence, or to argue that the word 'supremacy' is enough.¹³ But there is no better or more convenient word for it. The fact is there; the word is there; and if the word once meant something stronger, words do, after all, change their meaning, and the real question is only whether relevance to facts has all disappeared and whether there is a better word.

The Austinian revisionists have therefore got to go further than they have generally agreed to go. They have to agree that their legal sovereign may not exist, and even when it exists, it may be a limited or divided one. And as they admit that it may be only a constituent assembly, they have to recognise that it may be alternative bodies on the one hand, and, on the other, bodies including the whole population of the State, organised in a particular fashion indeed. As we have seen, alternative bodies exist even in the Constitution of the United States. But the Weimar Constitution of 1919 showed the possibility of more alternative bodies and more types of them, inasmuch as the people acting through the initiative and referendum were the possible components of constituent bodies. The neo-Austinians' more serious fault, however, is the non-recognition of a very real difference between the connotations of the term in its earlier and more recent usages. If the sovereign body nowadays is the constituent body, and that constituent body is also not the ordinary legislature, the content of that sovereignty is in one way diminished. That is, what it concerns itself with is not *all* legislation but only *supreme* legislation. Whether with the change in connotation, as with the change in denotation, the same term should be retained, is another question and one of convenience. But it is submitted that there is no better word to describe the fact of an acknowledged constituent body and power.

The non-Austinians on the other hand do not realise the significance of the existence of a constituent body where it exists. If the Austinians do not realise that it is not omniscient ordinarily, their opponents do not realise that it has superior competence.

¹³ P. W. Ward, *Sovereignty*, London.

But in its most recent and extreme form, criticism of Austin has taken the form of a denial of the value of the concept of legal sovereignty to a student of Politics, whatever might be its value to a lawyer. Professor Laski has argued that even the legal sovereignty of Parliament in England is a concept which has meaning only for courts.¹⁴ Whatever Parliament does will be enforced by them; that is all. And even the meaning of 'enforcement' was shown up in the United States in the time of President Jackson and Justice Marshall. It has no reference either to what Parliament actually does or how Parliament is regarded by the mass of citizens. But is that all? The legal sovereignty of Parliament means something to others besides lawyers and courts too. It means a legal power acknowledged by the mass of citizens, not indeed to do anything, but to do anything demanded by public opinion and unhampered by antecedent restrictions. In other words, they recognise not merely that whatever Parliament does is highest law, which is the meaning of the concept for the court, but that *the highest law must be laid down by Parliament*. Parliament is the body for doing that. This is an objective political fact. And as such, the legal sovereignty of Parliament is a concept necessary to describe the facts of political behaviour in England. And constituent bodies anywhere are legal sovereigns in this real sense.

It is in this sense fundamentally that the British Parliament is still legal sovereign over these Dominions (Australia, New Zealand and New Foundland, though the last has since been de-dominionised), which were required to pass, but have not yet passed, Acts adopting the Statute of Westminster passed by the British Parliament in December, 1931. That *any* act passed by the British Parliament will be accepted by the courts in these Dominions is probably true; it is also equally true that any Act infringing their cherished rights will be resisted by many other sections of the population in them. Bonds the law cannot break, as Bryce once said, may have to be cut by the sword. Legal sovereignty in that sense is a concept of not much reference to actual facts. But, on the other hand, there is the equally important fact to be recognised and designated that, as yet, they do not, for certain well-known reasons, want legislative sovereignty for their own Parliaments, and regard the British Parliament as still the best body to pass measures amending their existing constitutions, or otherwise, which they desire. Even after such adoptive Acts, there will be no power of amendment. The posi-

¹⁴ H. J. Laski, *Studies in Law and Politics*, London, 1932.

tion in Canada is substantially the same. Indeed the Act was not made adoptive for Canada. But constitutional amendment is still prohibited to, and not desired for, the Canadian legislature.

Legal sovereignty in this sense, however, does and can exist. If it does not exist, it is desirable, like the proverbial God, to create it. For it is certainly desirable that there should be some body of persons in a State which can lay down the law as desired by its people in any matter whatsoever without antecedent restrictions on its power to do so. Such restrictions are not unknown or inconceivable, as we have seen. But they are certainly undesirable, especially in modern democratic states. This is the significance of the tendency to remove such legal restrictions where they existed. Thus in England, as we have seen, in medieval times laws against reason and the law of God could not be made by Parliament. But now even lawyers have given up that doctrine. The real reason is that such external restrictions are no longer necessary now that Parliament has become responsible to public opinion. The tendency of constituent bodies to take a more and more popular shape has its parallel in the tendency to free them from antecedent legal restrictions. It would also appear that the tendency, in the actual creation of legal sovereigns, is away from creating too many alternative sovereigns, especially if they include the people as well through the Initiative and Referendum. The Weimar Constitution, in creating too many of them, undoubtedly complicated public understanding of the ultimate sources of legal power. The constituent body provided in the 1920 constitution of Czecho-Slovakia is equally recent, almost equally democratic, and certainly simpler to work and understand.

Now, what about the international sphere? It will have become obvious from the above that, in the sense defined, there is no legal sovereign there. In fact, if there is, that would be the only sovereign in question. But however necessary it may be to create a world-state with its organs,—and many question even the need for a complete world-state to-day,—there is none such today. Indeed there is a League of Nations even now. But its powers even at the height of its influence were small, and the right of withdrawal and the unanimity rule in all important matters made it much more like a confederation than even a federation. And, there is as yet no international community or State or sovereign in anything like the same sense as there is a national community or State or sovereign. Kelsen has indeed argued for the former. But then, to him it is all a matter professedly of the initial hypothesis, and a choice

between different initial hypotheses is possible, being in the last resort a matter of one's philosophy of law. And a philosophy of law, which puts it in the category of essence, as distinguished from that of existence, and therefore makes jurisprudence a normative, as distinguished from a natural, science, makes it initially suspect. There only remain problems created by relations like those of England with Egypt formerly, or of the League of Nations with the mandated territories. It is submitted that in these cases, in so far as we speak of the relations as legal, the word is used in a different sense from what we mean when we speak of the legal sovereignty of the Parliament in England or discuss the problem of obedience. In the latter case there is a recognised community; by law we mean civil or municipal law, "a body of principles recognised and applied by the State in the administration of justice,"¹⁵ and, we may add, habitually obeyed by the bulk of the community, as on the whole desired by it and desirable for it,—or at any rate as worthy of obedience, even in a hard case, to avoid the worse consequences of resistance. We may also note that England, for instance, by no means enjoyed that kind of *legislative* competence which England enjoys in the case of some Dominions or India. But, of course, there is no confusion in speaking of International 'Law,' though Austin and others have denied the name to it, and even to constitutional law. In so far as these have important similarities to civil law, they are law. And after all, no two kinds of laws are exactly similar.

But this only shows that the problem of legal sovereignty has always, and especially since Austin, been a two-fold one,—one of the meaning of sovereignty, the other of the meaning of law. Actually Austin was concerned more with the latter. And it is some comfort that if the doctrine of sovereignty is not a fashionable one now, neither is that of law. We have left Krabbe and Duguit far behind. Law is not even the product of the people's feeling for right, there is no law above the state. The law of a great nation, we are now asked to believe, means only the opinions of half a dozen old gentlemen. Law never is, but is always about to be. There are no rules and principles, but only prophecies and dooms. In fact, the very concept of law is the unacknowledged product of the Freudian desire for a father-as-infallible judge.¹⁶ By contrast, Professor Laski's ideas on law, when he argues for the revival of the medieval doctrine of natural law, having argued

¹⁵ Salmond, *Jurisprudence*, Ed. 1924, p. 39.

¹⁶ A. L. Goodhart in 'Some American Interpretations of Law,' *Modern Theories of Law*.

for the expulsion of the modern doctrine of sovereignty from Politics, seem tame and old-fashioned. Nevertheless it too is significant. For here is no reactionary medievalist writing in the atmosphere of religion and obedience, but, on the other hand, a revolutionary modern ingeminating the doctrines of rationalism and resistance. The Rhine has flowed into the Thames, said Heine, of the conquest of English thought by German Idealism in the nineteenth century, and the disaster is universal. But here is no modern realism actually flowing *back* into medievalism. Luckily, however, this particular disaster is not universal.

It is not true therefore to say, as has sometimes been said, that the real problem has never been that of the nature of sovereignty, but only of its location. We have seen that both have been important, and in fact, in the most significant of recent discussions, the former is the real issue. And it will bear repetition that the problem is not one solely of terminology either. This 'storm-centre' of political theory, this 'high-tension' political concept, this spider's web into which, according to Preuss, the theory of public law has got itself disastrously entrapped,—surely it is a question not merely of a Word, but also of a Fact, and a most important Fact.

CHRISTIANITY AND DEMOCRACY*

BY

S. H. LEGER.

Introduction—Christianity and Social Problems.

I trust that no apology is necessary for linking together Christianity and Democracy in the subject chosen for this paper. While Christianity transcends the environment in which it exists at any particular time or place, yet it cannot exist in a social vacuum, nor is the environment a matter of indifference to those who take Christ seriously. Some kinds of economic soil, some types of political and social climate, are certainly more favourable to the healthy growth of the Christian Church than others. Mr. J. Merle Davis in his recent study of "The Economic and Social Environment of the Younger Churches" prepared for the Madras Conference gives many excellent illustrations of this fact. "The Church Surveys Its Task"—the Report of the Conference on Life and Work held at Oxford in the summer of 1937—is full of material illustrating the bad effect of environment on the Christian Church and suggestions of ways by which the Church can attempt to reconstruct that environment for Christ and His Kingdom. In our time when totalitarian states both of the right and the left are openly appealing to religious sanctions in support of their pretensions and increasingly taking an attitude of uncompromising enmity toward both democracy and Christianity, it behoves those who believe in both to give some careful consideration to what the two have in common. The aim of this paper is to stimulate study and thought along this line.

I. Democracy is Largely a Product of Christian Idealism.

Historically considered, it is difficult to see how democracy could have arisen in Western Europe without the influence of the Christian religion. To be sure, some of the pre-Christian city states of ancient Greece were the forerunners of modern democracies. They were however quite local and class affairs, being confined usually to one city. The Hebrews lived for centuries under a theocratic form of government, believing themselves to be God's chosen people, administrative authority being

* Edited by Mr. Awadh Behari Lal of the Politics Department, University of Allahabad, from material kindly supplied through Miss Margaret Frame, Secretary, China Council, American Presbyterian Missions, Shanghai.

either in the hands of the priests or the King consecrated by the priests and ruling "by divine right." For centuries the Catholic Church attempted with varying success to mould European civilization after this pattern, and nearly a thousand years ago almost achieved a unified "Christian" culture over most of Europe and parts of Asia and Africa. But God is not content to work exclusively through a few ecclesiastical or political deputies. The leaven of the Gospel of Christ had been at work along with other social forces, and when the Renaissance and Reformation had done their work, Christendom had lost its unity, but had fixed more firmly than ever the idea of the dignity of all men, which found later expression in such words as liberty, fraternity, equality, and democracy. The abolition of slavery, the extension of suffrage to previously suppressed classes and groups, the growing Christian conscience against economic injustice and the nightmare of war—all these are alike the fruits of Christianity and milestones on the road to democracy. Granted that Christians have often been far from democratic, and that democrats have been anything but Christian, yet it can hardly be denied that historically democracy has developed to a considerable extent as an attempt to express Christian ideals in political life.

II. Some Ideals Common to Christianity and Democracy.

It may be useful to consider some of the principles shared alike by Christianity and democracy. Modes of expression often differ, and what may be primary in one is likely to be secondary in the other, while of course no statement can be taken as expressing the whole of Christianity. Yet at least three principles are held in common, and these tend to link the fate of Christianity and democracy in our modern world.

1. *First*, both believe strongly in the ultimate value of the common man as a person—an end in himself and not merely a means to some other end. To be sure, the Westminster Confession defines the chief end of man as "to glorify God and enjoy Him for ever," but even here man is taken for granted, and the question is as to the purpose of his life. To be a human being—how petty all distinctions of race and colour and nationality and sex and age and education and occupation and social and economic status are in comparison with that elemental fact. A human being is in very truth a child of God—capable of knowing Him, speaking to Him in prayer and listening to His voice, joining in His creative work and sharing His abundant life. Surely such a one can never be treated as a mere appendage to the state, nor mercilessly crushed in the interest of a class, nor given a perma-

nently inferior status to others. This is clearly an important insight of Christianity and also a fundamental tenet of any democracy worthy of the name. That democratic nations still permit economic injustice and racial inequality merely indicates that they are not yet sufficiently Christian to be completely democratic.

2. *Second*, human brotherhood is world-wide, and loyalty to mankind takes precedence over any lesser loyalties. This principle is of course inherent in the faith in one God of all the earth, who is Father of all, above all, in all and through all. The world in the eyes of the Christian is made up of a *family of nations*, and only as they all learn to be good neighbours can any nation really enjoy peace and happiness. While it would not be true to say that the so-called democratic nations have a consistent record for fair treatment of other nations and peoples, it is generally recognized that failure in this sphere is a failure in democracy as well as in Christianity. Anti-democratic totalitarian states usually make little pretence of ideals wider than class or nation, and acknowledge no loyalty higher than loyalty to the dictator.

3. *Third*, in the accepted technique of social control, Christianity and democracy agree in making the maximum use of persuasion and education and the minimum use of coercion and force. I have put this in the form of maximum and minimum rather than in absolute form, because I do not believe that the absolutist position is possible or realistic. There is not and can never be a sharp line between the individual and the group, the personal and the social aspects of human experience. Because this is true it naturally follows that social pressure, if not the cruder forms of coercion, is an unavoidable element in human life; yet Christians and democrats just because of their respect of the personality of others can be depended upon to press close to the persuasion end of the scale and as far as possible away from all forms of force. Christianity and democracy have a common interest in combating the factors in our modern world which exalt brute force and violent methods.

III. Some Weaknesses Common to Modern Democracy and Modern Christianity.

It seems likely that there is more vitality in modern forms of Christianity than in modern democracy because the Christian Church with all its faults is still able to combine a deep faith in its fundamental purpose with a searchingly sincere criticism of its present attainments while political democracies are doing surprisingly little in the way of constructive self-criticism. However that

may be it seems clear that they share together at least three significant weaknesses. These weaknesses are not inherent in Christianity. On the contrary their appearance is due to modern secular influences which have hidden important elements in Christian faith prominently found in New Testament Christianity.

1. There is a tendency towards too much individualism with a corresponding lack of the sense of community. In Christ's own teaching and in the New Testament Church, while both the individual and the group are given due weight, the emphasis seems somewhat more on the sense of community. Misled by false secularistic philosophies in the nineteenth century, deceived by an ethics of "freedom" which seemed to make it right for comfortably well-to-do Christians to flourish at the expense of the poor, the church has often made "individual salvation" the only true orthodoxy, in place of the community ethics of the Kingdom of God. Having sowed the wind, the church is in many places reaping the whirlwind in a generation who have lost the very meaning of community, and care nothing for the church, carrying on an ethically precarious existence as "atomistic Christians." The Conference at Oxford in the summer of 1937 together with the literature prepared in connection with it has done much already to recall the Church to a less suicidal and more truly Christian point of view.

This is not a mere question of theory, but goes deeply into practical church organization and work programmes. Various kinds of "group evangelism" of which the Oxford Group Movement is one of the most vital; Christian mass movements in India and elsewhere; the revolution in evangelistic and religious educational work when the Church is taken seriously—these are glimpses of what we may expect to happen when Christians regain their sense of community so that the Spirit of God can find *groups* of true Christians through which to act.

Political democracy has suffered from this same kind of extreme individualism. In fact, to many misguided souls democracy means "a system within which I can do as I please!" John Dewey describes democracy as a system wherein there is a maximum of shared interest within the group combined with free co-operative intercourse with other groups. (*Democracy and Education*, p. 96.) Obviously this is only possible where people choose to work in the interest of the group, and is made impossible where egotistic individualism holds the field.

The dictatorships of our day have arisen because of the failure of the pseudo-democracies which failed to make effective

the will of the people in the countries concerned. The will of the people in democracies is continually being thwarted by the attempts of the parliament or other representative body to legislate in detail as to the means of carrying out that will. When the United States Congress expresses the will of the people as to general policies—a New Deal with more justice to "the forgotten man"; be a good neighbour internationally and don't be drawn into other people's quarrels for the sake of profit to the few;—then it is at its best. When it attempts to legislate in detail as to how to implement these policies it usually falls foul of sectional interests and as often as not defeats the will of the people. The people in a democracy should determine policies, set up general standards, and choose a very few of the chief administrators (and if necessary recall them if they fail to carry out the policies effectively) and then loyally follow these chosen leaders in carrying out these policies. Over-emphasis on individualism and lack of sense of community has seriously weakened the democracies. It is to be hoped they will learn their lesson before it is too late.

2. In both the democratic state and the Christian Church there is apt to be lack of economic realism. The New Testament is full of the teaching on the Christian's attitude toward economic problems, the use of money, etc. Yet it is only comparatively recently that any large number of Christians have developed an active conscience covering the whole range of economic problems—ethics of earning money, saving money, spending money, economic systems, etc. There are still large bodies of Christians who consider it impertinent for the Church to discuss this type of problem.

This same situation has until recently been largely true of modern democratic states. Democracy has been for the most part confined to political organization with economic life largely organized in undemocratic ways. "Rugged (and ragged) individualism" still for the most part holds the field in economic life in America, though there has been progress in the last six years. One does not have to go to the unreasonable extreme of believing exclusively in the economic interpretation of history to see that economic life is and must always be one of the important elements in life. No democracy which fails to function in this field can be thorough-going. Both Church and State need to take economic problems more seriously, as life can be neither Christian nor democratic if this factor is left out of account.

3. Modern democracy lacks any adequate metaphysical basis; the Church of our time has for the most part been woefully weak in theology.

Democracy has not usually worried much about metaphysical problems; when the question has been raised at all it has been usually rather vaguely answered in some form of pragmatic relativism. This has usually tended toward idealism in theory and crass materialism in practice. In America at least, a basic assumption of democracy is separation of Church and State, hence all theological and by implication all metaphysical problems are ruled out of order from the beginning. This situation, though unfortunate, was not so serious as long as the only alternative to democracy was the old type of hereditary monarchy, and democracy seemed to be rapidly advancing to cover the face of the earth. The last twenty years have seen the development of competing forms of social organization militantly opposed to democracy and fully equipped both with strong organization and a more or less plausible metaphysics. Russian Communism is indissolubly tied to a thorough-going materialistic metaphysics and hence does and must take very seriously its opposition to Christianity. If and when that metaphysical basis is changed communism will be quite a different thing from what it is at present. Italy and Germany, though differing in detail, agree in pressing rapidly toward a complete deification of the State, with the "Leader" acting as a symbolic representation of that State. In Japan we find the same process already carried to its logical conclusion with the Divine Emperor, elaborate religious ceremonial, and definite and increasing hostility to any other religion which is not completely subservient to the State.

These four countries have more in common than they have themselves been aware. They have reacted strongly against democratic individualism, and overdone the emphasis on solidarity and totalitarianism. They have all taken the economic side of life very seriously, Russia at least carrying this to an extreme. They are all definitely "materialistic" in the sense that their faith is in force and coercion rather than in persuasion and education as the chief means of changing life. (Of course they make much of "education" but with a different connotation than that used in democratic countries.) Their basic reality, their "God" is class (Russia) or nation (the others)—i.e., their religion applies to a part of humanity rather than to the whole. Yet in each case their religion is a "missionary" religion, with world-wide aspirations fully developed in at least Russia and Japan and apparently developing rapidly in Germany and Italy as well.

Not only have the democracies been left with an inadequate metaphysical basis, but the Christian Churches in democratic countries have been very weak in theology during the late Nineteenth

and early Twentieth Centuries. The story of how this came about has been well told in literature connected with the Oxford Conference of 1937, and need not be repeated here. There seems no question that the Church has itself been deeply affected by secularism, progressivism, and humanism. It was no accident that danger signals were first hoisted in Germany and other lands where Christians first became aware of the new paganism. We are in the midst of a world-wide revival of theology, God is taking His central place again in the lives of many, and religion is once more becoming something worth living and dying for.

IV. We have seen that historically Christianity and Democracy are closely linked together, and that they hold in common certain highly important ethical ideals and share certain weaknesses in their modern expression. My fourth thesis is that they are essential to one another. Christianity in our time should seek social expression through the more adequately democratic organization of human affairs; probably democracy can be preserved only by more explicitly linking itself with Christianity in the future.

I believe the Church of Christ has a definite stake in the promotion of genuine and efficient democracy in the Church itself, in each local community, in economic life, in the nation, and in the world family of nations. Democracy to be genuine must make sure that the ultimate sovereignty and control both of policies and of administrative personnel for carrying them out is in the hands of all the people through their representatives. If democracy is to be efficient, those chosen for administrative responsibility must be given a great deal of freedom as to ways and means. Probably such machinery as proportional representation, the "city manager" type of administration, the recall (for chief administrators) and the referendum and initiative (for general policies only) need to be more generally adopted. For churches this may mean some kind of "constitutional episcopacy," with more democratic ultimate control than many episcopally organized churches now have and more administrative efficiency than most of the more loosely organized churches now experience. In economic life it will mean revolutionary changes so that labor and capital and consumer interests are all adequately represented in determining policies and appointing managers to carry them out—doubtless pointing to some sort of cooperative organization of industry. In international organization it would obviously mean a new kind of "League of Nations," definitely democratic from the beginning, and open only to such nations as are willing to give genuine economic and cultural cooperation. Such a world

organization would not depend upon military alliances or sanctions of any sort, but would be in the nature of a permanent co-operative group of friendly nations, membership in which would carry valuable privileges of economic and cultural cooperation.

If Christianity needs democracy, it is even more certain that democracy cannot permanently survive in such a world as ours without the support of religion. A democracy without a metaphysic will inevitably be beaten wherever it comes into conflict with a closely organized totalitarian state whose people are all on fire with a religious patriotism. At present the democracies are on the defensive in a cultural as well as a military sense; they can only regain the offensive culturally by becoming definitely "missionary," and that is impossible until they become clear as to their metaphysical and theological presuppositions which are and must be definitely Christian.

How this can be worked out is a problem for the future. The movement towards Ecumenical Christianity, reunion of the churches, etc., obviously has a bearing here. Clearly any sort of "state church" in the sense now known is completely inadequate. The cultural climate of our time is changing so rapidly that he would be a brave man who would attempt to predict what ten years or even five years may bring to pass. Many in our time are expressing the hope that out of our present chaotic and competitive world there may arise a new Christendom—a new unified Christian culture—a new Theocracy.

Christianity in the sense in which that term is understood by most Protestant Christians at least has a definite stake in the future of democracy. The democratic state seems likely increasingly to turn to the Christian Church in its urgent need.

SOME FINANCIAL ASPECTS OF PROVINCIAL AUTONOMY*

BY

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I propose to discuss in this paper a few of the financial problems at present confronting the Indian provincial governments.

Two Problems.

With political power in the provincial sphere transferred to the people, there is naturally a demand for increased State activity and enlarged governmental functions. At the same time the incidence of financial operations on the economic life of various classes of the population is subjected to critical review and analysis. The provincial governments have two general aims in common: (1) to afford relief in taxation to classes of the population at present relatively overburdened; (2) to broaden the scope of State beneficent activities and undertake measures of economic and social improvement for the masses. These two aims give rise to two cognate problems: to readjust the provincial tax systems so as to secure a more equitable distribution of taxation over the whole population; to make a net addition to the resources at the disposal of the State through measures of economy or fresh taxation. The provincial governments are accordingly making earnest endeavours in these directions. An exhaustive search for remnants of reserve 'taxable capacity' in the economic community is coupled with assiduous efforts towards securing the best and most economical use of available resources so far as it is possible within the existing constitutional framework.

First Steps Towards Solution.

Among the more important steps already taken in the direction of readjusting taxation or augmenting resources since the inauguration of provincial autonomy on 1st April, 1937, there have been the following:—the imposition, in Bihar, of a tax on agricultural incomes; the enhancement of rates of stamp duty and/or court fees in Bihar, the Central Provinces, Bengal and Assam;

* A paper read at the First Indian Political Science Conference, Benares, December, 1938.

the levy of duty on admissions to entertainments in Bihar, the United Provinces, North-West Frontier Province (and Sind) following the earlier example of Bengal (1922), Bombay (1923), Madras (1926) and the Punjab (1936); the imposition of a tax on betting at race-courses in the United Provinces, after the lead given by Bengal (1922), Bombay (1925) and Madras (1935); the passing in the Central Provinces of legislation for the purpose of taxation of motor vehicles, which were already taxed in the three Presidencies and the United Provinces, the Punjab and Assam; the increase of the rate of taxation on electricity from 6 pies to 9 pies per unit in certain areas in Bombay, where electrical energy was first taxed in 1932, followed by Bengal in 1935; the passing of the Tobacco Vend Fees Act, 1938, in the North-West Frontier Province on the lines of the existing legislation in Bombay (1857), Bengal (1935) and the Punjab (1936); the enacting of a law to regulate (through licence fees) the trade of dealers in cloth within the Province of Madras; the levy of a flat rate tax of seven rupees a quarter on all income-tax payers to be known as a tax on professions, trades, callings and employments, in the Central Provinces; the taking of measures to extract more money out of imported foreign liquor licensees and to levy permit and gallonage fees on direct imports of foreign liquors by private individuals; and the passage of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, the legality of which is at present being disputed by the Government of India before the Federal Court. Besides, Committees have been appointed, and in a few cases have reported, in several provinces such as the Punjab, the Central Provinces, Assam, and Sind for the purpose of suggesting means of increasing revenue and reducing expenditure.

The Task Ahead.

One important result of the action of provincial governments noted above has been to make the provincial tax systems more and more complex as regards the number and variety of tax sources, and to reduce their dependence on their former principal financial supports, land revenue, excise, stamps and, in a few cases, irrigation. But so far, this effect has by no means been appreciable. More far-reaching changes in the same direction are however likely to occur in the near future. For one thing, the introduction of 'Prohibition' in right earnest in most of the Indian provinces threatens not only to wipe out one of the main existing sources of provincial revenue, but to entail large additional expenditure also for its effective enforcement. The excise

revenue of all provincial governments in 1936-37 was 15 crores out of 92 crores from all sources, or a little less than one-sixth of the total. The proportion varied from 9 per cent in the case of the Punjab to 26 per cent in Madras, and 27 per cent in Bombay. The sudden loss of such substantial proportions of the provincial revenues must seriously upset the equilibrium of provincial budgets and stimulate a vigorous drive for economy as well as keen investigation of alternative sources of revenue. The tax system will become more multiple and diversified, and an attempt should no doubt be made during this process to distribute it more 'evenly' over the population, so as to remove the basis of truth in the strong complaint among certain sections of the population against inequality in taxation, which is an unhealthy element in the body politic.

A Few Considerations on Relative Incidence of Taxation.

Popular opinion has indeed begun to be excited about the measure of equity in the distribution of the burden of taxation as between broad divisions of the population like urban and rural. For a fair appraisal of the issues involved it is necessary to bear certain considerations in mind, though they are by no means conclusive. It must be remembered that a provincial government is not a separate and independent political entity. It does not constitute a 'State.' Its financial operations alone do not make up a system of public finance. It is a regional political authority with specifically assigned functions, and definitely allocated sources of revenue and powers of taxation. The provincial and central heads of taxation should, therefore, be considered together for the purpose of judging the relative incidence of taxation on different sections of society.

Special force attaches to this reasoning because the Government of India Act gives the provinces control mainly over sources of income pertaining to agriculture and agricultural land, and the Federal (or Central) Government taxing powers over non-agricultural income and property. Thus the provinces have land revenue and irrigation receipts among already existing heads of revenue, and powers of taxation over agricultural income and succession to agricultural property. The Federation will levy income tax, and customs and will have power to levy corporation tax, taxation on 'succession to non-agricultural property' and on 'the capital value of assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies.'

This division has indeed a sound basis in the economic and fiscal experience of other countries. Non-agricultural income and

property (except urban real estate) are mobile and shiftable from one locality to another. Therefore, uniformity of rates of taxation, of the methods of assessment and collection, and of the machinery of administration are essential to the efficient operation of taxes relating to them. This only a central authority with powers of legislation and control can ensure. Agricultural property, and the sources of agricultural income, on the other hand, are immovable. Inter-provincial variations in dealing with such sources of income may not, therefore, lead to much economic dislocation through uneconomic shifts of property or income, with a view to evading a relatively heavier burden in one province than in another.

Sound as the allocation of powers of taxation is, it has to be noted as constituting an important general limitation on the financial and therefore on the political autonomy of provinces.

Increase of Resources: Assumptions.

This brings us to a consideration of the possible means of augmenting the revenues of provincial governments. It is necessary to refer to a few general considerations which would condition the scope and feasibility of fresh taxation in whatever form, before we proceed to consider the nature of that scope itself. Any substantial increase of tax revenues can be regarded as sound and practicable only on the basic assumption that the resulting public expenditure will contribute materially to general welfare, by raising the standard of living and of life of the masses of the population. A small addition to the burden of taxation may prove onerous and extremely irksome if it brings no compensating benefit: a comparatively large addition may be lightly borne if it brings an abundant return in increased public welfare. It is not possible to gauge the extent of reserve taxable capacity which may be tapped for furthering governmental schemes, unless on some assumption as to the benefit likely to flow from those schemes. The term 'taxable capacity' by itself is practically meaningless. Capacity to bear taxation is conditioned by the manner in which the proceeds of taxation are spent: it may be large for one purpose, e.g., to finance well-devised schemes of promoting public health and improving sanitation and nil for another, e.g., unnecessarily multiplying the police force.

The Sales Tax.

Coming to a broad survey of the field of fresh taxation it may be observed in general that direct taxation is beyond the power of the provincial governments to apply or increase: for

any large addition to their revenues resort must be had to the least objectionable modes of raising indirect taxation. In the domain of indirect taxation the most fruitful of the possible new sources of revenue open to provincial governments to tap is likely to be the sales tax. Provided it overcomes the initial legal and constitutional obstacles to which we shall presently refer, the sales tax should develop into a very important element of the fiscal system of the Indian provinces. It may therefore be useful to have some idea of this tax as it exists in other countries and of the broad outlines of a practicable sales tax scheme in an Indian province.

'Taxes on the sale of goods' form item 48 of the Provincial Legislative List (List II) of the 7th Schedule of the Government of India Act, 1935, and can therefore be levied by the provincial governments.

The origin of sales taxes dates back to antiquity. Their present vogue is due largely to the impulse of the war and of the great depression which began in 1929. These events severely strained the finances of most states and led to the widespread adoption of sales taxation. It obtains now in about thirty countries, among them being many European continental countries as well as Anglo-Saxon nations like the American States and Canada, Australia and New Zealand. In most cases it contributes a substantial proportion of the total tax revenues.

It appears from a study of the systems of sales taxation in different countries that the sales tax refers commonly to a general *ad valorem* levy on proceeds of sales without reference to particular commodities, or a certain percentage of the aggregate value of sales. It has gradually become an accepted usage to exclude from the scope of this term selective excise taxes on the sales of specific articles such as tobacco, lighting materials, etc.

Even so, various problems demand solution in defining the exact scope, extent and the range of application of the sales tax in any particular case. They have been clearly set forth in (appended) questions 43 to 49 of the Questionnaire on Resources issued by the Resources and Retrenchment Committee, Punjab. My combined answer to all those six questions as regards the form of the sales tax that would best suit the circumstances of an Indian province is—a tax on retail sales of tangible personal property at a flat rate applicable throughout the province, without any exemption based on the quantity or kind of sales.

I would, in the first place, exclude the sale of services, e.g., of the lawyer and doctor from the operation of the sales tax in order to make its administration simpler. The sales of services could be taxed otherwise under a tax on professions, trades, etc.

A Tax on Retail Sales.

Secondly, I would levy a tax on retail sales only, and not on each and every turnover, or on wholesale sales. A so-called 'turnover tax' is levied each time a commodity changes hands for money, *i.e.*, at each stage of its transmission through society from the grower or extractor, through the manufacturer and wholesaler and retailer to the ultimate consumer. Such a broadening of the base of the sales tax would very materially complicate the task of framing and administering the tax in a satisfactory manner.

A wholesale sales tax may be defined as a tax on sales other than retail, when a retail sale is understood to refer in the words of the New York Tax Law, 1935, Article 17, Section 390 to 'a sale to a consumer or to any other person for any purpose other than resale in the form of tangible personal property,' or in the words of the Canadian Law, to a sale made to a person for his final use and consumption for domestic and private purposes as distinguished from purposes of trade or business. A wholesale sales tax would lead to difficulties in respect of the treatment of inter-provincial trade and transactions, even as such a tax has led to complications in the American States sales taxes as regards inter-state trade. The difficulty arises precisely because a wholesale transaction may easily shift its locale. Thus for instance in respect of important wholesale purchases by Punjab merchants, the transaction may be completed outside, say, at the port towns, and the imports into the province may merely constitute a transfer (and not sale) of goods from a nominal branch or agency at a station in another province. Similarly, in regard to sales made wholesale by Punjabi merchants to traders in the North-West Frontier Province, the United Provinces, Indian States, Sind, Baluchistan, ports of export, or other provinces or countries, the locale of the actual transaction which constitutes a sale may be shifted outside the borders of the province. For the successful operation of a wholesale sale tax, therefore, inter-provincial cooperation is an essential prerequisite, not to speak of cooperation by Indian States.

Apart from this, the raising of hindrances in the way of inter-provincial trade by means of a tax on wholesale transactions which cross provincial boundaries appears to be of rather doubtful constitutionality as we shall presently see.

Moreover, the underlying idea of the sales tax is to tax consumption, and it would be regarded as a distinct merit of any particular sales tax if it could be easily passed on to the consumer.

A wholesale sales tax, though it may be largely passed on, is likely to become, at least in some measure, a tax upon business profits.

This objection has greater force with reference to a turnover tax, which, moreover, is likely to operate with unequal incidence on consumers of different commodities: it bears with undue weight upon those commodities which pass through many economic stages before reaching final consumers, and favours highly integrated producers or lines of production.

The retail sales tax having a narrower base is likely to obviate many of the difficulties and pitfalls of these wider and more general forms of sales taxation. The proper delimitation of that base or the making of a clear distinction between retail and wholesale sales, however, is itself a problem involving much care and ingenuity for its solution. I have no doubt that a solution satisfactory to conditions here can be found in the light of the experience of other countries. For the rest, a retail sales tax will certainly be simpler to devise and administer. It is more likely to be shifted to the consumer, and less likely to involve elements of business taxation.

Conflict of Jurisdictions.

Again, there is a general difficulty of a constitutional nature about any form of sales taxation in the Indian provinces. A provincial sales tax is likely to conflict at many points with the Federal power of levying excise duties or with Federal customs [Items 45 and 44 respectively of the Federal Legislative List (List I)]. Essentially all these are indirect taxes on commodities imposed at one stage or the other between production and consumption. Only, customs and excise are supposed to be levied at a relatively early stage and a sales tax at a comparatively later stage. But in fact there can be no clear-cut demarcation of stages. Indeed they often overlap one another. There is therefore no unambiguous distinction between the Federal and provincial spheres of taxation in this respect. The position needs to be more carefully and clearly defined than it is at present. As things are, however, I consider that a general retail sales tax having no particular reference to individual commodities is likely to provide the most, if any, satisfactory interpretation of Item 48 of the Provincial Legislative List, apart from its superiority over alternative forms of sales taxation on other grounds.

A Uniform and General Levy.

Thirdly, I would levy the retail sales tax at a flat rate, *i.e.*, as a uniform percentage, say 1 or 2 per cent, of gross sales pro-

ceeds, on all retailers irrespective of the size of their business. In other words, the tax should be proportional to the volume of sales, and not graduated with reference to them. This is a sound principle because any discrimination among dealers decreases the possibility of shifting and makes the tax in part a business tax: competition from the less highly taxed forces the more highly taxed sellers to absorb a part of the tax out of profits.

No Exemptions.

Fourthly, I would not give any exemptions on the score of the quantity of sales of a retailer being below a certain limit, except when the limit is very low and is obviously devised to minimise the administrative difficulty of assessing very small sales. The objection against excessive exemptions on the basis of the volume of sales is the same as against the graduation of rates: competition from tax-free rivals will force the taxed sellers to pay the tax out of profits. It is fundamental to a consideration of the sales tax problem that it is intended to effect taxation on consumption, and not taxation on business.

Fifthly, for substantially similar reasons, I would make no distinction between towns and villages as regards the operation of the tax.

This, in brief, is the scheme of sales taxation which might form the framework of a permanent and completed structure of sales taxation in the future.

It might be advisable to postpone the introduction of the full system for a time and make an humbler start along somewhat different lines which involve less administrative complication. It is not my aim, however, to discuss the details of the first steps of an immediately practicable scheme at this moment.

Merits and Demerits.

The essential merit of the sales tax lies in its fiscal adequacy, its capacity to produce substantial returns, because even a very small rate on gross sales is likely to amount to an appreciable sum. Its essential demerit may be summed up in one word 'regressivity': it weighs more heavily on the poorer than on the richer classes of the community. A flat rate on consumption or expenditure means an inversely progressive rate on total income, because the income spent on consumable goods forms a higher proportion of the total income of the poor than of the rich. The tax, therefore, takes a large slice out of the income of the former than of the latter.

Indirect Taxation.

This objection, however, applies to any system of indirect taxation. But the weight of indirect taxation, in spite of its theoretical drawbacks, everywhere continues to grow, under the pinch of practical necessity and for lack of suitable alternative means.

Moreover, the objection against indirect taxation becomes less serious when we examine the opposite facet of taxation, *viz.*, public expenditure. Public expenditure tends increasingly to benefit the poorer sections of the community, to secure to them the minima of life—sanitary living, health, medical care, education. If public expenditure is rightly directed, it becomes an important factor in reducing the inequalities of economic opportunity, and therefore, the differences between the taxable capacities of different sections of the community.

The problem ultimately hinges on practical considerations: there is in every country a limit to which direct taxation strictly based on the principle of ability can be safely carried, a limit which it cannot overstep without drying up the sources of revenue. If the proceeds of that taxation are insufficient to support the existing or projected scope and cost of governmental services including beneficent expenditure, recourse to indirect taxation becomes inevitable. And the limit to direct taxation is nearer in poor countries than in those which are affluent or rich.

In a poor and backward country like India rigid equity is a dry financial milch cow: it is necessary to have a base broad enough for taxation to assure adequate revenue to the State treasury.

Conclusion.

To conclude: the crux of the problem before the Indian provincial governments in their task of raising the standard of life of their people is this: there is a near limit to the expedient of 'soaking the rich' as a means of replenishing their exchequers: the main method of raising funds to finance programmes of general economic betterment and social uplift must be to pool together the tiny contributions of innumerable small sums from the mass of the people themselves. For the latter, it will mean a reduction in the amount of income individually disposable, and an enlargement of the reservoir of resources collectively disbursed to provide the positive needs and basic amenities of life,—education, public health, agricultural improvement and economic development; in short, a substitution of public for private expenditure.

THE FAR EASTERN (JAPANESE) MONROE DOCTRINE*

BY

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Between European and Asiatic problems, the contrasts are striking. In the former, not less than five of the seven Great Powers of the world have their seats of administration and wealth; in the latter but one, as in the case of the American region. Again, while four of the five considerable European States are continental, Japan, the single great power which is exclusively Asiatic, is insular. For all five of the Great powers directly or indirectly concerned with Asia—Japan, Great Britain, the Soviet Union, France and the U. S. A.—the Asiatic mainland is, therefore, primarily a field of exploitation, and for the Soviet Union alone, it is a land of extensive colonisation as well. As a consequence, whereas the European problem has its origin in the clash of National policies which are questions of life and death for all of the continental states, since their security is directly at stake, the Asiatic problem arises from the collision of rival imperialisms, and only for Japan are the issues vital. Nevertheless, for Great Britain, since two-thirds of the population of the British Empire lives between Aden and Singapore, and for the Soviet Union, three-quarters of the whole territory of which is located between the Urals and the Pacific, Asia is actually the field of lagrest importance so far as Imperial policy is concerned. On the other hand, French Imperial interests are essentially African and not Asiatic, though Indo-China is reckoned one of the most profitable and considerable of French colonial possessions.

Lastly, the U.S.A. has decided to relinquish possession of the Philippine Islands as from 1946 and will have, therefore, no territorial stake in the Far East. Its concern is largely commercial, and its interest confined to the preservation of the *status quo* of treaties which insure it an "open door" in the Chinese markets. The Asiatic problem has, therefore, its origin not in the direct clashes among the three imperial powers—Japan, Great Britain and the Soviet Union—growing out of their present territorial holdings, but in the collisions of the rival interests of

all the powers in China. And in fact the Far Eastern problem is actually the question of China which has today become a vast area of political anarchy and economic disintegration, almost wholly surrounded by British, French, Soviet and Japanese territories and spheres of influence. China is, therefore, still conceived by the trading nations as constituting one of the most considerable of the few surviving fields for exploitation. Africa has been apportioned among the several imperialisms, the U.S.A. has made good its Monroe Doctrine, closing the Americans to further European annexation and even Asia, outside the limits of the Chinese Republic, is apportioned and closed. The existence of the American Monroe Doctrine is recognised by all the powers of Europe and Asia. Only China, therefore, remains and a profound faith exists in the promise of vast mineral resources suitable to the development of industry, such as coal, etc.

For the moment at least, therefore, all five of the Western powers—Great Britain, France, Soviet Russia and the U.S.A.—are agreed upon a common policy which is to preserve the territorial integrity of China. This is due to the realisation, on their part, slow and gradual, that China is no more a profitable field for exploitation. At this moment of realisation on the part of the Western powers Japan has suddenly taken the field, employing the same methods that the Western powers used in China a generation back. Having abandoned their old practice, not for moral but for material reasons, the Western nations are now moved to common condemnation of the Japanese policy.

Actually the Japanese have crowded into the brief span of four decades imperialistic operations which in British history have continued at least for three centuries. A very slight study of the map suffices to demonstrate how striking the resemblance is between the position of Japan in relation to the Asiatic continent and that of Great Britain in relation to the European. The Korea strait replaces that of Dover, the Sea of Japan takes the place of the North Sea, Korea measurably takes the place of Belgium, and Hokkaido and Sakhalien command the Russian outlet to the open sea in the north as Scotland and the Orkneys control that of Germany. Strategically, the Japanese problem is identical with the British. Naval supremacy in all the waters surrounding her islands is the prerequisite of her security as may be seen from the following words of Viscount Ishii the co-author of the Lansing-Ishii agreement of 1917 with the U. S. A. "Japan is an island nation. But her distance from the continent of Asia is so small that she cannot be indifferent to what happens in Korea, Manchuria, China and Siberia, any more than England

* A paper read at the Indian Political Science Conference, second session, Lahore, January, 1940.

can keep aloof from development in the low countries across the Channel and along the North Sea. Particularly in Korea and Manchuria, we have consistently followed a policy dictated by the sole motive of establishing our own security. We have looked upon their frontiers as our own frontiers, even as England looks upon the frontiers of the Low countries as her own." "The permanent bases of Japanese foreign policy" by Viscount Ishii in the *Foreign Affairs*, Vol. II, No. 2, 1933.

It is in pursuance of this policy that Japan fought China in 1895 and forced China to yield her old pretensions of suzerainty over Korea and secured the recognition of the independence of Korea from China, a recognition which she herself had made in 1876. European intervention (by Russia, France and Germany) then robbed her victory over China of its calculated fruits, though she secured the possession of Formosa and the Pescaderes. Only ten years later after her triumph in the Russo-Japanese War, the capture of Port Arthur and the occupation of Korea gave her a secure footing on the continent of Asia. A decade later, the first World War permitted the eviction of Germany from Shantung. Another ten years, and the descent of Europe into new political anarchy and of the whole world into the depths of the Great Depression permitted the Japanese to consolidate their position in Manchuria by the creation of the puppet Empire of Manchukuo.

The high-water-mark of Japanese power in Eastern Asia was reached in 1917-18. The first World War had enabled Japan to change from a borrowing to a lending nation, from a state with constantly adverse trade balances to one with favourable balance from a nation with inadequate gold reserves to one with a large gold surplus. It had also enabled her to give free play to any continental aspirations which she had without any foreign interference as may be seen from the 21 demands of 1915 which she made and secured from China. She had already introduced modern methods of production before the war and was, therefore, able to enlarge her markets; and it was also as a result of the earlier efforts to build up a merchant marine that Japanese shipping was able to monopolise the Pacific-carrying trade. It was on November 2nd, 1917, that the Lansing-Ishii notes were exchanged between Japan and the U.S.A. in which both countries pledged anew their support of the independence and territorial integrity of China and of the principle of the Open Door. This was merely a policy which renewed and extended the views exchanged in the Root-Takahira notes of 1908. One paragraph of the 1917 notes, however, was enunciated for the first time, in

which Japan proclaimed her policy, which later was to give birth to the so-called Japanese Monroe Doctrine. It reads as follows:—

"The Governments of the U.S.A. and Japan recognize that *territorial propinquity* creates special relations between countries and consequently, the Government of the U.S.A. *recognises that Japan has special interests in China*, particularly in the part to which her possessions are contiguous." This position was admitted by Secretary of State Bruyan even earlier, i.e., on March 13, 1915 in a dispatch to the Japanese ambassador which reads as follows:—"The U.S.A. frankly recognises that territorial contiguity creates special interests between Japan and these districts." (Shantung, South Manchuria and Eastern Inner Mongolia.) This policy was elaborated and later extended into the Japanese Monroe Doctrine of which we will speak a little later. Under the Treaty of Versailles signed on 28th June 1919 Japan received the German rights in Shantung. These consisted of the Kiaochow leasehold which she had already promised to return to China, the Tsingtao-Tsinan Railway 256 miles in length which she had promised to turn into a Sino-Japanese enterprise, three mines and and all the German public property. Later she was awarded a mandate for the Marshall and Caroline islands. As a result of the Shantung articles of the Versailles Treaty, there was an intense anti-Japanese feeling and boycott in China and even in the U.S.A. This controversy was not finally settled till the Washington Conference of 1922. The Treaty of Versailles, however, refused to recognise the racial equality clause proposed by Japan—a clause which, if it had been recognised, would have removed the racial bitterness between the East and the West."

The Washington Naval Conference assured Japanese naval supremacy in all the waters of the Western Pacific from Indo-China to the Aleutian islands by establishing a ratio of naval strength between the U.S.A. and Great Britain on the one hand and Japan on the other. Japan denounced this ratio recently and demanded parity. Japanese security, then, demands naval supremacy in the Far East. That supremacy, however, constitutes the basis not merely of security but of hegemony as well.

The Washington Conference more or less secured this object for Japan. Relying upon the accomplished facts of military occupation of Manchuria and naval supremacy in all waters of national interest, Japan has, by indication, to be sure, begun to arrogate to herself the authority inherent in a new Monroe Doctrine investing her with the same rights in Chinese territory that the U.S.A. has claimed over Latin America.

The challenge of Japan by her proclamation of her Far Eastern Monroe Doctrine is regarded as a threat by the Imperialist powers of Europe. Thus Russia in Siberia, Great Britain in India and France in Indo-China identify in Japanese policy an ultimate danger to their possessions. All the same, none of the four Western Imperialist Powers—Great Britain, Russia, France, and the U.S.A.—is prepared to fight to prevent that extension of Japanese power in China which all desire for obvious reasons of their own to check.

Looking back over the past half-a-century which marks the rise of imperialism in Japan, it is obvious that she has fought three wars with China, Russia, and Germany to remove them from her pathway for continental expansion on the mainland of Asia. She met the objections of the Anglo-Saxon powers by the less expensive method of conference, first at Washington and then at the London Naval Conference. Her present situation, however, indicates three dangers. In respect of China, she has to guard against attacks which might be inspired and financed by foreign states unable themselves to strike directly. In respect of the Soviet Union, she has always, to be on guard against a military challenge to her whole position on the Asiatic mainland. Finally in respect of the Anglo-Saxon powers, and the U.S.A. in particular, she had always to maintain an adequate degree of naval strength.

From the first of these dangers to national policy flows the Japanese insistence in recent times upon what has already been described as a Far Eastern Monroe Doctrine. That doctrine in fact constitutes the assertion by the Japanese of a right to supervise Chinese financial and political relations which the outside world in such fashion as to ensure her own immunity from a Chinese attack sustained by foreign loans and material supplies. This policy has been made clear by the famous Amau restatement and clarification of Japanese policy towards China in 1934 and it reads in part as follows:—

“We regard Japan as principally responsible for the maintenance of peace in Eastern Asia and we are

determined to fulfil this mission. In order to do so, Japan must share China's responsibility for the maintenance of peace.”

“In the situation which has arisen since the Manchurian and Shanghai incidents, if other powers attempt to cooperate in assistance to China, whether under the guise of financial or technical assistance, ultimately such efforts almost inevitably produce political results. The outcome for China may be calamitous, endangering her integrity and producing a division of spheres of influence.”

“Japan does not object to other powers individually negotiating with China for assistance in the fields of economics and commerce, provided this does *not disturb peace and maintenance of order in Eastern Asia*. But if such efforts lead to a disturbance of peace, Japan must object.”

“Japan must object to the supplying of military airplanes, the establishment of aerodromes, the furnishing of military advisers and instructors, and the granting of political loans.”

The real motives of Japanese Foreign Policy are to be found, however, in economic rather than strategic circumstances. If the geographical position of Japan is responsible for her pursuit of security by methods which ensure her supremacy in Eastern Asia, it was nevertheless economic circumstances that finally led Japan to invade China. Except for Great Britain, Japan has the highest density of population of any great power and her population increases by a million a year as against a quarter a million for Germany and 400,000 for Italy. Today she has a population of over 75 millions and she finds it impossible to support this population on a level of prosperity measured not by European or American standards, but by the means of bare existence, as only 1/5 of her total area is available for agriculture.

In the Anglo-Saxon countries in North America and Australia, immigration laws have closed the door to Japanese immigration. And in Korea and Manchuria which are already densely populated climate and domestic standards of living have proved serious obstacles to Japanese settlement on any large scale. Of necessity, therefore, the Japanese have been driven to meet the ever-growing problem of population pressure by domestic devices rather than by means of emigration. Like the Italians and Germans, they have turned to the double methods of increasing domestic agricultural production and expanding national industry. Due to the smallness of the arable area, the limit of possible extension has been reached in agricultural production. In the

field of industry, poverty in coal and iron have proved insuperable obstacles to the development of any large iron and steel and iron output of Japan today falls far short of that of Belgium and is only half the output of Luxemburg, the nature of the limitations which Japan faces in this field can be properly appreciated.

In fact, it is only in cotton, wool and silk textiles that Japanese industrialization has made real progress. But cotton and wool have to be imported and this rising dependence upon the outside world for raw materials is equalled only by a similarly rising dependence in the matter of food stuff. The growing competition of Great Britain has made that country close British Crown colonies to Japanese trade. Even more serious, however, is the growing competition of China and India, in both countries the cost of production being lower due to cheaper labour and larger domestic supplies of coal and cotton. The tariff barrier of Western nations is another serious obstacle for the expansion of trade. It is for these reasons that the Chinese market continues to have primary importance for Japan; not for immediate sales but because of future possibilities. In fact Japan has adopted a rigidly exclusive policy of protection in her colonial dependencies. The imports from her colonies are 23.1% of her total imports and colonial exports form 22% of her total exports. Like Italians the Japanese have the alternatives of an artificial restriction of population or the acquisition of new territory. It is precisely at this point that one comes face to face with the Manchurian policy of Japan and her Chinese policy since 1937. Manchukuo is the answer which Japanese statesmen and soldiers have given to the question of *Lebensraum*.

Manchukuo has three times the area of Japan proper and possesses many resources which are complementary to the Japanese. There is considerable coal and iron besides valuable food stuff which, in fact, constitutes for Japan the chief importance of its new sphere of influence. Soya beans and wheat are raised in considerable and increasing quantities and both are precious additions to Japanese domestic food supplies. Although the density of population in Manchuria is relatively low—something like 80 per square mile as contrasted with 450 for Japan—no considerable Japanese emigration is possible because of the lower standard of living of the 30 million Chinese settled there and the rigours of the climate. For Japan, therefore, Manchukuo must remain a field for profitable development and exploitation though she cannot find an outlet for her surplus population in Eastern Asia. To defend their present position in Manchuria

the Japanese people are prepared to fight to maintain their Far Eastern Monroe Doctrine, they are ready to build armaments, even at the cost of new sacrifices measured in a reduction in the national standard of living. To remove the possibility of an eventual challenge from China or Russia, she is prepared to fight both—one at a time of course; and that explains its efforts on the one hand to assert a political and financial guardianship over China and on the other hand to achieve the isolation of Russia. In 1935 Japan tried to detach North China from China proper, and when she failed in doing this, war broke out between China and Japan in 1937. It implies a complete and continued domination of China or organizing China as a vassal or protected state. This is exactly the meaning of the Sino-Japanese War of today, as most Japanese prefer the latter alternative to the former alternative of conquest and annexation.

It is not commonly realised that Japan is the fourth largest colonial power in point of population, though not in area, and if the present campaign in China succeeds, it will place her *vis-à-vis* the 400 million Chinese, in a position analogous to that of Great Britain in India. North China has coal, iron and cotton, and China as a whole is a vast store-house of unexploited natural wealth and docile coolie labour awaiting the magic touch of Japanese capital and organisation. "East Asia" of the future will be the mightiest and most efficient empire the world has ever known. This was the picture present to the imagination of the Japanese while their guns and troops were devastating the Yangtze valley and the Chinese retiring, burning and destroying crops, field and villages as they went, so that China's riches might not fall into the hands of Japan.

RECENT DEVELOPMENTS IN INTERNATIONAL LAW

BY

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When some aspects of International Law are, as it were, in suspended animation since Japan crossed the Yalu on September 18th, 1931, it may be a perplexing problem to take stock of the recent developments in International Law. Now that Great Britain has declared war on Germany in defence of the principles of international law and usage, it remains to be seen how far accepted conventions would be observed during the course of what threatens to be a ruthless war aided by the discoveries of Science. Any attempt to indicate the bare outline some of the recent developments in International Law is bound to be incomplete. The endeavour is made with the hope that it may lead others to pursue further these trends of thought.

Conception of 'International Law.'

For anyone trained in the British tradition, the term "International Law" embodies a "Conception which is at its best confusing and at its worst exasperating. It is never law as we understand it and it often, as it seems to us, comes dangerously near to being an imposture, a *Similacrum* of law, an attorney's mantle artfully displayed on the shoulders of arbitrary power."¹ This recent confirmation of the strict Austinian view of International Law as "positive international morality" has led to further examinations of the basic conception underlying 'International Law.'

So long as international law cannot be called 'law' with a sanction behind it, there is bound to be vigorous controversy regarding the appropriateness of the term used to describe it. As Professor Hall had put it, "the weakness and indeterminateness of the sanction of international law" cannot be an absolute bar to its admission as law.²

Professor A. L. Goodhart after a careful examination of what is meant by 'law' states that it turns on the question "is

¹ Zimmern, *The League of Nations and The Rule of Law*, p. 94.

² Hall, *International Law*, VI Ed., p. 15.

there an international community to which the individual states are responsible?"³ Applying this test, one finds it difficult to answer in an unqualified affirmative. That international rules are cast in a legal mould and are invariably treated in practice as being legal in character warrants the inclusion of them in the sphere of law. Criticisms are levelled that the rules are being violated with impunity by the Big Powers. But does law within a state cease to exist because "it is broken or even because for a time it may be broken on a large scale"?

On 'Laws of War.'

Further, since Kant termed war as "a cessation of juridical relations between the states involved," some jurists have been doubting whether laws of war should be treated as a branch of international law. To like effect Prof. Norman Mackenzie of the Toronto University while reviewing this author's work on the *International Law* has stated that "war has always seemed a negation of law."⁴ But so long as war itself is a "legal remedy of self-help to obtain satisfaction for an international wrong," international law should endeavour to regulate it and humanize it as much as possible. Further, the laws of war, like all rules of international law, are based on "usage hardened into customary law and modified from time to time by law-making treaties."⁵ The existing law of war comprises the "conventional or written law" and the "customary or unwritten law." The Hague Conventions of 1899 and 1907, the Geneva Conventions of 1906 and 1929 and the Declaration of St. Petersburg (1868) are a few instances of the conventional law. "Usages established between civilized nations, the laws of humanity and the requirements of the public conscience" have been declared to constitute the principles of the law of nations in the Preamble to Hague Convention IV of 1907.

It is sometimes incorrectly stated that the elimination of war is the *raison d'être* of international law. But its *raison d'être* is to form a framework "within which international relations can be conducted and to provide a system of rules facilitating international intercourse and as a matter of practical necessity it has and will operate as a legal system even when wars are frequent."⁶

³ *Transactions of the Grotius Society*, Vol. XXII, p. 42.

⁴ *Canadian Bar Review*, Vol. XV, p. 743.

⁵ Wheaton, *International Law*, Vol. II, p. 708.

⁶ *Law Quarterly Review*, April, 1939, p. 265.

On Recognition.

Prof. Oppenheim laid down that a state "is and becomes an international person through recognition only and exclusively." It is just as well to state here that this view of Oppenheim is opposed to recent juristic opinion. International personality, it is argued by Oppenheim, belongs to a community not because it is a state but because being a state it is admitted to the membership of the family of nations by the other members of the family. A critic pointedly asks "is the family of nations anything more than a figure of speech?" How is one to reconcile Oppenheim's view with the principle that recognition is a purely individual matter for each state? If admission be left to the caprice of a member, it would lead to anomalies and would be introducing a new-fangled theory of relativity in international relationships. (per Sir J. F. Williams.) Professor Hall's view is sound that every state must be regarded as an international person but the question, whether a particular community satisfies the requirements of state-hood must necessarily be decided by other states, each for itself.

Since the inauguration of the League of Nations, it has been held by some jurists like Prof. Pearce Higgins that admission to the League of Nations *per se* would be *prima facie* equivalent to recognition. Admission to the League of Nations can be regarded as recognition only in the case of those communities which satisfy the requirement of full international sovereignty according to accepted juridical ideas. Further, as Prof. Hatschek points out, while recognition is irrevocable, "the piece of juristic business" called admission to the League is capable of being undone again.⁷

Recognition of Insurgents.

During the Spanish Civil War (1936—39) English Courts had to decide matters of interest for international law. The decision in the *Arantzazu Mendi*⁸ is worth examination. The *Arantzazu Mendi* was registered at Bilbao. She had left Spain before May 1937. In June 1937, Bilbao was captured by the insurgent forces. On 23rd March, 1938, the owners of the ship were served in London with a notice of requisition on the part of the Republican Government under a decree of requisition of 28th June, 1937; on 5th April, 1938, the accredited sub-agent of the insurgent Nationalist Government in London served on the owners

⁷ Hatschek, *An Outline of International Law*, Translated by Prof. Manning, p. 113.

⁸ 1939. 1. All E. R. 719.

a notice of requisition under a decree issued on 2nd March, 1938. On 13th April, the Republican Government issued a writ asking for possession of the ship to be adjudged to them. Mr. Justice Bucknill in an interim judgement held that the nationalist government was in possession of the ship. In reliance upon the letter from the foreign office, Mr. Justice Bucknill held that the nationalist government was for the purposes of this case a government of a foreign sovereign state and that the writ must be set aside seeing that it tended to implead the government of a foreign sovereign state. The Court of Appeal and the House of Lords confirmed the decision. That the *Arantzazu Mendi* is not an authority for the view that before English Courts there is no distinction whatever between recognition *de facto* and recognition *de jure* is the view of Dr. H. Lauterpacht, the Whewell Professor of International Law at Cambridge.⁹

Law and Practice as to Insurgency and Quasi-Blockade.

Mainly as a result of the Spanish Civil War a new conception of quasi-blockade has been evolved and D. A. D. McNair has summed up ably the following tentative propositions after examining the law and practice as to insurgency and quasi-blockade.

I. The practice of tacitly admitting (the fact of insurgency) has become common when hostilities have assumed such proportions as to jeopardize the sovereignty of the parent state over the rebelling community or seriously to interfere with customary foreign intercourse.

II. Foreign states while abstaining from interference in the hostilities will not admit any right of either party to interfere with their subjects and their subjects' property outside any area under that party's control, for instance on the high seas which can pass into the control of nobody.

III. Consequently foreign states will not admit on the high seas any right of blockade or interception of contraband being carried by their ships or any right of visit and search upon them; at any rate they are under no legal obligation to do so.

IV. Although as a matter of law neither the parent government nor the insurgents possess the belligerent right of blockade, there is some authority for the practice whereby foreign states, while preventing interference with their commerce on the high seas, will treat territorial and national waters appertaining to territory under the control of either party as assimilated to that territory and will not demand for their ships the right of navigation

⁹ *Modern Law Review*, June, 1939, p. 20.

through it any more than they would demand the right of transit for their subjects and their property across territory under the control of either party. (This can be called a result of the quasi-blockade.)

V. As a matter of practice, if not of law, foreign states which have recognized the fact of insurgency will acquiesce in the capture and detention of their merchant ships by either party within *the limit of the territorial waters* of the state suffering from insurgency as a penalty for the commission within those waters of acts injurious to and prohibited by that party.¹⁰

Recent Technique of Coercive Wars.

As to the need for a formal declaration of war, it was practised in ancient India and Rome. Till the end of the sixteenth century, direct notice of war was always given to an intended enemy by letters of defiance and by heralds. Such a wholesome practice appears to have been discontinued in most of the wars of the seventeenth century. General Sir F. Maurice points out that of the "120 wars between 1700 and 1870 (Prof. P. Higgins would have wished a more scientific treatment by Sir F. Maurice by an exclusion of the cases of intervention from 'wars') there were barely ten cases in which a formal declaration preceded hostilities."

Hugo Grotius stated that a formal declaration of war was quite essential. The practice of states has not been uniform. In the Russo-Japanese War (1904) Japan attacked Russia two days prior to her formal declaration of war. The controversy regarding the justifiability of the act of Japan culminated in the Third Convention of the Second Hague Conference (1907). Through Art. I of this Convention hostilities must commence "without previous and explicit warning in the form either of a reasoned declaration of war or an ultimatum with conditional declaration of war." Despite the limits imposed by "Custom and Convention, the opening of hostilities still appears to be mainly a question of strategy."¹¹ Reference to the beginning of hostilities in Manchuria in 1931 and to the Italian attack on Ethiopia in 1935 serves to exemplify the lapses of aggressive nations. Herr Hitler as also Signor Mussolini believe in swift attacks. It has been argued in Berlin political circles that Germany has not declared war on Poland. This recent conception that "coercive measures, such as that of the armed invasion and occupation of a country

¹⁰ *Law Quarterly*, October, 1937, pp. 489—490.

¹¹ *Pitt-Cobbett*, Vol. II, p. 7.

are peaceful acts, falls outside any legal category.¹² "Thus, a declaration establishes the legal status of war. It is not always clear what is to be regarded as a declaration, nor what authority can issue it, nor when it is to be regarded as in effect."¹³ As Pearce Higgins is obliged to point out, the "crucial point, the period of time which must elapse between the presentation of the declaration or the ultimatum and the beginning of hostilities is left undetermined."¹⁴

Defensively Armed Merchantmen.

It is the view of Prof. P. Higgins that "international law places no restriction on the armament of merchant-vessels." During the war of 1914—18 neutral states barring Holland "recognized the legality of the arming of merchant ships by admitting them to their ports on the usual terms of ordinary merchant-vessels."¹⁵ The German view is clear from 1913 when Dr. Triepel was opposed to the rule adopted by the *Institut de Droit International* recognizing the lawfulness of the resistance of merchant ships to capture. The opinion of Dr. C. C. Hyde as expressed in his work is also in favour of the legality of resistance to capture by enemy merchant ships and of their carrying arms for this purpose. (Vide *International Law* chiefly as interpreted and applied by the U. S. A., 1922, Vol. II, Dr. Hyde, SS. 709, 742.) The two U. S. A. memoranda on the status of armed merchant-vessels dated September 19th, 1914, and March 25th, 1916, as also the British Instructions for defensive armed merchant ships dated October 20th, 1915, fully clarify the position of defensively arming merchantmen. Britain would, one learns, be very soon putting into force the Convoy System of escorting her merchantmen in the present war.

Submarine Warfare.

How far submarines, especially German ones, would follow the rules drawn up at the Washington Naval Conference with regard to the use of submarines against merchant-vessels¹⁶ remains to be seen. The torpedoing of the *Athenia* without any warning

¹² J. B. Moore, *Harvard Law Review*, January, 1937, p. 434.

¹³ *American Journal of International Law*, Vol. 32, p. 29.

¹⁴ *Hall*, VIII Ed., p. 452.

¹⁵ P. Higgins, *Studies in International Law and Relations*, p. 274.

Vide also *The U. S. Naval War College, International Law Decisions and Notes*, 1923, pp. 189—206.

¹⁶ Vide 1922, Cmd., 1627, p. 9 and 1930, Cmd. 3556.

appears *prima facie* to be a violation of the conventions and laws of humanity.

So far as submarine cables in time of war are concerned, a cable which has been cut when "enemy-owned or used for hostile purposes" is *prima facie* an object of condemnation in a prize-court. Though no case has thus far happened, the above is the correct view.

As to retaliation and its limits, it is a right of the belligerent which must be exercised only after the greatest provocation and as a last resort. Neutrals should be allowed compensation in all cases where there is undue delay in dealing with their cases in the belligerent Prize Courts under retaliatory orders. In the exercise of retaliation the fundamental laws of humanity must be observed.¹⁷

Air Warfare.

During the war of 1914—18 not merely were aircraft used as scouts by the navies and armies, but they were availed of in land and sea-fighting to "bomb camps, munition dumps and columns on the march." Further, they were used for raids at great distances from the theatre of "military operations, either to attack military objectives, such as railway stations and munition factories or in some cases by the Germans and Austrians for the purpose of terrorising the civilian population." It is reported that fifty-one air-ship raids and forty-nine aeroplane raids were made over Great Britain during the Great War (1914—18), killing 1117 civilians and 296 soldiers and sailors and wounding 2886 civilians and 521 soldiers and sailors.

Controversy raged round the question as to what constituted a *defended place*. Was Paris, was London, asks pertinently a writer, a defended place? The British military manual (Art. 119) stated that it "might be deemed to be defended, if a military force is in occupation or marching through it." That air attacks should be limited to specific *military objectives* reads well as a principle. (*Vide* the Buenos Aires Conference of the International Law Association, 1922.) The Commission of Jurists appointed by the Washington Conference (1921-22) prepared two sets of rules dealing with the control of the radio in time of war and aerial warfare respectively. Art. 24 laid down that aerial bombardment is legitimate only when directed at "a military

¹⁷ P. Higgins, *Studies in International Law and Relations*, pp. 237-238.

objective—an object of which the destruction or injury would constitute a distinct military advantage to the belligerent." Military objectives were defined by Fauchille as "military works, military or naval establishments, depots of arms or war material, shops and installations suitable for use by the enemy army or fleet, soldiers or other persons officially attached to the army or fleet and whose status is not regulated by the Geneva Convention." When aviators have to fly at an altitude of 13000 feet to avoid overhead swooping planes and gunfire from below, how could it be possible to distinguish between places of military strategy and merely civilian centres or between combatants and non-combatants?¹⁸ Can any rule in a manual bring this about? It depends on final analysis on the "heart and conscience of the combatants."¹⁹

Within a few days of the outbreak of the present war, complaints of bombing of civilians in Poland and violations of Dutch and Belgian neutrality by aeroplanes owing to stress of bad weather are in the news. These serve to illustrate the extremely changed conditions of three-dimensional warfare in 1939.

The Difficult Position of Neutrals.

The neutrals learnt during the War (1914—18) that when "the vital interests of two belligerent groups are at stake, legal and moral arguments are available to both sides for ignoring the interests of those who do not choose to participate in the armed struggle."²⁰ Very wisely, J. B. Moore pointed out that "the assertion that neutrality is a thing of the past is as unsound in theory as it is false in fact."²¹

The present writer wrote on January 1st, 1937, that there was a paramount need for the preservation of the laws of neutrality. "Wars are certain to recur. Most of the clauses of the harsh treaty of Versailles have been unilaterally repudiated by the Revisionist Powers."²²

Prof. J. W. Garner whose death in December, 1938, has taken away one of the learned international publicists from us drew attention to two major defects of the law of neutrality as it

¹⁸ *Vide* The Hague Rules of 1923, regarding use of aircraft in war. Cmd. 2201 of 1924.)

¹⁹ For difficulties of enforcing the rule *vide* B. Y. I. L. 1923-24, pp. 21—33; A. J. I. L., XIX, p. 702; A. J. I. L., XXIII, p. 570.

²⁰ E. Turlington, *Neutrality*, Vol. III, p. 152, Columbia.

²¹ *Harvard Law Review*, January, 1937, p. 447.

²² K. R. R. Sastry, *International Law*, p. 378.

was revealed in the War (1914—18):—"The first was that during the world war it proved insufficient to enable states which desired to keep out of the war to do so, and in the second place. . . . The events of that war showed conclusively that the rules of neutrality as observed by neutrals generally did not always ensure a *bona fide* neutrality such as the best standard of morality and good faith today require."²³

The U. S. A. Neutrality Act of 1937.

The obligations of a neutral state under international law are uniform and identical for all nations; but not all "nations have followed the example of the United States and Great Britain by enacting comprehensive municipal legislation to assure observance of the duties of neutrality."²⁴

The primary object of the new legislation—The U. S. A. Neutrality Act of 1937—is to enable the United States to avoid being drawn into the wars of other countries. To the earlier resolutions the Congress added in § 1 (c) that whenever the President proclaimed a state of "civil strife" in a foreign state, export of "arms, ammunitions or implements of war" from the United States to such foreign state would be unlawful. In the case of international war, the embargo is automatic and mandatory.

Under the "Cash and Carry" Scheme of this Act, the President may forbid American vessels from carrying such articles (other than "arms, ammunitions or implements of war") to any belligerent, if in his opinion such action endangers the security of U. S. A. This clause is in practice bound to operate with "the grossest inequality as between belligerents" one of whom is in control of the sea, possesses an adequate merchant marine and has an available gold supply.

The late J. W. Garner remarked, "one looks in vain through this Act for any prohibition of the use in American ports by foreign ships of radio instruments or of the flying over American territory or the landing thereupon of belligerent aircraft."²⁵

Since the Neutrality Act has been passed, influential American critics feel that it "must be amended to permit adaptation of American action to the differing circumstances of different situations."²⁶ A revision of the Neutrality Act is expected as a result of the war that has now broken out.

²³ *Transactions of the Grotius Society*, Vol. 22, p. 7.

²² A. J. I. L., Vol. 31, p. 258.

²⁵ A. J. I. L., Vol. 31, p. 395.

²⁶ A. J. I. L., Vol. 33, p. 123.

The Governments of Denmark, Finland, Iceland, Norway and Sweden signed a Declaration regarding similar rules of neutrality in case of war between Foreign Powers at Stockholm on May 27th, 1938. The Declaration amounts to a renewed acceptance of the provisions of the Hague Convention, amplified by the new rules as constituting contemporary international law. The provisions regarding aircraft are entirely new. The Declaration consists of 15 articles. Para. 2, Art. 15 of the provisions runs as follows:—

"Any air-craft in a condition to commit an attack against a belligerent or which carries apparatus or material, the mounting or utilisation of which would permit it to commit an attack is forbidden to leave Danish territory if there is reason to presume that it is destined to be employed against a belligerent Power. It is likewise forbidden to perform work on an air-craft in order to prepare its departure for the above-mentioned purpose."

Measures relating to the employment of "mobile radio-telegraphic stations" mark another difference between 1912 and 1938 rules.²⁷

Future of International Law.

Philosophers have been crying that unless we have an international police-man it is a waste of breath to talk of international peace. Increasing distrust of the aggressive policy of the dictators combined with the devastating development of aviation has led Major Attlee of the British Labour Party and competent observers like Captain Philip S. Mumford to work for the "abolition of national military, naval and air forces, the internationalisation of civil aviation and the creation of an International Air Police Force."²⁸

While such deep reflections are more germane to a political study of international organization, they serve to indicate the need for a thorough change in outlook.

The League of Nations, the hope of the century, is strong on its judicial side. On its political side it has had many rude setbacks since 1931. One need not be alarmed at the fancied *débâcle* of the League. The present League of Nations is admittedly imperfect. Born as it was in the vindictive atmosphere at Versailles, its provision for peaceful change found in Art. 19 was never tried.

²⁷ A. J. I. L., Vol. 31, Official Documents, pp. 141—163.

²⁸ Captain Philip S. Mumford, *Humanity, Air-Power and War*, p. 94.

The present war directly started to preserve international law and conventions is bound at its end to evolve schemes for the reconstruction of the international society. The defective League of Nations would be further strengthened and broadened.

The enforcement of the law of the human community when it is "challenged by a force of arms or a negative refusal to respect it" is a huge complex problem. The *abandonment of economic war* between states is a very important desideratum for preserving peace. A concerted attack at the unequal distribution of the wealth of the world has been launched with vigour. In sheer self-preservation, the organization of democracies has been vigorously advocated.

Taking note of these fundamental difficulties which face the international society, one can state that the future of international law is not at all dark. Impatient idealists might be upset by the rude thrusts of Japan, Italy and Germany. The magnitude of a modern three-dimensional warfare could drive the reformer sometimes into despair. Pseudo-religious analogies foreboding the death of civilization might make the prudent human being lose faith in the evolution of international law to suit the changing conditions. As result of this war there would be further disillusionment and *clarification* of issues. International law would emerge out of it with its rules further broadened and its bases more scientifically built. Progress in international law which has been going on for several centuries *must necessarily be slow*. *The future of international law has now become a matter of vital concern to every citizen of a civilized country.*

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THE CHINESE CO-OPERATIVE MOVEMENT*

I

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I. The Hu Tsu Sheh.

Hu Tsu Sheh or mutual aid society is now a term familiar to at least a million householders in rural China. It was first used in 1931 when the first of the present 50,000 units was formed in the lower Yangtze provinces by the China International Famine Relief Commission in connection with the flood relief operations undertaken by that body on behalf of the National Government. Each *sheh* (society) of this type was a group of peasants intending to receive a loan at a nominal rate of interest for the purpose of rehabilitating their land and other necessary equipment for the pursuit of agriculture. That they needed this help is apparent when one recalls the scene of the countryside after a flood or catastrophe of equal or greater seriousness and magnitude.

Unlike straight or free relief whereby materials or funds are doled out to the qualified recipients, the operation of a farm relief plan takes the form of loans. The process is thus made complicated and, therefore, calls for some unavoidable preliminary procedure. The grouping of the prospective beneficiaries into suitable units is quite essential; for, unless this is done, there is no assurance that the money does not go into the wrong hands, or is not devoted to unwise purposes, or that it will not default when due. Of course, those same precautions might be taken in other ways but the cost for supervision alone would well nigh make the plan quite out of the question, not to mention other problems that were bound to crop up, notably that of personnel.

A *Hu Tsu Sheh* is formed under some twenty simple rules originally drafted and applied by the C.I.F.R.C. in the flood work but now adopted by the government. Summarized these rules would make a *Hu Tsu Sheh* a body of nine or more needy and

* Edited by Mr. Awadh Behari Lal of the Politics Department, University of Allahabad, from material kindly supplied through Miss Margaret Frame, Secretary, China Council, American Presbyterian Missions, Shanghai.

worthy heads of families who pledge their joint responsibilities for the actions of their group. The *sheh* expects to raise a loan from outside sources for the sole purpose of restoring the farmstead to a working condition so that farming can be resumed without further loss of time. The affairs of the group shall be conducted by the officers and a committee elected by the members. Members of the group are entitled to take loans from the society on such terms as are laid down in rules covering interest rate, amount, repayment, etc. Upon full discharge of its responsibilities particularly as regards to loan obligations, a *sheh* is to be re-organized into a credit co-operative or disband.

It can thus be seen that the *Hu Tsu Sheh* actually serves a purpose far greater than merely co-operating with the relief-giving body to make farm relief at all possible. As it has already been amply demonstrated in thousands of instances over a large area during the past seven years, a society of this type really spans the gap between relief and co-operation; remedy and reconstruction. It started out to receive benefits in a passive mood; it ends as a co-operative with all its dignity. This seeming miracle, however, will not occur unless full advantage is taken of the time, usually a year, during which a society functions, to instruct the group in ideas and ways that will enable the individuals better to help themselves in years to come when a permanent body is brought into their midst.

The psychological value of the conditions under which these societies are inaugurated is not to be underestimated, for upon it depends the success of the ultimate structure after the scaffolding is taken away. Created as they are out of good neighbourliness prompted by man's inborn desire to recover from an adversity, effectively accentuated by a recent catastrophe from which all have suffered heavily in common and contrasted by the readiness of a helping hand to satisfy that desire, groups of common men, such as the *Hu Tsu Sheh*, are most apt to accept and eagerly react upon well-intentioned advice, especially when such advice is supported by substantial, tangible rewards.

The principles upon which the co-operative societies have been formed throughout the world during the past century are too abstract for simple-minded farmers to understand, whether presented to them in writing or even by word of mouth. The educational effect is much enhanced by actual experience. Viewed in this light, the *Hu Tsu Sheh* method for promoting the co-operative movement is ideal. Tinged with relief complexion, this plan has been recognized as giving a great impetus to the rapid growth which the movement has enjoyed in China in recent years. Since its

inception in 1931, the method has been followed in almost all major relief operations when the need for them was due to natural or man-made causes. The plan has been extensively applied by the C.I.F.R.C. itself on many occasions since 1931. The initial success soon attracted wide-spread attention, so much so that, in connection with the anti-communist campaign, farm relief was distributed by the central authorities by the *Hu Tsu Sheh* method, though it was given another name. Societies then formed were called "preparatory co-operatives."

Consequent on the popular acceptance of the idea, co-operative societies grew in number as well as in strength, the number of units having increased from a mere thousand in 1931 (a ten-year achievement), to over 50,000 at the end of 1938. The rapid growth called forth increased support from the government both in organization and financial backing. Special departments had been created in the central as well as in the local governments for the promotion and supervision of the co-operative societies, so that extension of the movement as widely as possible became a regular routine of the functionaries. The Financing of the societies had been entrusted to two institutions created for the purpose, namely, the Farmers' Bank and the Agricultural Credit Administration whose combined capital amounts to \$70,000,000. Besides, the Bank enjoys the privilege of note issue and the Administration may secure additional accommodations against commodities (largely farm produce) pledged to it as security. Interest in agricultural investment taken by several private banks had been on the increase from 1930 till the war broke out in 1937. The amount of advances remaining outstanding against the rural co-operatives at the present time is relatively unimportant.

That the insignificant *Hu Tsu Sheh* handling but a few hundred dollars at the start should be able to play an important part in a national socio-economic reform of an important character, once more substantiates the famous saying of Tseng Kuo-fan:

"Far-reaching shall it be looming,
despise not the humble beginning."

II. The Village Credit Society.

Unlike the *Hu Tsu Sheh*, a credit society is an integral part of a nation-wide co-operative structure, being installed among the people by the National Government as one of the two essential means by which Dr. Sun Yat-sen's economic plan for the Republic is to be carried out. Of political significance *vis-à-vis* the

co-operatives, we shall have more to say in a later section. For our present purpose, it suffices to note that a village credit society is an elementary cell of a *tout ensemble* whose well-being affects China's new economic system now being set up.

The first credit co-operative in the world was formed in Germany around 1847 by R. F. Raiffeisen who formulated the basic principles upon which these societies are founded. Chinese credit societies were patterned after the original German model as adapted to eastern conditions successively by India and Japan. Raiffeisen built up his societies on these ideas:

1. That mutual trust growing out of neighbourliness should be cultivated.
2. That the activities of a co-operative should be confined to a definite working area in which all members come into easy contact with each other.
3. That necessary capital requirement be met by contracting outside loans to which the members pledge unlimited liability. But savings should be encouraged with a view to building up an independent source of capital belonging to the members themselves.
4. That loans extended to the members by the society should be limited to those for productive and certain unavoidable purposes only.
5. That the reserve fund accumulated from year to year by the society shall be indivisible among the members.

These basic ideas or their intended purposes are incorporated in the Chinese co-operative law which became effective on September 1, 1935. Prior to that date, societies organized by various agencies followed regulations drafted by the sponsoring bodies. Provincial regulations began to appear as early as 1927 in Chekiang.

Anyone who attempts to promote the movement will at the very start encounter a dilemma. While by its very nature, a true co-operative must result from a spontaneous burst of enthusiasm prompted by a strong conviction and thorough understanding, the people at their present stage of education cannot reasonably be expected to take this all-essential initiative. It thus seems logical to begin co-operation with education by which the practical values of the movement as well as the methods for conducting its

affairs are explained to the prospective co-operators. This takes time which the weight of the situation does not well permit, though the course is materially shortened by converting the *Hu Tsu Sheh*.

Twenty years of experience have enabled those who work in this field to discover what amounts to the safest short-cut between utter indifference and positive action. The following dialogue illustrates the typical method of approach now being followed by the co-operative workers:

(Stopping at a village temple) Organizer A: Oh, why! Why waste your good money on the incense?

Farmers B & C: Wo Mi Tu Fu! Don't you say things to insult the *kung-kung*, stranger!

A: Oh, I don't care even if I do. But, by the way, how often do you do this?

B: Don't you realize this is the fifteenth of the moon? We here worship the *kung-kung* on the first and the fifteenth of each moon besides the three festival days. This makes about thirty times a year.

A: Great pity! This means actually burning away your hard-earned money.

C and others: Sure t'is, we farmers live by our labour and the goodness of the gods.

A: I can understand the labour part of what you just said. But I don't see where the gods come in. Certainly I sympathize with you but I can't approve of your trying to seek for better luck in life by pleasing idols. I think there must be better and more dependable ways out.

Voice from the crowd: Tell us then what are these ways. The *tuchun* and, for that matter, all the rest are only looking after their own interest, not our welfare. Our gods are kind to us and exact no money from us. We like to visit our temple, meeting so many friends when we come.

A: Don't blame you. But I still say by spending your money in worship, you won't improve your lot an iota. Someone just told me that almost all of the farmers here are in debt. If so, how foolish it is to use your borrowed money this way! Now let's sit down. (On the temple steps.)

A better way out, it seems to me, is for each of you to help yourselves and then band together to help each other. "God helps those who help themselves" goes the old saying. You are industrious. It is by working hard, by making your land yield more and better crops that your conditions can be improved. Then, too, you and your home folks have plenty of leisure time in the winter. You can make use of that and earn more money. All the benefits that will surely result are yours, only if you make up your mind today to work together in the new way. This is surely a better way out, not by burning incense.

B: Mr. A. What you just said sounds very well except one important detail. You must know we are all farmers who can't afford to do things your city way. We know of no place where we can borrow sufficient money to go around at 40 per cent.

A: That can be managed. The question is: Are you interested in starting things on a new basis? If you are, I think, I can help you. To tell you the truth, I'm not a stranger among you, but your friend. I come to help you to form a co-operative in which you can work together as I just suggested. The money can be made forthcoming if you mean business.

Three simple but stimulating ideas are embodied in the "first talk," such as is given in this temple scene: 1. That the unsatisfactory existing conditions must be improved; 2. That the people must themselves find the way out; 3. That the best way is to pool all efforts in a co-operative to which the Government gives its blessing.

Following the preliminaries, a skilled organizer would capitalize the interest just created and proceed at once with the regular routine or organizing the society in accordance with the prescribed procedure. (Copies of *Tsu Sheh Hsu Chih* may be had at any co-operative office, the Chieh Shih Ting or, on payment of 15 cents, from the Agricultural Credit Administration, Chungking).

A credit society is expected to serve more as a savings bank than a loaning association. Share capital, however small at the start, subscribed by the members forms the nucleus fund of the society for making loans to its members. In a new group, mem-

bers would borrow more than they can put in, necessitating borrowing from the outside. This is understandable and is the general order of events. Loans are granted to members for productive purposes. Thrift is encouraged at the start; with it is carried a host of beneficial results, for instance, stamping out the opium curse and the gambling habit, reforming the wasteful weddings and funerals, discouraging petty law suits, etc.

Once formed, a credit society is subject to a planned educational program which includes periodical visitations by the organizer, issuance of specially prepared reading materials among which is a monthly bulletin, etc. By helping this little cell to mature and multiply, each unit group is escorted along toward recovery and prosperity by tried technique till the society builds up a capital of its own and becomes less and less dependent upon external aid. The temple worshippers are placed upon their feet again.

II

CHINESE INDUSTRIAL CO-OPERATIVES¹

REWI ALLEY

The project first started in Shanghai where a number of people who were interested in the war and who had seen Chinese industry being smashed, met together in a series of talks to discuss what could be done to give China all the industry that she needed to carry on the war. The group was very keen to get industry into the interior because seventy per cent of Chinese industry was on the coast and this meant that most of it had been destroyed by the war. We discussed at length, and finally came to the conclusion that the only way to get industry moving would be by setting up small industrial co-operative units throughout the country in a way that the big factory organization could not cover. We felt that we could put these co-operative units in the third line of economic defense,² such as Szechuan and Kweichow. These small

¹ A talk given to an interested group at Chengtu, on January 17th, 1939. Mr. Alley was a factory inspector for the Shanghai Municipal Council for twelve years and the horrible working conditions he found in many factories aroused in him a determination to find a better way.

² Referring to the three lines of economic defense worked out in the original plan for industrial co-operatives: (1) close to the fighting lines, existing industry and new mobile industrial cooperative units; (2) more removed from the fighting line, the principal concentration of

units would be impossible to destroy because they were too numerous and also outwardly they would look like ordinary residences and not large factories.

You know what has happened in China—a whole country full of small handicrafts has been supplanted by factory products from the west or from industry concentrated on the coast, leaving the farmers nothing but their farms. We thought it wise to get industry back into the country and give it the technical assistance and organization necessary, and tie it up in a national organization so that the units could be interlocked and aim at standardization, so that these industries would not only help China to win the war but would also pave the way for peace-time reconstruction. Of course the difficulties are tremendous. In peace time the problem is mostly one of marketing; in war time there is no trouble in this line. In areas back of the lines in the southeast the shelves of all the small country shops are empty. In Fukien, Japanese goods still come in; also in Kiangsi. In Kiangsi there are tremendous quantities of raw materials, and plenty of refugees to do the work, but there is need for capital and organization to bring these two factors together.

Do you understand what war-time industry means? Next to keeping the Japanese back it is important to keep production moving for the sake of the army. Imports are cut off. Everything has to be made, and for everything that can be made there is an immediate demand. Money is no use unless there is something to buy.

So we went to Hankow, secured Mr. Liu Kwan-p'ei (K. P. Liu)³ and Chang Nai-chi, Head of the National Salvation Society. Dr. Kung invited him to be the general secretary but he went into North Anhwei and could not get out. Also, he feared his friends would think was running away from danger so he remained. Madame Chiang found quarters for us in the Yokohama Specie Bank and in August, 1938, we sent out groups of people to set up co-operatives. We started to work in the North-West of China at the end of the Lunghai on the Kansu border, for both refugees and local people who were without employment, providing engineers and capital to get industry started. There

new co-operative units and existing industry; (3) in the western provinces, heavy industry supplemented by new co-operative units. (See pamphlet "Chinese Industrial Cooperatives," published in the summer of 1938, with map.

³ Trained at Ford's Factory in Detroit as a result of Joseph Bailie's interest and later magistrate at a model *hsien* government at Hohsien in Anhwei.

are now over 100 co-operatives in that area. Our next efforts were in southern Kiangsi. Co-operatives grew so fast that it was difficult to keep up with them.

We now have co-operatives at many centres in southern Kiangsi, southern Hunan and western Shensi. In western Shensi our co-operatives are all paying back the capital loaned to them. For instance, the price of coal in Paochi was \$30 per ton. By organizing a local miners and transport co-operative, we were able to bring that price down to a reasonable level. One little village was furnished with electric light through the forming of a co-operative. Paochi got its first newspaper, because a group of Hsueh printers came in and were pleasantly surprised to find they could borrow a few thousand dollars and set up shop in a cave in the side of a hill—the result is a daily newspaper. We call that section our "Northwest Headquarters."

The "Southwest Headquarters" was set up in Hunan and we sent engineers and co-operators there. We have proved that the co-operative industries can move, and they really constitute guerilla industry because as the Japanese advance they just pick up and move away. In the large type of industry, as the Japanese advance, usually the head of the company runs off to Hongkong and the workers join the horde of refugees. For instance, the units in Changsha moved their equipment and settled further behind the lines.

Our "Southeast Headquarters" is in Kiangsi. The Shanghai Hongkong Promotion Committee was able to raise \$200,000 which it provided for use in Kiangsi. This is an extraordinary region because of good transport. Boats can be built for \$300 which will carry 10 tons so that this region which is rich in all kinds of minerals, such as coal, iron, etc., has great promise as an economic base for the various operations in the Southeast where we are endeavouring to make an economic base. Kiangsi is full of riches, probably one of the richest places in natural resources in the world. In size as large as many European countries, it has almost every kind of raw material. There are plenty of refugees; China has capital and technicians as good as any in the world—our problem is to bring all these factors together. The place for Chinese engineers and technicians is in free China where they can help to build up the kind of resistance that is essential if the war is to be won. We have tried to organize various co-operatives there, such as a wounded soldiers co-operative with a printing co-operative to make books and run a newspaper. They dug up an old Red Army press which had been buried by the peasants and are using this old heavy piece of

machinery effectively. A boat building co-operative is also in operation, and they had an exciting time when Nanchang was threatened because the farmers buried all their materials. We dug them up and took the stuff out on boats.

The most important places from a military standpoint are the Northwest and the Southeast, for if the armies there are amply supplied, the Japanese will find great difficulty in breaking through and striking at the centre of China. If resistance in the Northwest and Southeast collapses, it will be very serious, and the best way to avoid this collapse is to keep up these economic bases. Only small industry can go into these areas because large industries would be unsafe, and besides no one would be willing to risk capital there. To join these two areas, there must be a continuous line of industries running across the country, with headquarters at Chungking. Depots are being established throughout the country and we hope to get hold of some of the wool from the back country for 1939-40 which may be the decisive period of the war.

One of the most important tasks is to keep up the morale of the soldiers and see that they are well clothed, and we ought to be using Chinese wool for this. There are too many soldiers dying this winter because of cold. A thin cotton blanket made abroad and costing five dollars is not enough to keep out the cold. We should be able to produce such blankets here.

In addition to having these small industries interlocked, we must have these interlocking industries in all three lines of economic defense. We hope to have depots in Yunnan and Kansu and we hope that these new offices will materially help in the coming year. A chain of industries to which improvement can be added so that when peace comes these industries may play their part in reconstruction is part of the aim of the Chinese Industrial Co-operatives. If not, after the war stops, many people will have to buy Japanese goods because no other cheap goods are available. It is a people's movement that the people can enter into and feel that they are part of the whole, and that they are really an industrial army which is struggling to win the war also.

Industry in factories as it has been in the coastal cities is a crime. To make a pile of cheap junk to supply the world is a poor ambition, ill-befitting a great nation. We should be making things that our people need and under conditions that do not make for slave labour. These conditions we should try to avoid in free China, and we believe that the small industrial co-operatives are a better instrument for modern conditions than the large-scale factory.

We make almost everything that anyone can make, although we drew the line at a request for a loan to make figures to burn at funerals. We also had a request for a loan to make wooden figures to replace those destroyed by the Communists. However, these are about the only requests we have turned down. We strike a lot of trouble in industries dependent on foreign materials such as electric batteries. However, it has been found that many of these things can be found in China, and it is useful in stimulating initiative and the production of raw material in China. Some of the mines have been closed for years and there are many old copper and coal mines not working. Sometimes someone comes along and says that he will open a mine for \$50. We have several such mines now operating.

We have organized marketing societies and a federation of co-operative representatives which has been a great contribution to the social life of the communities. In the Northwest there is a training school for people who cannot do the things which have to be done, especially refugees. It is obviously impossible to keep 60 million people on relief forever. They must be given work. If they want to and can, they must be given the chance of trying to keep themselves.

An industrial co-operative is a co-operative which is set up to carry on some industrial project or labour project, such as the road work in Lanchow, Kansu, or the family type of co-operative where there are people enough but not money enough to buy the necessary materials. We finance those transport, labour or industrial projects that run up as high as \$30,000 but mostly they are two or three thousand dollar projects, with about 20 members. We try to give them a sense of belonging to one organization by letting them wear badges. We are trying to organize from Fukien to Mongolia and hope to have them in both free and occupied China, so that the people will not have to buy Japanese goods.

The two greatest problems are transportation for the collection of raw materials, and what to do about excess profits. In peace times, the latter would not be an item, but at present they can get almost any price they ask for their goods. Some solution must be found for this.

These industrial co-operatives are essentially co-operatives of workers. Previously such co-operatives were unknown.⁴ There

⁴ Before the war, two such workers' co-operatives were organized in Nanking by the University of Nanking, a rickshaw co-operative in 1933 and a wool-weaving co-operative in 1935.

were a few organizations where managers banded together, but not workers. The idea is to have seven or more workers participating. They pay for their shares from the profits, which is much easier now than in peace times. The difficulty is to get gasoline to run the motors. Charcoal is usable to a certain extent, and in some cases Diesel engines have been converted into charcoal engines, or sometimes even vegetable oils can be used. It is important to have industries that can run throughout the year.

There is much talk of sending people onto farms, but in many cases the needy refugees are city people, such as the thousands around Kweilin refugeeing from the Canton area, who know nothing about farming and just sit around and do nothing. The general appearance is that life has stopped.

We want 30,000 co-operatives established this year. I think that industry spread like this in country districts removed from central authority will help to prevent anarchy from breaking out in these places. There is only one way to keep the morale up and that is to give the people a livelihood. The Chinese Industrial Co-operative Association has collected some 200 co-operators and engineers who are putting up with all kinds of privation and hardship in the country districts to make these industries work. We hope that the many educational institutions in this area will help in this co-operative enterprise. Such industrial enterprises should be a natural outlet for many people with some technical training, and should make it unnecessary for them to go into jobs for which they are not trained, or even worse to be left without employment.

III

CO-OPERATIVES IN KIANGSI

LLOYD R. CRAIGHILL

The co-operative movement in Kiangsi had its beginnings during the general shake-up accompanying the anti-Communist campaigns in the early part of this decade, it progressed as part of the New Life Movement which had its beginning in Nanchang, and now plays an important part in the extensive refugee and industrial rehabilitation programme in Southern Kiangsi.

In the early stages the co-operatives were almost entirely of the credit type and were designed to help improve the condition of the small farmers many of whom were in a desperate plight

because of economic pressure from several directions. The landlord system in Kiangsi is no worse than in many other sections, but bad enough at that. The tenant farmer pays from fifty to sixty per cent of his crop in rent. When there is a poor year and the share of rice he retains is not sufficient to carry over his family until the next harvest, he must borrow from the gentry who have a surplus of rice. These loans are generally made when the old stocks are running short and prices are high, but they must be repaid when the new crop is harvested and prices are depressed by the big flood of new rice on the market. Sometimes a farmer may have to sell two piculs of rice to get money to repay the cost of one picul at the time he took the loan. Added to this is the interest from two per cent to three and a half or even four per cent a month. No wonder the majority of small farmers and tenants never find it possible to climb out of the bog, but are always in debt.

Added to this chronic state of blood-sucking indebtedness, there had been a succession of public calamities. There were floods which tore away dikes and submerged great areas in the fertile valleys of the Kan and Fu Rivers, and the low-lying section around the Poyang Lake. Then came the years of military campaigns between the government forces and the Communist armies during which time the farmer who couldn't leave the land had to choose between one side or the other, and would often get it in the neck when the line of battle shifted. Moreover communications were disrupted and he could not find a market for whatever surplus rice he might have. No wonder the plight of the small farmer was desperate indeed.

The government realized that unless the condition of the peasants could be improved there would be little chance of restoring order in that section. As General Chiang Kai Shek expressed it to his officers assembled at the foot of Kuling Mountain, their problem was eighty per cent economic and only twenty per cent military. As part of the programme of reconstruction, machinery was set in motion for the organization of credit co-operatives among the farmers. Experts from the League of Nations came as advisers. The experienced staff of the International Famine Relief Committee was brought down from North China to set up these co-operatives in certain areas while in other sections a provincial organization did the work.

To the farmer who came back to his devastated farm to find neither plough nor buffalo to till his fields it was a great help to be able to borrow a little capital for a new start through these loan

co-operatives. When conditions were not so desperate as that it was still a help in struggling from under his load of debt to be able to borrow at a reasonable rate of interest. Where care was exercised in educating the people to the meaning and responsibility of co-operatives the movement has been successful, loans have been repaid, and there has been a supply of capital to turn over each year. In some places, unfortunately, the organization has fallen into the hands of the "rotton gentry" who have used it as a means to get cheap money to be loaned out to the little fellow at the old exorbitant rates of interest. In such cases the movement has fallen into disrepute, and loans have remained unpaid. The Rural Welfare Centres established at ten points throughout the province under the leadership of Mr. Chang Fu Liang, and also the Lichuan Project under the Kiangsi Christian Rural Service Union were linked up with the co-operative movement and made the agents through which the organization functioned in their several areas.

In the present war period the co-operative spirit has emerged in a new form and in a new field in Kiangsi. The industrial co-operatives now being organized in the south of the province are meeting a number of needs all at once. There in the interior where the supply of textiles and other manufactured articles from the port cities of the coast has largely been cut off small-scale industries are being started in the homes and villages to supply the lack. Hand-loomes that had been stilled by the machines of the cities have been fetched down from the rafters, dusted off and set to work again. The Industrial Co-operative Association is introducing more efficient hand machines. Co-operative groups are formed and through them the necessary capital is supplied to purchase these improved looms and the needed raw material. By gradual reduction of these loans the machinery will come to belong to the groups who operate them.

In refugee camps where those who have been driven from their homes in the zone are being cared for at government expense weaving co-operatives are being formed to enable the people to help earn their own living and at the same time produce the cloth that is needed for the whole community.

But Industrial Co-operatives are not confining their attention to spinning and weaving alone. In one place a sugar refining co-operative has been set up which enables the farmers to get more and better sugar from their cane than by the crude local methods formerly in use, and at the same time encourages the supply of this essential that is becoming scarce behind the lines. Coal mining, boat building and cloth dyeing are a few of the industries

already in operation on a co-operative basis, whereas plans are in process for the extension to many other lines of industry.

There is no lack of basic raw material such as coal, iron, copper, lead, zinc, limestone, timber, vegetable oils, cotton, ramie, indigo, etc., to be had in Southern Kiangsi. A group of enthusiastic technicians under the leadership of Mr. Rewi Alley are furnishing the necessary skill, and organizing ability. These, combined with the co-operative spirit and method of organization, are helping China to meet her industrial needs and to furnish useful occupations for her refugee population.

His Excellency Sir George Cunningham, the Governor, in his inaugural address to the Assembly, said:

"No purpose would be served by my disguising the fact that during the last five years the Government, of which I was a member, had been on some occasions in conflict with certain elements in the province, now strongly represented in this House. I believe myself that the spirit of antagonism has disappeared from the minds of the vast majority of people. It, certainly, has vanished from mine and it can find no place in the constitution."

The Congress party having refused to take office in all the Indian provinces, the late Sir Abdul Qayum, the veteran statesman and in some ways the maker of the Province, was invited to form a Ministry. The Hindu-Sikh Nationalists were persuaded to form a coalition with the United Muslim Party on terms, according to which the notorious anti-Hindi-Gurmukhi Circular was to be withdrawn; legislation affecting the minorities was not to be introduced without the concurrence of three-fourths of the minority members in the legislatures; one ministership, one parliamentary secretaryship and 25 per cent of future appointments in the Public Services were to be reserved for the minorities.

The coalition Ministry, however, was unpopular from the very start. Congress nominees, though belonging to the Independent Party, were elected Speaker and Deputy Speaker respectively. Sir Abdul Qayum, sensing danger, prorogued the Assembly on the very second day of its session. But the evil day could not thus be postponed indefinitely. When the Assembly met again in September, 1937, for the Budget Session a no-confidence motion was tabled and passed against the Ministry by the Congress Party with the help of two Hindu-Sikh Nationalists, the Hazara Democrats and the Independents.

Dr. Khan Sahib was then invited to take office. The Congress Ministry was formed with the help of the Hazara democrats who in return for their pledge to support the Ministry got a seat in the Cabinet.

In spite of persistent rumours to the contrary, the Ministry has been firm like a rock. Though all except one of the Hazara Democrats have deserted it, yet there has been a fair amount of internal cohesion within the Congress Party and more of the Opposition have recently been drifting towards the Ministry. The visits of Mahatma Gandhi and Pandit Jawahar Lal Nehru have greatly consolidated the position of the Congress in the

F. 11

DEVELOPMENTS IN LAW, CONSTITUTION AND ADMINISTRATION. PERIODICAL SURVEYS

I

PROVINCIAL AUTONOMY IN THE N.-W. F. P.*

BY

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It is interesting to note that the two years of Provincial Autonomy in the Frontier have been quite eventful.

In the Elections of 1937 the Indian National Congress contested 37 out of a total of 50 seats and captured 19, but the United Muslim Party with 20 seats was the largest single party in the Assembly. In this province, unlike other provinces, large numbers of Muslims voted for the Congress. In the Muslim constituencies the Congress contested 29 seats and secured 15—a very significant fact, when we remember that the total number of Muslim seats captured by the Congress in the remaining Indian provinces amounted only to eleven. In the general constituencies the Congress captured four out of the eight seats it contested.

The position of the parties after the Elections was as follows:—

United Muslim	...	20
Congress	...	19
Hindu-Sikh Nationalists	...	8
Independents	...	3
		50

The success of the Congress was due to its close contact with the masses. The Khudai Khidmatgar and the Red Shirt movements founded and organised by Khan Abdul Ghaffar Khan have effectively spread the Congress creed.

* Written in April, 1939.

Frontier. Dr. Khan Sahib has striven hard to exterminate communalism. In the appointment of the Committee to inquire into the causes of the Bannu riots, in his attitude towards the Malakand Electric Department Strike as also in his assurance in regard to recruitment to public services, Dr. Khan Sahib has established beyond doubt his claim to impartiality.

Having come to power, the Congress Government soon set to work. To suppress corruption in the Government departments, the Ministry issued instructions calling for periodical reports to enable them to take necessary action. The institution of Honorary Magistrates has been abolished and in this the N.-W. F. P. has given the lead to the other provinces. The question of the separation of the Judiciary from the Executive has engaged the attention of the Ministry but the smallness of the provincial cadre and the insufficiency of funds have presented insurmountable difficulties.

The Frontier Government has given much thought to the question of free and compulsory primary education. The illiteracy in the Province is appalling. In the settled districts hardly 6 per cent of the male and 1 per cent of the female population is educated. The number of the literate in the unsettled districts is even smaller. To give democracy a firm root, the Pathan must be trained and softened with education. The Frontier Government has taken the initial step by making an additional grant of Rs. 27,000 per annum for the Municipal area of Peshawar where free and compulsory primary education has been introduced. Adult education, however, has so far found little or no active support from the Government. Some progress has, all the same, been made through the efforts of the Islamia College, Peshawar, which has opened Adult Education classes.

In respect of technical education also little has been done so far. Eight Frontier students, each with a Government stipend of Rs. 15 p. m., were sent for training in paper-making and oil-pressing at the All-India Village Industries Training School, Wardha. But this is hardly sufficient to solve the colossal problem of unemployment and poverty in the province.

The nominated element in the Local bodies in the Province has been abolished. Nepotism and official control from within has thus been ended. Not only has the franchise for the local bodies been extended but a lead has been given to India by establishing a system of joint electorates with reservation of seats for the minorities. In the Government review on the Public Health Report for 1937 the local bodies were admonished for bad conservancy arrangement and were asked actively to cooperate

with larger financial contributions and otherwise, in the extension and reorganisation of the Public Health Department.

The cases of political prisoners were examined, soon after the assumption of office by Dr. Khan Sahib. Panda Sant Ram and Shrimati Amar Kaur convicted for delivering seditious speeches during the last General Elections were released at once. The Hathi Khel prisoners convicted of the offence of rioting with murder in 1930 were also set free.

Khan Abdul Ghaffar Khan was permitted to enter the Province and the ban hitherto imposed on various associations was withdrawn. The Assembly passed a bill repealing the Frontier Crimes Regulation, as also Section 124 A of the Indian Penal Code, but the Governor refused to give his assent to the measure. The Press has enjoyed greater freedom but the Ministry had to take strong action against many newspapers which either fomented hatred between communities or blackmailed respectable citizens. While the Ministry claimed to stand for the freedom of the Press, it was prepared to "demarcate between honest journalism and unbridled license."

The Ministry has shown great concern in the amelioration of the plight of the peasantry. The Agriculturist Debtors Relief Act has been passed to relieve the agriculturists who paid annually one crore, that is, six times the land revenue, as debt. The Agriculture Produce Market Bill is now before the Assembly. It is proposed to establish and regulate the agricultural market with a view to secure for the producer a fair price. The Hindu-Sikh Nationalists and some other Hindu members of the Assembly look upon the Bill with disfavour, constituting, as they do, the main bulk of middlemen and traders whose profits the bill seeks to limit. It must, however, be remembered that the main causes of the poverty of the peasant are the fragmentation of holdings, the heavy pressure of population on the land, the appalling ignorance of the zamindar, the absence of cottage industries, primitive methods of farming and the collection of Government dues at high rates and at unsuitable times.

The financial position of the province remains unsatisfactory, owing to its physical, political and economic conditions. The North-Western Frontier Province cannot and will not for a long time, become a self-supporting province. Its solvency depends upon the subvention of a crore of rupees granted annually by the Central Government. This amount, however, is insufficient and is far less than that recommended in June, 1931, by the Haig Committee—Rs. 1 crore 46 lakhs, rising every year by 4 lakhs to a maximum of 1 crore 62 lakhs. The present figure of one crore

had been fixed originally in the lean year 1932 but has remained unchanged since.

While the advent of Autonomy brought changes in the political life and even made it more expensive, the subvention was not raised. The Government of India however remitted the loan amounting to Rs. 3,41,12,000, advanced to the Provincial Government in the pre-autonomy period. Though the major portion of this debt was already not repayable, there is no denying the fact that the provincial Government actually gained by this remission to the extent of Rs. 12 lakhs that had been payable to the Centre in the form of recurring annual interest charges. Besides, the Government of India made a grant of Rs. 9 lakhs to provide the Frontier Government with the minimum balances to be kept in the Reserve Bank and the Treasuries. But on the debit side of the account the Province had to accept certain net liabilities of the Government of India, amounting to nearly 30 lakhs.

The average annual expenditure during the quinquennium ending 1939-40 amounts to Rs. 1,80,00,000 and the average revenue, excluding the subvention, to Rs. 80 lakhs. The main source of receipts is the land revenue, which contributes about a quarter of the provincial revenue, leaving the subvention out of account. It is followed by Irrigation with a share of 19 per cent and Excise with 11 per cent in 1939-40. 'Stamps' yield nearly 10 per cent and 'Forests' come next in order of importance.

Not only is there no possibility of improvement in the Land Revenue but on the contrary the Government must give relief to the overburdened small peasant proprietors in the years to come. Income from Excise is steadily falling and is bound to do so to an increasing extent in the future. Total prohibition has been introduced in the Dera Ismail Khan District at a cost of Rs. 1 lakh per annum—a great sacrifice on the part of a deficit province—and the extension of the scheme to the entire Province is only a question of time. The revenue from Stamps is also dwindling but that from Forests shows a tendency to increase in the coming years. Thus it is clear that the principal sources of revenue in the N.-W. F. P., as in other provinces, are inelastic while the expenditure is mounting up rapidly. That the Frontier Government has not lagged behind other provincial Governments in the search for new sources of income is clearly indicated by the fact that Sir Abdul Qayum's Ministry placed two new taxes and the Congress Government is about to place one more on the statute book. The Entertainment Duty Act was passed two years ago and was followed by the Motor Vehicles Taxation Act which came

into force from the 1st of July, 1937. The Petrol and Lubricant Sales Tax Bill is at present before the Legislative Assembly. There has been some increase of income from Irrigation and also through the reduction of working expenditure in general.

Of the development schemes expected to yield profits the Malakand Hydro-Electric Project is the most noteworthy. Originally taken in hand in 1934-35 at an estimated cost of Rs. 94 lakhs it was opened on the 23rd of April, 1938, by H. E. the Viceroy. When completed in 1941 it will not only give the Province a decent additional income but is also expected to supply electricity to the villages and towns of the Frontier at rates lower than elsewhere in India.

The inauguration of autonomy has, on the other hand, meant a further expenditure of Rs. 1,67,000 mainly on the "Public Service Commission," a "Tribunal for the trial of Election Petitions" and the Parliamentary Secretaries. It may be observed that the budgeted receipts from all sources excluding subvention is exhausted by the budgeted expenditure for "General Administration," "Justice," "Jail" and "Police" which amounts to 75 lakhs. And, due to the peculiar condition of the province, there seems little or no likelihood of a 'break' from this sad feature of the Frontier finances in the future. The administration has, therefore, to look to the not-too-willing Centre to finance the progress of the nation-building departments.

But undaunted has the Provincial Government forged ahead in its beneficent schemes. The Congress Ministry with its able and hardworking Finance Minister, Mr. Bhanju Ram Ghandi, recast Sir Abdul Qayum's budget and without further increase in taxation has saved enough to grant remission in Land Revenue amounting to 1 Lakh and provided Rs. 50,000 to sink wells for the supply of water in some of the driest regions of the settled districts. The depression in the price of sugar-cane and the consequent misery of the peasant was relieved by a further remission of one Lakh in land revenue. In the second Congress Budget the grant for sinking new wells was raised to one lakh. Besides providing for tanning, weaving and wool industries institutes, funds were granted for the construction of the much needed sanatorium for Tuberculosis at Dadar. A decent amount was set apart for carrying out industrialisation and economic surveys. To help industrialisation and to relieve unemployment, the Government purchased 2 Lakhs worth of preference shares in the Frontier Sugar Mills and Distillers Ltd., Mardan, on the condition that 75 per cent of its share capital would be contributed by the inhabitants of the Province.

The following figures indicate the progress in the beneficent services:—

	1935-36 (Actual)	1939-40 (Budget)	Increase
Education	21.40	24.19	2.79
Medical	6.16	7.36	1.20
Public Health and Agriculture	1.28	2.06	78
Veterinary and Cooperative	4.47	5.68	1.21
Industries	6	2.68	2.62
	<u>33.37</u>	<u>41.97</u>	<u>8.60</u>

(In thousands of rupees)

This increase of 8 lakhs 60 thousand is remarkable in a Province living on the "charity of the Centre."

It is evident, therefore, that either the subvention must be increased or substantial economies effected to provide more for the beneficent departments which still remain far below the standards of most other Indian Provinces. The Congress ministry has introduced revised scales of pay for new entrants to services and has curtailed allowances in a wholesale manner. The salaries of the ministers, of course, have been fixed at Rs. 500 effecting, thereby, a saving of over Rs. 50,000 per annum. Again the post of the Director of Public Instruction, hitherto always occupied by a European, was filled by a provincial servant at a much lower salary. The post of the Assistant Director of Public Health for the first time went to a member of the Provincial Medical Service at reduced emoluments. The Publicity Department has been merged into the Civil Secretariate, securing an annual saving of Rs. 14,000. The Directorate of Agriculture was abolished as a useless and costly luxury. *Inams* and *Pashto* Allowances in subordinate services have been stopped. The Travelling Allowance rules have been drastically revised. The effect of these measures on the finances of the Frontier is naturally bound to be very gradual and any government under such circumstances would find itself handicapped in its beneficent work.

Any review of the Frontier, however, would be incomplete without reference to the area beyond the settled districts, for the questions of the Forward Policy, the increase of crime, the Frontier Agencies and the Frontier States are of the utmost importance to India. A feeling has been growing, of late, that the Government of India Act, 1935, meted out an inequitable treatment to the Frontier states (Chitral, Dir and Swat) by failing to provide for their admission and their adequate representation in the Indian Federation.

The Agencies have, in effect, separated the tribal belt from the settled districts artificially and illogically. The system divides the N.-W. F. into two areas: one under an autonomous government, democratically elected, and the other, the tribal area, administered by the Deputy Commissioners of the settled Districts acting in this respect as the Political Agents "of the irresponsible and irremovable executive at the centre." Sir Abdul Qayum had clearly seen the drawbacks of this dyarchical system and had strongly advocated the gradual amalgamation of the two areas.

The Forward Policy has been, in recent years, one of the most discussed of Indian problems. Even official opinion has been sharply divided on this question. Sir William Barton has opined that progress, moral and material, is impossible on the Frontier without a Forward Policy. Sir Dennys Bray's committee reported that such a policy, even if advisable, would "involve expenditure that we cannot dream of in the present state of India's finances." Orthodox Hindu opinion has on the whole favoured the Forward Policy. But that of the Pathan Nationalist is solidly against it, and holds it responsible for the disturbances in Waziristan, and for the tribal raids. Subjection of the tribes by military force is costly nor does it offer any permanent solution. It is urged that the raids are economic rather than criminal or even religious in their nature, for the tribal area is neither self-supporting nor at present self-sufficient. The tribes have no means of livelihood and their pacification by monetary grants and allowances is criticized as immoral, for it merely serves to whet the tribal lust for money, more money and more money. A permanent solution would rest on the amelioration of their economic conditions. The tribal area must be industrially, commercially and agriculturally developed. Doubtless, the problem is a colossal one, but, argues the Pathan, the vast sums spent annually on military operations, if spent on economic uplift, would soon bear fruit. The tribes must be tamed and their poverty removed. It must be noted that the number of raids has actually increased since the Waziristan operations were started. And, in spite of an additional cost to the Central Government of 3 crores and well over a thousand casualties, "The Faqir of Ipi remains as elusive as ever."

Only a full cooperation between the Frontier and the Central Governments can solve the problem. Dr. Khan Sahib has repeatedly stated that a permanent settlement can be arrived at only by handing over the administration of the tribal areas to the Government of the N.-W. F. P. The Government of India, according to Sir Aubrey Metcalf, the Political Secretary to the Government of India, had not considered the question of accepting the advice of

the Frontier Premier since the control over the tribal area was, under the provisions of the Government of India Act, 1935, the responsibility of the Central Government. Recently, however, the Governor of the Frontier granted an interview to Khan Abdul Ghaffar Khan and it is believed that the question of tribal unrest was discussed.

The alarming increase in crime since 1937 has been a most disconcerting feature in the Province. Amidst murder, dacoity and tribal raids the Frontier has been living through a veritable anarchy. Bannu, Kohat and D. I. Khan have a terrible tale of woe to tell. In the Province 781 murders and 1,918 burglaries and dacoities took place in the year 1938. The total number of civilians kidnapped from the settled Districts and the Agencies by transborder men during the period was well over a hundred. Large ransoms have often been paid. The damage to life, property, trade and commerce has been incalculable and the never-ending anarchy has scared the public—particularly the Hindus—and has made them impatient and restive.

Much blame is naturally heaped on the Congress Government. It is criticised as ineffective and inefficient. The Government has granted compensations to the victims, but these are inadequate and fail to offer a satisfactory solution. Dr. Khan Sahib, however, has stated his difficulties in no unconvincing manner. Of all the protective forces the Police alone is under the Frontier ministry; the Army, the Frontier Constabulary and the Khassadar Force being under the control of the Agent of the Political Department. Unity of control over the whole area and over all the protective forces, Dr. Khan Sahib maintains, is a necessary condition for the maintenance of law and order. He denies that the raids have any communal aspect. It is true that the Hindus have suffered more, but that is because the question is an economic one and the Hindus, being the richer, are hit the hardest.

H. E. the Governor has always evinced a great interest in the suppression of crime and has assured his cooperation in the matter. Sir George has been tactful and sagacious and has worked with the ministry in a spirit of harmony and cooperation. In his speech at the opening of the New Assembly Hall, recently, he declared that his Government was determined to restore order and to put an end to the existing state of affairs.

II PROHIBITION*

BY

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I do not propose to dwell at any length on this occasion on the distinctive conditions which prevail in India concerning the use of excisable articles. It has been frequently observed that all our traditions, our instincts and our religion—I am referring to Hindus and Muslims alike—are opposed to the use of liquor and drugs. Society condemns such use and, what is more, consumers themselves realize that they are offending against public opinion. Nor do I wish to enlarge upon the manifest duty of Congress Ministries to implement the declared policy of the Congress on this important matter. The Congress has been committed for the last 55 years to a policy of total prohibition and it would be both intolerable and inexcusable if, when the Congress has the power, it should not take the earliest opportunity to execute the programme it has so strenuously advocated in the past.

My present object was to approach this question from a somewhat different angle and to discuss the aspect which, I know, is troubling many people, viz., the duty and the difficulty of raising funds to make good the deficit which is bound to be caused to the public exchequer by the extinction of the excise revenue. I shall be forgiven if I say that at least some of the opposition to the prohibition policy pursued by the Congress Ministries is due to the fact that those opponents who belong to the intelligentsia, the educated middle classes, feel that in the very nature of things they will be called upon to shoulder additional burdens of taxation to supply the needs of the public treasury. Prohibition in the past as a somewhat distant adorable ideal appealed to Indians of all classes, educated and uneducated alike, but now that the time has come when that goal is within a measurable distance of achievement, hesitation to go forward is somewhat naturally felt by some who apprehend that they may be called upon to pay the price of freedom from the demon of intoxication. We are told that the experiment has not proved

* An address delivered at the Progressive Club, Allahabad, on August 15, 1939.

successful in any part of the world and that we should proceed slowly and cautiously. Even now no one is against the promotion of temperance, and no one is even opposed to the advocacy of a propaganda which may bring about by voluntary means total abstinence on the part of consumers. But it is stated that the coercive process of a prohibition policy may defeat itself and may lead people to satisfy their craving by resort to illegitimate means and by recourse to the illicit distiller and the smuggler; and in support of these criticisms it is particularly pointed out that illicit distillation has increased, and is bound to increase in future, and this fact by itself, it is suggested, is sufficient to establish the failure of prohibition.

As I have already said I do not propose to dwell on this occasion upon moral and religious considerations. But I must say that if the saving of the excise revenue is the main object then that object would be defeated, whether we follow a policy of prohibition or a policy to bring about total abstinence by voluntary choice on the part of the people. The more sincere and strenuous the propaganda for the furtherance of total abstinence the greater will be the jeopardy to the excise revenue and whenever that propaganda succeeds the excise revenue will substantially disappear and the difficulties for replacement of the lost funds will emerge. One might almost say that people who wish to preserve the present revenues and still talk about temperance and total abstinence want to have the cake and eat it too. The two things cannot possibly go together.

Another point which should be emphasized at the very outset of this discussion is the fact that illicit distillation does not cover entire field. Excise revenue in the United Provinces, as in other parts of India, is drawn from several sources. It includes revenue derived from foreign liquor, country liquor and *tari* (toddy), along with opium and hemp drugs, i.e., *charas*, *ganja* and *bhang*. It is not generally known that so far as the United Provinces is concerned the revenue from opium and drugs is almost half of the entire excise revenue. Taking the figure of 1936-37 as an illustration, out of a total revenue of about a crore and a half, 70 lakhs were under the heads opium and drugs and 66 lakhs came from country liquor, 7 lakhs were the proceeds from *tari* and the balance from other heads, such as foreign liquor, etc. It is apparent that so far as opium and hemp drugs are concerned illicit distillation has no relevance whatsoever. Illicit distillation only applies to country liquor and nothing else. I shall deal with that aspect later, but here I may point out that among the drugs, leaving aside *bhang*, Government has a virtual monopoly.

ly. It either both produces and distributes or it is the sole distributor. Governments in India can, if all the provinces and the States were to act together, eradicate the use of drugs (excepting *bhang*) from all over the Indian continent without any difficulty whatsoever.

Excise revenue is in reality a source of taxation. So far as the provincial revenue is concerned it is an important source. Taking the United Provinces figures as an example, out of the total revenues of about 13 crores, nearly 11 per cent is drawn from excise and if we leave aside land revenue to which entirely different considerations apply, excise revenue may be said to have formed the chief head of revenue in the province. I believe in other provinces the situation is very much the same and indeed in some provinces, such as Madras and Bihar, excise revenue occupies a still more important place among provincial receipts. Had this revenue been drawn from the bulk of the people in the province, then something might have been said in favour of, at least, its equity. It was something which everybody was contributing. But we must not forget that in India excise revenue is not derived from the people as a whole. Fortunately the vast majority of our countrymen abstain from the use of drink and drugs alike. It is very difficult to give even approximate figures of consumers and the margin of error in any calculation is bound to be very great but if we were to make an estimate on the basis of average consumption per head each year then it has been calculated that consumers of country liquor in the United Provinces cannot possibly exceed two lakhs and a half, and of opium one and a half lakh; and of other drugs about two lakhs.

The entire excise revenue falls upon these people. They are five to six lakhs at the very outside and form about 1 per cent of the population. Then further it is well known that these consumers do not hail from the upper or even the middle classes but are drawn in the main from the poorest in the land. Many of our brethren of the scheduled castes are addicted to drink and drugs. The economic condition of these consumers is of the saddest and the payment of this revenue must mean a terrible drain upon their financial resources. The question that I should like to be considered dispassionately is how far the State is justified in imposing this extremely severe and, one might almost say, oppressive tax on these poor people. Before I develop this point further I might at once invite your attention to the great difference in the local conditions prevailing in the western countries and their bearing on the excise revenue. Everywhere, I dare say, excise revenue plays an important part in the Government budgets

but the use of liquor and wines in the western countries is common among all sections of the communities, rich and poor. The aristocrats, the upper ten, the middle classes and the lower classes all alike by tradition and by common custom consume liquor and all alike, therefore, are taxed. The poor man who takes a glass of beer contributes a few pennies to the treasury and the rich and well-to-do man when he drinks his peg of whisky or champagne contributes his shillings and pounds to the exchequer. Bearing in mind the habits of the people it seems to me that excise revenue may in England be considered to be a very fair and equitable tax, the burden falling on practically all alike in proportion to their ability to pay, but, as I have pointed out above, the conditions in India are entirely different and the question for our consideration is how far it is indeed moral that the comparatively well-to-do classes should seek sustenance from excise revenue derived from these poor people.

It has been recently said that the use of liquor in moderation is beneficial to the human frame and it has been urged that for industrial factory workers it may almost be a necessity. Appeal has also been made to the liberty of the individual to have his glass or peg of country liquor, and I must say that during recent months virtues and merits have been discovered in country liquor and *tari* which were up till now almost hidden. Most of this is obviously special pleading and takes no account of the fatal facility with which a moderate consumer may rapidly degenerate into an addict. But assuming that this is all quite correct, the consumer may very well turn round and say that he commits no crime in consuming any excisable article and he knows of no reason why these particular commodities should be so heavily taxed to his ruination. The extent of this tax is, I fear, not generally realized. For example, if you take the case of *charas* of which the Government is the sole distributor in the province, Government used to get its supply from supply contractors at about Rs. 2-8 per seer delivered at the warehouse and that *charas* is now sold at a fixed retail price to the consumer at Rs. 2-4 per tota, i.e., to say at Rs. 180 per seer. Out of this sum about Rs. 160 per seer go to Government, that is to say, for an article worth intrinsically Rs. 2-8 per seer which should be available for retail sale to every consumer, supposing there were no tax upon it at all, at the most for Rs. 20 per seer the consumer has to pay Rs. 160 per seer. This works out to about 800 per cent over and above the retail price. Similarly take the case of opium. Opium is manufactured entirely by the Government of India. It is supplied to the Provincial Governments at the rate of Rs. 19

per seer more or less, and the net revenue that Government derives from every seer of opium in the shape of duty and licence fee (after deducting the cost price) is about Rs. 150 if not a little more. Opium is also sold at Rs. 2-4 per tota, i.e., Rs. 180 per seer, and the rate of tax can be easily found out. The same condition prevails about country liquor. Country liquor in the United Provinces is manufactured at private distilleries which are under contract to supply it to Government. The provincial average rate of supply is twelve to thirteen annas a gallon and the duty and licence fee comes to about Rs. 15 per gallon. That is to say the tax is about 20 times the cost price at least. I repeat that if you look at it from the point of view of civil liberty to drink and take opium and drugs then a consumer may very well say that it is oppressive and tyrannical that a poor man with an income of Rs. 10 a month should be fleeced in this fashion. He may urge that if Government is keen that the use should be in moderation, and that all excess should be avoided, then Government may adopt all possible and even rigorous restrictive measures to regulate sales and to ration supplies but whatever may be the permissible quantity, it should be made available to him at a reasonable price. I am aware that ostensibly it has been the declared policy of the Indian Governments, both central and provincial, in the past, to prevent excess, but so far as country liquor is concerned no limits of sale have been prescribed and it is open to any individual, provided he has the money or can beg, borrow or steal the same, to drink himself to death by purchasing as much liquor as he likes. The only thing that he is called upon to do is to pay the excise tax on every bottle of liquor. The important point, therefore, to be considered by us of the middle classes, particularly educated middle classes who derive the most benefit from the excise revenue in the shape of universities, colleges and high schools, roads and other amenities of life in the cities, is how far it is consistent with justice, and may I say, even morality that the poorer classes should be continued to be taxed in this fashion for our benefit? There can be no denying that in a sense excise revenue is tainted revenue. It is founded upon the infirmities of mankind. All this talk, we know, about moderation, etc., is moonshine. Moderation in the use of liquor according to past experience in India is difficult to achieve.

The real point may be put in this way. If the use of excisable articles is bad and injurious, the State should take all possible means to stop it, just as it has forbidden the use of cocaine and other drugs irrespective of any consideration of deriving revenue from their regulated sale under State auspices. If, on

the other hand, it is not so injurious and may possibly be beneficial, then there seems to be no justification whatsoever for singling out the very limited number of consumers of excisable articles in this heartless manner for extremely onerous taxation. From either point of view excise revenue is liable to extinction or at least to substantial reduction. If prohibition is enforced it disappears, if taxes are reduced it may become insignificant. This is the dilemma.

Coming now to this new discovery about supposed benefits from the use of liquor, I am glad to find that no one has ventured to deny that *charas* is one of the most deleterious and harmful drugs. It does no good of the slightest kind to anybody. Government has a monopoly in its distribution and it derives substantial revenue to the tune of about Rs. 15 lakhs, if not more, from *charas* alone. *Charas* of the requisite quality, flavour and potency, *charas* which is fancied by the consumer, cannot be manufactured in India. It is brought into India under direct Government control all the way across the mountains from Chinese Turkistan. It is stored in warehouses at Hoshiarpur in the Punjab by the traders who import it from Chinese Turkistan and from Hoshiarpur it is distributed to all the provinces and States under direct Government supervision. The stoppage of *charas* is a matter which presents no difficulty whatsoever. Rates of duty and retail sale prices of course vary from province to province and it is sometimes urged that, inasmuch as the duty in the United Provinces is higher than that levied in the Punjab and some of the neighbouring States in Rajputana and the Punjab Hills, there is a danger of the smuggling into the United Provinces of *charas* which may have been otherwise legitimately purchased elsewhere outside the United Provinces. On enquiry I have found that, while this danger exists, it has been grossly exaggerated. In the Punjab the sales are falling and there have been no indications of any abnormal increase in sales from which one might deduce the export of *charas* from the Punjab into the United Provinces. The difference in the duty undoubtedly exists, but then we must remember that the smuggler runs risks and has to incur extra expenses in illicit distribution in the United Provinces of the smuggled article and this extra expense may well wipe out the difference between the rates of duties in the two provinces. But looking at this problem from an all-India aspect I suggest that if all the provinces and States were to combine and prohibit the use of *charas*, all difficulties about inter-provincial smuggling will disappear.

The case of opium presents still less difficulty. It is manu-

factured in India and is not imported from outside India. The Indian Government till about 30 years ago used to make crores out of opium exports to China but they had to bow to the pressure of the world's public opinion and it is a matter of history that all exports to China have now ceased. Still in India thousands of acres of land are devoted to poppy cultivation. Opium is manufactured in Government factories and sold out to poor consumers at exorbitant rates. This curse can be banished from the land if only the Governments of British India and Indian States were determined to do it. It is amusing to read ingenious defences of the sale of opium on the part of the Government of India from time to time. This question has been raised in the League of Nations on several occasions and the Government of India have persistently justified the sale of opium. In a Despatch of March 24, 1921, Lord Reading's Government quoted with approval the previous Despatch in 1911 of Lord Hardinge where it was said that "the opium habit as a vice scarcely exists in India, that opium is extensively used for non-medical and quasi-medical purposes in some cases with benefit and for the most part without injurious consequences, that the non-medical uses are so inter-woven with the medical uses that it would not be practicable to draw a distinction between them in the distribution and sale of the drug and that it is not necessary that the growth of the poppy and the manufacture and sale of opium in British India should be prohibited except for medical purposes." And it has further been said "that it has long been recognized that any attempt to eradicate by law the use of opium would be open to all the objections involved in bureaucratic interference with popular custom." Then the writer in almost poetic language continued "eating opium is largely quasi-medical; it is used for the prevention, cure and alleviation of disease, as a prophylactic, as an anodyne and as the commonest and most treasured household medicine of the people to whom qualified medical assistance is inaccessible. It is also taken as solace, as a tonic and as restorative to lessen or avert fatigue and in other ways in which, when moderately used, it is relatively innocuous." The writer should have added further in mere prose, that it incidentally also adds crores of rupees to the treasury of the British Government in India. I do not know whether the middle classes of India are prepared to justify the retention of the opium trade on the grounds urged by this writer; and if all these benefits are conferred by this treasured household remedy then I repeat once again that it is almost criminal that the poor people who use it should be so heavily taxed. The truth of the matter

is that opium is very seldom used for these health-giving purposes. The people who do use it are called *afimchies* and lose the vigour, both of body and of mind, and become almost physical wrecks. It will be useful here to refer to the experience gained at Etah and Mainpuri last year when the general sale of opium was stopped but permits were issued to addicts. In Etah district 129 permits were issued and in Mainpuri 168. In Etah out of a total consumption of 180 seers in the year 1937-38, the permit-holders had obtained $10\frac{1}{2}$ seers in 1938-39, and the corresponding figures for the Mainpuri district were $157\frac{1}{2}$ seers and 28 seers. No reports have been received of any dire consequences felt in any part of the two districts on account of the stoppage of the sale of opium. The figures in *charas* are equally instructive. The number of permit-holders was altogether 46 in two districts and instead of the previous consumption of 623 seers only nine seers were issued to the permit-holders. The consumption both of *charas* and opium has fallen considerably all over the province in the year 1938-39 owing to the restrictive measures adopted, such as the increase in rates and the closure of many shops and the introduction of the State-managed agency system, and there is no apprehension of any appreciable smuggling of opium and *charas* in Etah and Mainpuri districts and the figures referred to above may be taken as fairly accurate. The trade in *ganja* is also under Government control. *Ganja* is the dried flowering top of the hemp plant. It is commonly used in the eastern districts of the United Provinces and is imported from the Government godowns in the Rajshahi district in Bengal. It is also a source of considerable revenue and its use can be stopped. It is entirely injurious.

Then comes *bharg* which is a comparatively cheap stuff and is not considered to be so injurious as *charas* or *ganja*. As is well known Brahmans such as *Pandas*, *Ganga Putras* who are found at places of pilgrimage are mostly addicted to the use of *bharg*. In the Etah district at Soron there was almost consternation when the news of the prohibition of *bharg* spread in the district and many of the *Pandas* there thought that they would not be able to live without it. They said that they had become accustomed to it by the use of generations but the results have been very gratifying. In the two districts in the year 1937-38, 2,477 seers were issued and in the prohibition year 1938-39 there were only a few permit-holders and only 14 seers were issued.

I have dwelt at some length on this question of drugs because very often the urgent necessity of the prevention of the use of these drugs is overlooked and attention in public discus-

sions is concentrated on illicit distillation and its prevalence as if that is the sole factor to be taken into consideration and nothing else. I come back again to my main thesis that if there is general agreement that traffic in drugs should be prohibited then this province alone would stand to lose about 70 lakhs of rupees of revenue taking the 1936-37 figures into consideration and we must reconcile ourselves to the loss of at least as much of the excise revenue.

I come now to the case of country liquor and here every prohibitionist is warned that the ship will founder on the rocks of illicit distillation. A cry is now being raised that illicit distillation has already increased and every scrap of news detailing the detection of any case of illicit distillation is seized upon as proof positive of the spreading of the disease. I am compelled to say that most of this criticism is uninformed and uninstructed and is based upon an imperfect appreciation of the conditions of the problem. I noted at the time that much was made of the observations made by the Excise Commissioner in his annual administration report for the year ending March 31, 1938, about the wide existence of illicit distillation in the province. In the zeal for condemning the prohibition policy many of the critics overlooked that the period dealt with in the report was one prior to the introduction of prohibition in any part of the United Provinces. In the year 1937-38, excise administration continued to run on the old lines and apart from the fact that strict instructions were issued in August, 1937 immediately on the assumption of office by the present Ministry, about the rigid enforcement of the existing departmental rules about the hours of sale and such other cognate matters, no other change was effected in the excise administration. The new programme came into operation from April 1, 1938. All critics however overlooked that successive Excise Commissioners have been commenting on the spread of illicit distillation in the province for many years past. Even a cursory examination of the annual administration reports from the year 1926 onwards will show that according to the Excise Department the evil of illicit distillation is becoming rampant in the province. It will be tedious to quote extensively relevant passages from these reports year after year. For instance, in the report for the year 1926-27, the Excise Commissioner observed "that there are reasons to believe that the crime of illicit manufacture of liquor exists practically all over the province and is not confined to any particular districts or group of districts." "The extent of the crime," it was observed, "probably varies a great deal from district to district and depends mainly on the

numerical strength of castes like *Pasees* who are versed in the art of distilling, inhabiting the district and on the relative abundance of the supply of *mahwa* flowers. From this point of view it is rather disquieting that cases of illicit distillation were detected during the year in which the men belonging to the higher castes were involved." Then after referring to a number of such cases the Excise Commissioner went on to say "that these cases indicate that the crime of illicit distillation is no longer confined to low caste people but has spread to members of the so-called higher castes and Muhammadans also. The difficulties and risks attendant on the detection of such cases have consequently also correspondingly risen." The same point was made in the next year's report for 1927-28. In the report for 1928-29, the Excise Commissioner again said, "that the disease has spread to almost every district in the province," and in order to illustrate the rapidity with which the evil had spread and the extent to which it has increased, he quoted crime statistics from the year 1920-21 onwards. A point was recently made that not only was illicit distillation rapidly increasing but that it was being carried on in most ingenious ways to escape detection and it was suggested that that was another proof of the failure of the prohibition policy. It is interesting to note that even in 1929 the Excise Commissioner quoted the Deputy Commissioner of Rae Bareilly district as saying "that illicit distillers of liquor are getting wiser and more cunning by experience and keep their stills outside their houses where a raid is ineffective and the offence cannot be easily brought home to them." These were the days when the sur-charge system was in operation. In 1932-33 that system was changed and was replaced by the auction system. One of the grounds given for this change was the wide prevalence of illicit distillation and it was argued that the lowering of prices by the lowering of duty would increase consumption and also minimize illicit distillation. Under this system no minimum prices were fixed and it was left to the will and option of all licensed vendors to sell country liquor as well as drugs at any price they liked. Inasmuch as the incentive of private profit was an inherent ingredient of the system, competition prevailed and all licensed vendors endeavoured by legitimate and illegitimate means, and by employing all sorts of seduction, to increase sales. They succeeded to a large extent, consumption went up all round much to the profit of the public exchequer, and in three or four years excise revenue mounted by about 35 lakhs of rupees, but according to the Excise Commissioner illicit distillation went on as merrily as ever. If it was the object of the auction system, as in force up till the year 1937-38,

to check illicit distillation then the system signally failed and stood condemned. The report for the year 1934-35 is emphatic on the point. The Excise Commissioner says that illicit distillation has now become a problem of first-class magnitude and that the complaint is loud and general that illicit distillation has grown at an alarming pace and continues without an effective check. Not only has it increased in districts which were already known for it but other places have got the infection. During the year illicit distillation was reported from 46 districts while there were cases relating to illicit possession, sale and transport of country spirit in all districts. The growth of illicit distillation has been greatly assisted by the abundance of *mahwa* in some districts and in other parts by the extraordinary cheapness of molasses which has resulted indirectly from the development of the sugar industry. The Excise Commissioner stressed the fact that "the illicit distiller thrives under the secret protection of the most moneyed and influential men of the village." The Excise Commissioner in passing also observed "that the consumers generally prefer illicit liquor because its expense is insignificant as compared with the price for which licit liquor is obtainable. The great disparity of prices beyond question is a principal factor in stimulating consumption of illicit liquor." Next year (1935-36) the Excise Commissioner began his observations by saying that "the wide prevalence of illicit distillation is a subject which is stressed in these annual reports year after year and considering the proportion which the evil has assumed the measure of success achieved in its suppression cannot by any means be considered gratifying." And in the year 1936-37 immediately before the acceptance of office by the Congress Ministries, the Excise Commissioner made still more emphatic remarks and he stated that the magnitude of the problem of illicit distillation had not materially lessened in any way. These by no means exhaustive quotations conclusively show that according to official opinion and testimony illicit distillation had become a gigantic evil long before the prohibition policy was launched by the present Government and I suggest that it is not correct to argue that prohibition has led or would lead to further increase in illicit distillation.

Illicit distillation can be definitely checked by one of three methods. It may be extinguished if by reason of wide public education in the matter, national conscience is aroused, and total abstinence becomes the order of the day thereby causing the illicit distiller the entire loss of his market. Illicit distillation may again be stopped, at least substantially by rigorous enforcement of coercive and deterrent processes. This requires very considerable

strengthening of the detective staff and vigilant detective work by the authorities concerned. Finally, illicit distillation may be checked by depressing the profits of the illicit distiller and thus making it not worth his while to carry on his trade. This object can only be achieved, as the Excise Commissioner remarked in a passage to which I have already referred, by reducing the price of licit liquor to such an extent as to make it not profitable for any consumer to have recourse to the illicit distiller. Obviously this is a counsel of perfection for the average cost of manufacture of licit liquor does not exceed annas 12 to 13 per gallon and the cost of illicit manufacture is purely nominal. If the Government were to enter into a sort of competition with the illicit distiller by reducing prices then the price of the licit article would have to be reduced beyond measure and the present excise revenue from country liquor would drop to an insignificant figure. Unless the price is so reduced the margin of profit between the retail price of the licit liquor at the licensed vendor's shop and the cost of manufacture of the illicit liquor would always be so enormous as to tempt every individual so inclined to embark upon the profitable adventure of illicit distillation. I sometimes think that the problem has not been correctly approached and the statements of supposed facts may not be necessarily accurate. As there is no measure for truly gauging the extent of illicit distillation, inferences are drawn from the statistics of excise crime. If the number of cases detected increases it is supposed that illicit distillation has become rife and *vice versa*. Proper allowance in my opinion is not made for the human factor. Detection may depend largely upon the ability and keenness of the particular excise officers and it may be almost misleading to infer from the statistics in a particular district as to whether illicit distillation is spreading or not simply on the basis of the number of detected cases. Then again there may be a class of consumers who would not go to an illicit distiller at all. They would buy liquor if they can get it at a licensed shop and if the licensed shop is not easily accessible or the price is beyond their means then they would desist altogether. This must be so because of the rise and fall in consumption following in the wake of the increase and reduction of retail prices and it is also well known that the number of shops has a bearing on the total consumption. Apart from the enforcement of the total prohibition policy in some districts, the present Government has endeavoured to reduce consumption by adopting several restrictive methods. The number of shops has been considerably reduced. In the two years, 1938-39 and 1939-40, the total reduction is in the neigh-

bourhood of 40 per cent. Duty has been increased and fixed retail prices have been prescribed. It is not now permissible for any licensed vendor to attract custom by selling liquor or drugs at reduced rates. This has eliminated unhealthy competition between rival licensed vendors. These two methods coupled with a rigorous enforcement of the Excise Departmental rules relating to hours of sale, etc., have considerably lowered consumption. This gratifying result is not limited merely to country liquor but is evident also in the case of opium and drugs (excluding *bhang*). The figures indicate a reduction in consumption by about 33 per cent more or less all round. The experiment of the sale of country liquor and drugs through the State-managed agency has yielded still more remarkable results. Too much stress cannot be laid on the unwholesome effect on the liquor trade by the operation of the motive of private profit. A private licensed vendor employs all possible means to attract custom to his poor customers who live in hovels. He provides the amenities of music and good-fellowship. If electricity is available then he furnishes his shop with electric fans and radios and loud-speakers. He is, I dare say, in spite of excise rules accommodating to his favourite customers and is an adept in the art of seducing unwary beginners into greater indulgence of their fond desires. The State-managed agency is intended to eliminate this profit incentive altogether from the liquor traffic. The trade is entirely under State control and the salesman has no inducement for increasing sales. All rules are rigorously observed. The results achieved have been remarkable. Wherever the system has been introduced, it has been found that in the State-managed shops consumption has fallen by about 50 per cent if not more. This reduction is not confined merely to country liquor but also extends to opium and drugs. This is important because so far as the consumer is concerned it should make no difference to him whether he buys his packet of opium or drugs from a licensed vendor or from a State-managed shop.

Accounts received from all quarters, official and non-official, from the two districts of Etah and Mainpuri where total prohibition was introduced on April 1, 1938, have been most encouraging and do not indicate any increase in illicit distillation. On the contrary widespread public propaganda which was organized by all sections of the community and which penetrated every nook and corner of the two districts aroused real enthusiasm among the people for total abstinence and has resulted in gratifying results. According to the report of the Commissioner of the Agra Division "the work has been well begun on a solid basis and is meeting

general acceptance. Results are most praiseworthy and in my opinion reflect most creditably on the district staff." Detailed enquiries made in several villages by competent social investigators and also visits made by ladies interested in prohibition showed unmistakably the real reform in the life of the people directly due to prohibition. Addicts have given up their old habits and in their homes there is more food to eat and cloth to wear. Women-folk, one lady observed, were loud in their praises and blessings of the new policy because they were the direct recipients of its benevolent results. This is not strange because, as the Excise Commissioner remarked so far back as 1931, "at the price fixed by the department for a bottle of licit spirit in the rural area 45 seers of wheat can be purchased; and similarly one tola of *charas* costs as much as 30 seers of wheat." This is really the fundamental justification for prohibition. To exercise adequate supervision the excise staff in each of the two districts was increased from two excise inspectors and four peons to six excise inspectors and 48 peons and yet the number of cases of illicit distillation detected fell in Mainpuri from 37 in the year 1937-38 to 7 in 1938-39 though it rose in Etah from 7 to 29. The Excise Commissioner is satisfied that the apprehended danger that the crime of illicit distillation might increase has proved groundless and he attributes the increase in the number of cases in Etah to the appointment of extra staff. The total quantity of country spirit consumed in the two districts in the year 1937-38 was 7,175 gallons and the figure fell to 10 gallons in the year 1938-39. Prohibition has now been extended to four more districts in the United Provinces and the first quarterly report received from all these districts fully corroborates the experience gained in Etah and Mainpuri. While considering the question of illicit distillation and its bearing on prohibition, one must not lose sight of the real question, namely, whether there has been owing to prohibition any diversion of custom from the licensed liquor shop to the illicit distiller. There may be some people who resort to the illicit distiller for their supplies, prohibition or no prohibition, but if it is established that the old customers of the licensed shops have practically ceased to drink then prohibition must be said to have succeeded. There is no evidence of such diversion forthcoming in the districts of Etah and Mainpuri. On the contrary, all indications point the other way. Then again we must also remember that it is not so very difficult to find at least in the rural areas whether total abstinence is gaining ground or not. While country liquor is also consumed by individuals in small quantities the custom in many communities is for its, if I may use the

expression, collective or congregational consumption on the occasion of feasts and marriages and such other social events. On such occasions large quantities are procured and necessarily procured from licensed shops. It is easy to discover, on enquiry, whether prohibition has led to a change of practice on the occasion of these festivities. Here again evidence exists that people have voluntarily abstained from drink and that is in my view a positive test in favour of the success of prohibition in India. I may add that owing to long distances and small populations in scattered villages beneficial results in rural areas may not readily leap to the eye but in populous cities like Ahmedabad the effect is definitely visible. The Bombay Government have introduced since last year prohibition in the Ahmedabad City and sacrificed about 36 lakhs of revenue. I was told that this led directly to a saving of over a crore of rupees on the part of the consumers. In Ahmedabad enquiries have established the fact of a considerable expansion in the trade in cloth and articles of food and industrial workers who were the chief consumers are better off economically and have invested their savings in purchases of gold and silver ornaments. An encouraging report of this nature was also received from personal investigation in some villages of the Mainpuri district.

Excise Commissioners in the past have repeatedly referred to the lack of public co-operation in the cause of temperance. I do not know whether any real and genuine efforts were made to secure such co-operation. An anxiety to increase revenue and a sincere desire to promote temperance do not appear to be easily reconcilable; but with the introduction of the present prohibition policy official and non-official effort is in unison and I can speak from personal knowledge, having attended a large number of meetings in towns and villages, that ready response is forthcoming wherever prohibition has been introduced and a demand for its extension is becoming more and more insistent. From an administrative point of view there is good deal to be said in favour of its speedy extension to the whole of the province. At present the prohibition districts are faced with the problem of smuggling from across the bordering districts but the wider the prohibition area the lesser would become the danger of such intra-district smuggling; it may also make detection easy because mere proof of being found under influence of liquor may make a man liable to punishment for the offence of its illegal possession. And further I dare say that a bold introduction of prohibition in the entire province might catch public imagination and arouse public fervour to a very high degree, but financial considerations and also the desirability of moving according to a plan of some years'

Professor Gyan Chand, is by far the more important; for although birth-rate has had its variations, depending on a number of circumstances some of which are rather obscure, variations in the death-rate have been much wider and have exercised greater influence over our population. It is true that the appalling loss of life, that is, and probably will, for some time, remain normal in India is an unmixed evil; but whatever measure of success we can achieve in our measure against death, it will make the task of mitigating the sordid poverty of our people proportionately the greater unless we are able to bring down the birth-rate as well or unless we are able to improve the economic position of the country by industrialisation or any other means.

In the next three Chapters, VIII, IX, and X, Professor Gyan Chand goes on to analyse the present economic position of India and to survey comprehensively the possibilities of increasing production, keeping in view all the time the needs of two to three millions annual increase to an already all too large a population. He surveys in detail the possibilities of growth of the cotton industry, of the jute and tea industries, of the iron and steel industry, and of the sugar, matches, cement, and paper industries in India, but feels that such possibilities would be hardly sufficient to meet the needs of the situation. Economic development, argues Professor Gyan Chand, is not merely a matter of resources—the remarkable progress of Japan has been achieved in spite of the well-known poverty of her resources; it is primarily a question of enough driving power and organisation and ‘our ability to make appropriate and adequate economic and social changes in the whole economy of our national life.’ In this connection he deplores the lack of political freedom in India: for so long as the control of British Imperialism remains, India cannot be free to try the daring remedies necessary to raise the standard of the life of her people. He is clear in his own mind that such remedies are possible only by the method of planned economy: but the planning of economy is not quite so easy in India as some of the academic economists are inclined to believe.

Economic planning presupposes the existence of a purpose, an ideal underlying the whole scheme, and needs to be operated comprehensively, that is, in the country as a whole: and the political situation of India at the present time hardly permits of a unity of objective, purpose, and action. The reservation of Defence and External Affairs, the creation of the Reserve Bank and the Federal Railway Authority and placing them, along with the power of Tariff policy, outside the control of responsible ministers, the adoption of indirect election for the Federal Legislatures and giving the nominees of the Rulers of Indian States and the representatives of special interests a highly weighted position—are all devices for holding the progressive forces in check and strengthening the reactionary ones. Anyhow, India is passing through a period of struggle which is likely to become more intense and involve even greater conflicts of interests and purposes than exist at the present time; so that successful economic planning, in the sense of a comprehensive reconstruction of our entire national economic life, is out of the question in the context of the present conditions.

It will be clear from this analysis that Professor Gyan Chand's view is quite comprehensive. His conclusion that what India needs at the

present moment is a check on the growth of her population is nothing very striking; but his argument is materially rich and substantial. It is true that his sentences are sometimes awkward and his thought sometimes confused: that is not because he has very little to say, but because he has too much to say and has at his command a whole army of facts which he wants to compress and from which he has to select.

There is one word, however, which we might add. Professor Gyan Chand's criticism of the socialist view that population has nothing to do with the economic distress of the masses is hardly well made. To damn a view by calling it a ‘polemic’ or a ‘tradition’ is not a sound method of intellectual argument. A certain amount of rational control of population is indeed inevitable for the success of a scheme of national planning as the Russians believe in; but to say that is not to prove that the socialists believe a large population to be the cause of the economic distress of the masses or that a smaller population would lead to the betterment of the standard of living. The standard of living is determined primarily by the economic position of a community, and economic position is primarily dependent upon the organising and driving faculty of that community. It may be possible for Professor Gyan Chand to argue that the socialist dream of ‘an absolutely sound social economy’ is an illusion; but it seems to us quite irrational to deny the validity, within the context of that dream, of the view that the size of a population has no relation at all to its economic standard of life.

BOOL CHAND.

TESTAMENT OF INDIA, by Ela Sen. Allen & Unwin, London, 1939.
Price 7s. 6d. net.

This book gives an account of contemporary India and her struggles ‘during the last twenty years as reflected in the lives and works of her great men—from 1919, when Gandhi returned from South Africa and put into practice his creed of non-violent non-cooperation, up to the day of Jawaharlal Nehru and the Younger Socialists,’ shedding a flood of light on India's major problems like Terrorism, Communalism, the Peasants’ and the Women's movements.

The account of Terrorism is particularly outspoken and courageous. The authoress seeks the psychological explanation of the terrorist mentality in the English writings of the 19th century, which were set for Bengali schools and colleges and which were full of calumnies of the Bengali people. Macaulay, for instance, says, in one of his Essays, of the Bengalis: “What the horns are to the buffalo, what the paw is to the tiger, what the sting is to the bee, what beauty according to the old Greek song is to the woman, deceit is to the Bengalee. Large promises, smooth excuses, elaborate tissues of circumstances, falsehood, chicanery, perjury, forgery are the weapons, offensive and defensive, of the people of the Lower Ganges.” It is undeniable that such calumnies rankled deep in the minds of the people, but among the historical causes of terrorism due importance, I think, ought to have been given to the

duration, has led to the procedure of progress by well-marked stages. My conclusion from experience is that prohibition has definitely come to stay. It has been one of the cherished ambitions of the Congress and the Congress is determined to execute its policy. Even non-Congress elements in the province have supported whole-heartedly the Congress Ministries on this question. If anything, we in the United Provinces have been blamed for proceeding slowly. The masses favour it, not only favour it but clamour for it. It is a boon and a blessing to the poor people who are afflicted by this curse of drink and drugs and the question for the educated middle classes is whether they would lend all their weight towards the furtherance of this noble and sacred endeavour or stand in its way. Of one thing I am convinced that there can be no such thing as any inevitability of gradualness in a matter of this kind. Mere pious talk of a tepid lukewarm temperance would not serve the purpose. We have got to adopt a bold and energetic policy and to save lakhs of poor people from themselves.

I fully realize the insistent necessity of funds for a variety of nation-building activities. Government needs all the money it can get and while I agree that every possible effort should be made to increase the national wealth and the purchasing power of the masses at the same time, the hands of the clock cannot stand still, and all work, even productive work, needs expenditure both recurring and non-recurring in the beginning. Questions of taxation will naturally arise. These will give rise to sharp differences of opinion but these conflicts can be solved by full and free discussion of all aspects of the problem. But I submit in the end that the implementing of the policy of prohibition should not be made to depend upon merely financial considerations.

REVIEWS

INDIA'S TEEMING MILLIONS, by Dr. Gyan Chand, Professor of Economics, Patna University. Allen & Unwin, 1939. Price 12s. 6d.

This excellent but essentially erratic book is meant as a contribution to the study of the Indian population problem, which in Professor Gyan Chand's view is one of the most urgent Indian problems that has to be dealt with immediately. "The population problem is the problem of the making of a derefct people. Its solution depends upon a complete and radical reconstruction of our entire national life, but the point which is important is that the reconstruction required by the needs of the situation cannot be carried out without making the control of the population an integral part of the whole scheme of reconstruction." Following up his argument through the book, Professor Gyan Chand comes to the conclusion that "judged from any point of view, a check on the growth of India's population is an urgent practical necessity" and that therefore "contraception has to be introduced in India on a national scale."

But the interest of Professor Gyan Chand's book lies not so much in the conclusion, which has been fairly frequently and emphatically stated before him by a school of thinkers in India in recent times, as in the argument and facts on which it is based. Professor Gyan Chand shows an appreciation, as very few economists in India have shown, of the implications of India's poverty, how it causes the problem of diseases and how it robs life of cheer, hope and self-respect and makes sheer sustenance the all-absorbing object of existence; and he has made a striking analysis of the relationship between India's poverty and the ratio borne by the population to the cultivable land on the one hand and to the birth and death-rates on the other.

In Chapters III and IV, Professor Gyan Chand studies the figures of the growth of population in the various Provinces and States of India, and shows that the increase of population has, during the censused period, been the greatest in those parts which at its beginning were and still are the more densely populated parts of the country. This, he says, presents a serious problem, in so far as these parts happen to be the most favoured regions of the country, their soil being fertile, rainfall sufficient and less liable to failure, and other conditions favourable to agriculture, and in so far as the other parts of the country cannot afford any relief to them. Professor Gyan Chand states his disbelief in the myth of '93 million acres of culturable waste in India,' and concludes that "the uneven distribution of population which is such an outstanding characteristic of the country as a whole points not only to the severity of population pressure but also to the difficulty of redistributing it more evenly."

The problem of birth and death-rates has been elaborately investigated in chapters V, VI and VII. Of the two, the death-rate, says

partition of Bengal and its attendant circumstances. The greatest resentment, of course, was caused by the daily insulting behaviour of the British towards Indians. "A man in dhoti often was not allowed to walk on the same pavement as a European: soldiers were frequently seen hustling and abusing Indians in the road, or they would go into a market and make themselves free with fruit and vegetables, whilst nobody dared to protect for fear of assault." All this made the Bengali youth brood over the fact that the British understood only strength. Their impatience made them forgetful that an unarmed people cannot fight with violent methods against a nation equipped with the most efficient army and navy, and impelled them to meet the brutal treatment and police aggression which they saw before their eyes with terrorist activity of an intensified character. But the authoress is particularly insistent upon two things: firstly, that terrorism prospered only in the face of repression and that as soon as the rulers learnt to respect the susceptibilities of the ruled resort to terrorism died down; and secondly, that terrorism is in any case an irrational procedure adopted by the Bengali youth in a certainly impassioned and impetuous mood, and that perhaps a wiser course would have been to circumvent Britain's exploitation of India by the propagation of Swadeshi and the stoppage of revenues through the non-payment of taxes and rents, as Gandhi was preaching.

Of Mahatma Gandhi's rôle in the Indian struggle, the authoress is adequately appreciative. "This small, frail man, singularly unattractive by the ordinary standards of appearance, fills the rôle of a greater dictator than Hitler or Mussolini, with all their armies and armaments. He sways the countryside, not by fear or force of arms, but by love and unswerving devotion to the cause of the masses . . . Dictator is too vulgar an epithet to be used with regard to him, and can only be done so comparatively, seeing that at his insistence and teaching age-old traditions and prejudices have been swept aside." (P. 24.) Or again, "through the arches of the years, through light and shade, over many quicksands, Indian politics floundered onward, ever gaining ground. Gandhi dexterously showed the way; each step he took bred patriots; each fast he undertook brought more men rallying to his standard. Out of him and his plans of action rose men like Jawaharlal Nehru, who were later to show the way to socialism."

The book has three chapters on the Socialists, one on Jawaharlal Nehru, the second on Subhas Bose, and the third on the Younger Socialists. The authoress effectively brings out that while Nehru is fundamentally a rationalist, in Subhas's life religion and idealism played a great part from an early age. From this fundamental difference there have followed a host of other temperamental differences between the two characters, although both have very many ideas in common, including the belief in socialism as the ultimate salvation of India. The Younger Socialists are the products of the present age, born out of economic struggles and bred on the intellectual study of the social problems of the day. They have 'impetuosity, exuberance, and love of action,' but they have brought all this enthusiasm and exuberance to the service of their country. For instance, they have developed personal contacts with the masses. Under their guidance trade unions, peasants'

organisations, workers' unions, labour unions, and students' unions have taken shape, and they devote their entire time and energy in trying to direct all these forces, hitherto untapped, into channels of constructive activity. In the administration of these elements there is great evidence of an organising capacity; and it would be a grievous mistake for any responsible publicist in India today to seek to minimise the importance of the Younger Socialists.

Mrs. Sen has given separate chapters to Tagore, Sarojini Naidu, Jinnah, Abdul Gaffar Khan, Malaviya, Rajendra Prasad, and all that they stand for. The chapter on Jinnah is particularly brilliant, brilliant in its pungency. In the authoress's view Jinnah is an interesting example of egoistic arrogance. "Jinnah's early life and education are somewhat obscure, but he qualified for the bar in England. Some light is thrown upon it by an ancient letter quoted herein, written by a contemporary of Jinnah's to the daughter of Mr. Manmohan Ghose, the first Indian barrister, to practise at the Calcutta Bar. The letter is dated September 9, 1896: 'Kindly tell your good father that Mr. Jinnah has returned to Bombay as a full-fledged barrister. I met him at a party only the other evening. I think it was all owing to your good father that proper arrangements were made for the call and return of the young man.' When I placed this letter in Mr. Jinnah's hands, an echo from the past, I got the impression that it was a past he would rather forget. Not a word passed his lips about the dead man, who had also been a great man of his times. But the desire to play-act came uppermost in his mind, and he said with a deep sigh 'I wish I had never returned; I would have been happier then.' It was a cruel jar on my sensibilities." (P. 98.) His own success at the Bar and on the platform have been his greatest handicap, in giving him a mythical valuation of himself. His greatest drawback had been his craving to be in the forefront of all activities; that is just what has turned the once "Ambassador of Hindu-Muslim Unity" into the "Apostle of Communalism."

The book also contains chapters on Communalism, Women's Movements and the Peasants' Movements, which are interesting but do not go very far.

It will be clear from the above analysis that this book covers fairly extensive ground. Its chief merit consists in its biographical material with which is interwoven a great deal of enlightening information on the major problems of Indian nationalism. The book is thoroughly readable throughout, and although there are a few inaccurate statements here and there, on the whole the analysis of the various characters of the Indian struggle and the assessment of their work is generally correct.

BOOL CHAND.

PROBLEMS OF DEMOCRACY IN INDIA, by S. Srinivasa Iyengar. (Rt. Hon. V. S. Srinivasa Sastri Endowment Lecture for 1938-39 in the University of Madras.) Madras Law Journal Press, 1939. Price 12 annas.

In this booklet of 80 pages—Mr. Srinivasa Iyengar considers the various problems of democracy in India in the background of 'the signal failure of democracies all over the world;' but he states his belief that firstly, the failure is of the political systems as they exist today in democratic countries and not of the ideal of democracy itself and secondly, the failure is due to three main causes: (1) the insistence of democracies on party government, (2) the failure of responsible government to meet acute or sustained foreign menace or serious domestic crisis, and (3) the unwillingness of the mechanism of representative government to adjust itself to changing economic necessities; so that the experiment of democracy can be successful in India only if it seeks to remove these three causes.

Of the party system of government the author is particularly critical. In Mr. Iyengar's view it is a wholly undesirable device. 'It keeps many good and able men who would not belong to party out of politics.' It facilitates and aggravates nepotism and jobbery in public services and tends to lower the standards of administration. It divides not only the legislature but the country into rival camps competing for power. In effect it supersedes democracy itself, invents differences where none exists, aggravates them where they do exist, and in the long run tends to dictatorship.

The author is no doubt careful to mention that the objections to a party system in connection with the running of government do not apply to political parties formed for the purpose of 'winning Swaraj or complete independence for India or of upholding civil liberties against any administration in India;' nevertheless his hostility to the functioning of party system of government is unabated. The alternative to party government is necessarily a National government and that may be of two kinds: it may be a non-party government or a government formed by a coalition of all the parties. The latter is in the author's view an unsatisfactory expedient, for it combines all the demerits of the party system without any of its merits. The only really satisfactory form of National government is a non-party government.

Arguing on this hypothesis, Mr. Iyengar constructs the broad lines of a scheme of responsible government for India, in which the Council of Ministers would be elected by the legislature and would carry on the government on the basis of joint responsibility till the new elections: no defeat on any particular measure or policy would entail their resignation unless there is an express vote of no-confidence passed by a special majority such as two-thirds of the members: the Head of the State would not preside over the meetings of the Cabinet, although he would have the power on the advice of ministers and for reasons of emergency to dissolve the legislature or on the resignation of a ministry to ask the legislature to elect another in its stead. In this scheme the Cabinet would be independent of a party majority in the legislature and

the legislature would be the real representative of the democracy, so that it would be empowered to govern as far as possible and its resolutions would be binding upon the Government not only in financial and other matters as now prescribed but in every other matter.

Mr. Iyengar's faith is that such a scheme will bring into existence a government fully responsible to the legislature and at the same time strong and stable, and that it would form the best safeguard against a democracy deteriorating into a dictatorship whether of the Right or of the Left. Whether this faith is well founded or not can be proved by the actual operation of the scheme alone; but perhaps it is worth pointing out that the scheme fails to raise many hopes of successful operation. Firstly, the hope that the legislature would be able to play an eminently active rôle in the task of government is emphatically unrealistic. At the present time when the business of government is becoming highly complicated and technical on account of the progressive increase of governmental functions in the social and technical fields, it is becoming increasingly difficult for the legislature even to satisfactorily perform its most normal duties of legislation; so far as one can see, the tendency, at least in the immediate future, must inevitably be towards the greater dependence of the legislature upon the lead of the Cabinet rather than towards freedom from that lead. Secondly, the formation of parties in any community is perhaps quite an inescapable necessity. So long as people differ in their opinions, there must be, in the context of the present conditions, an irresistible desire on the part of those who hold the same opinion to ally themselves for some purposes. The refusal to recognise the existence of organised parties for political action inside the legislature will, therefore, merely lead to the growth of numerous small and ever-shifting groups, which would forebode greater harm than good to the strength and stability of the democratic machine.

Mr. Iyengar's argument, therefore, whatever its theoretical virtues, does not have the virtue of practicability. Nevertheless, coming as it does from a publicist of his vast experience, it deserves to be studied very carefully. The argument is stated with undoubted ability and in beautiful academic style.

BOOL CHAND.

THE DEVELOPMENT OF LOCAL BOARDS IN THE MADRAS PRESIDENCY, by M. Venktarangaia, M.A., Reader in Politics, Andhra University, Waltair. Published by Local Self-Government Institute, Bombay. Pp. 242. Price Rs. 4.

Madras has been the premier province of India in matters of local self-government. The present book is a historical and critical study of the subject in the rural areas of that presidency. It is divided into six chapters dealing, respectively, with the local areas, the constitutional development of the local bodies, state supervision and control over them, local expenditure and revenue, and, finally, certain general considerations. Each of the chapters except the last begins with a history of the topic in hand, goes on to describe the present position reached, and concludes with suggestions for reform.

The starting point of the historical narrative is the year 1863 when the Education Act of that year established for the first time certain local school committees. Now, in the older provinces of British India of which Madras is undoubtedly the first, local administration and finance as distinct from provincial, are of much earlier origin than the so-called local self-government. The latter when it came in the time of Lord Ripon was merely superimposed on the sub-structure of the former. This initial relationship between the two vitally affected the growth of local bodies in later years. Accordingly it would have greatly added to the historical interest and instructiveness of the work, if it had pushed its enquiry back to the opening years of the 19th century when the first germs of a local administration first made their appearance.

As an exposition of the present-day constitution and working of the local bodies, the book lacks in concreteness and detail. The dry bones of the system are before us but no muscles and sinews. Little is said about the internal organisation of the local bodies, and the numerous problems that arise in connection with it.

On its constructive side, the book is mainly a plea for the maintenance of the *status quo*. It is in general agreement with the cautious and conservative policy that has been followed in regard to the evolution of local self-government. "There is every reason to conclude" says the author "that the evolution of local government has so far proceeded on right lines." (P. 231.) This being so, it sees no need to disturb the present arrangement in regard to local areas, constitutions, functions, and external control. A more elastic and liberal local finance than obtains at present is pleaded for, but beyond a reference to certain recommendations of the Taxation Enquiry Committee, nothing is said as to how this is to be done.

But while the reformer of the local government may not find in this study all that he needs for his purposes, its helpfulness for the student of the subject is undoubted. The author has made a thorough and patient use of the various official publications that have a bearing upon the subject, and has succeeded in presenting to the reader a well-connected and lucid history of the development of local institutions in Madras. Students of Indian Administration must be grateful to him for his labour on this much-neglected subject of local self-government.

M. P. SHARMA.

THE INDIAN POLITICAL SCIENCE CONFERENCE

The Indian Political Science Conference held its second session at Lahore on the 2nd, 3rd and 4th of January, 1940. A report of the proceedings, the texts of the inaugural address of His Excellency the Governor of the Punjab and the presidential address of Dr. P. N. Banerji, a summary of the papers submitted and a few of the papers will appear in the next issue of the Indian Journal of Political Science.

EDITOR.

The following Constitution was adopted by the Indian Political Science Conference at its Lahore session in January, 1940.

THE CONSTITUTION OF THE INDIAN POLITICAL SCIENCE ASSOCIATION

1. The name of the Association shall be the Indian Political Science Association.

2. The objects of the Association shall be:—

- (a) Advancement of Political Science;
- (b) Scientific study of political problems and public affairs and dissemination of knowledge relating to them;
- (c) Holding of annual conferences;
- (d) Publication of proceedings of conferences, bulletins, memoirs, transactions, journals and other works;
- (e) Co-operation with other organisations in India and abroad having similar objects;
- (f) The securing and management of funds and endowments for the purpose stated above;

and (g) Performance of all other acts that may be conducive to or necessary for the fulfilment of the objects of the Association.

3. The membership of the Association shall be open to teachers and all other persons interested in the study and advancement of political science and allied subjects.

4. The fee for ordinary membership shall be Rs. 10/- per annum, payable in advance for the calendar year (from January 1 to December 31). The fee for life membership shall be Rs. 100/-.

5. Members of the Association shall be entitled to the following rights and privileges:—

- (a) to attend the meetings and conferences of the Association and to participate in their proceedings and to record their votes;
- (b) to receive without further payment a copy of the Journal and proceedings and also such other

publications of the Association as may be determined by the Executive Committee either free of charge or at reduced prices;

- (c) to read papers, to take part in the discussions and to communicate papers written by persons who are not members of the Association.

6. Persons other than members of the Association may become members of the Association Conference by payment of a fee of Rs. 5/-. *Bona-fide* students may become members of the Conference by payment of a fee of Rs. 2/-. These fees shall be credited to the funds of the Association. Members of the Conference shall be entitled to read papers and participate in the discussions and to receive gratis the proceedings of the Conference if they are printed.

7. Ordinary membership fee if not paid before the 31st March of each year may be realised by sending one of the issues of the Journal per V.P.P. Membership shall cease in case the V.P.P. is refused.

8. Persons contributing Rs. 500/- or more shall be deemed patrons of the Association and shall have all the rights and privileges of membership.

9. Subject to the direction and general control of the Association the management and administration of the affairs of the Association shall vest in an Executive Committee, which shall consist of the following:—

- (a) The President;
- (b) Two Vice-Presidents;
- (c) A General Secretary & Treasurer;
- (d) A Local Secretary;
- (e) A Managing Editor for the Journal;
- (f) The President of the preceding year, *Ex-officio*;

and (g) Fifteen other members.

10. The Office-Bearers and other members of the Executive Committee shall be elected at the annual meeting of the Association, which will be held along with the annual conference of the Association. They shall continue in office until fresh elections take place.

An endeavour shall be made to secure representation of all the Indian Universities, so far as possible, on the Executive Committee.

11. The President of the Association shall also be the President of the ensuing session of the Conference.

12. The President shall preside over the meetings of the Association and of the Executive Committee and regulate their proceedings. He shall be responsible for seeing that the rules, regulations and bye-laws are observed and the resolutions are properly carried out. He shall have a vote and, in case of an equality of votes, a casting vote.

13. In the absence of the President, a Vice-President shall perform the duties of the President.

14. The duties of the General Secretary and Treasurer shall be as follows:—

- (a) to conduct the correspondence of the Association and the Executive Committee and to sign all papers on behalf of the Association;
- (b) to circulate the notices and agenda of the meetings of the Association and the Executive Committee;
- (c) to maintain the minutes of the meetings;
- (d) to conduct elections under the guidance of the President;
- (e) to keep the accounts, to make payments, to prepare the annual budget and the annual report and to place them before the Association;

and (f) to keep charge of the office, books and registers of the Association.

15. The accounts of the Association shall be kept in a branch of the Imperial Bank of India or in the Post Office Savings Bank or in both and shall be operated upon by the General Secretary & Treasurer.

16. The Association shall sue and be sued in the name of the Secretary who shall enter into all agreements and contracts on its behalf and who shall have power to execute all documents including deeds of transfer of property by or to the Association.

17. The Local Secretary shall be elected from among the members of the Association residing at the place where the Conference is to be held in the ensuing year. He shall make all

arrangements in connection with the convening of the Conference. He shall be authorised to organise a reception committee, collect funds and take all such steps necessary for the meeting of the Conference.

18. The Association shall have the following powers and duties:—

- (a) It shall determine all general questions of policy consistent with the objects;
- (b) It shall elect the office-bearers and other members of the Executive Committee;
- (c) It shall consider and pass the annual budget;
- (d) It shall receive the annual report and the audited accounts and pass resolutions on them;
- and (e) It shall have the power to change the constitution and the Rules of the Association after considering any recommendations made by the Executive Committee.

19. The quorum required for the meetings of the Association shall be 15.

20. The Executive Committee shall have the following powers and duties:—

- (a) To give effect to the decisions of the Association on matters of policy;
- (b) To manage and administer the affairs and the funds of the Association;
- (c) To prepare the budget and lay it before the Association for approval;
- (d) To maintain the accounts, prepare the annual statement of income and expenditure and have them audited;
- (e) To sanction expenditure;
- (f) To prepare the annual report and lay it before the Association for approval;
- (g) It shall have authority to undertake all measures and to do all acts necessary to the realisation of the objects of the Association and for the carrying on of the work of the Association;
- (h) It may delegate any of its powers and functions to any of the office-bearers or members;

(i) It may make bye-laws for the admission of members, the conduct of its affairs and the regulation of its business and procedure, and rules for the control and guidance of its staff (if any);

(j) It shall appoint, dismiss and control the paid staff (if any);

and (k) To recommend to the Association changes in the Constitution and Rules.

21. The quorum required for a meeting of the Executive Committee shall be five.

22. In a casual or temporary vacancy among the office-bearers the Executive Committee shall make arrangements for the carrying on of the duties till the new elections take place.

23. The Executive Committee shall appoint annually an auditor or auditors to audit the accounts of the Association and of the Journal.

24. The Association shall elect a Board of Editors for its Journal which shall consist of five members, one of whom shall be the Managing Editor.

25. The Managing Editor shall be responsible for the printing, publishing and despatch of the Journal. The income from subscriptions, sales, advertisements, etc., shall be credited to the Association. The Executive Committee shall sanction the budget for the Journal which will be administered by the Editorial Board. The Managing Editor shall keep the accounts and shall be authorised to make payments.

26. The appointment, dismissal and control of the clerical and other staff of the Journal shall be vested in the Board but the Managing Editor shall supervise and direct the work of the staff.

27. The decision of the Editorial Board shall be final on all questions connected with the publication of matter in the Journal.

28. The Association shall create a separate fund for the maintenance of the Journal, to which Rs. 8/- from each member's fee, advertisement receipts, sale proceeds, subscription money and other incomes on account of the Journal shall be credited.

29. The annual subscription of the Journal will be Rs. 10/- from non-members and institutions but *bona-fide* students may

obtain copies of the Journal on payment of a fee of Rs. 6/- per year.

30. The special fund of the Journal shall be kept in the Imperial Bank or in the Post Office Savings Bank and shall be operated upon by the Managing Editor.

31. The budget for the Journal shall be prepared by the Managing Editor in consultation with other members of the Editorial Board, approved by the Executive Committee, and passed by the Association along with its own budget.

32. The Managing Editor shall submit the annual accounts, duly audited, and report on the maintenance of the Journal to the Association each year.

THE DILEMMA OF DEMOCRACY*

BY

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Political thinkers are apt to glorify the particular brand of political ideal that they happen to uphold, but history has always checked their pride by showing how some neglected aspect of complex human nature gives a new twist to current politics and upsets the settled convictions of political theorists. The study of democracy affords an excellent illustration. John Stuart Mill was in raptures over representative democracy as the greatest political discovery. It seemed to him as if future political thinkers would just have to dot the i's and cross the t's of representative parliamentary democracy. To-day within less than a century democracy finds itself impeached and has to fight for its bare existence. It is easy to be wise after the event, but a remedy becomes possible only after the disease has been detected. Only with the success of democracy has its inner weakness come to light, a weakness which has been lying embedded in its very ideology: the conflict between freedom and equality, a conflict which demands solution within the framework of democracy or else democracy must yield the pride of place to either of its arrogant rivals: Communism and Fascism.

Democracy stands for the rule of the people. It is possible to find it in the early tribal organisations whether of the Aryan or Semitic tribes, but it is so lost in the mists of time and its records are so blurred and ambiguous that for all practical purposes we would not be wrong if we date genuine demogenic democracy from the city states of the Greeks. Neither Plato nor Aristotle subscribed whole-heartedly to the principle of democracy as the rule of all or the masses. But both believed in freedom and found it compatible only with the city state with an aristocratic constitution: the rule of the best in the interests of all. The large empires of Egypt and Persia repelled them with their aroma of unbridled power slavishly accepted by the masses. Freedom was their creed, even though that freedom was reared

* A paper read at the First Indian Political Science Conference, Benares, December, 1938.

on the basis of slavery. Within the circumscribed boundaries of the city state the limited population of free citizens could hope for an equality of ambition and achievement so that they were not left entirely at the mercy of a few leaders. Even if they accepted the leadership of a Pericles, it was done openly and ungrudgingly as a tribute to a great statesman who meant well by, and deserved well of the republic. Democracy to a considerable extent harmonised freedom and equality in ancient Greece, because it was confined to the four walls of the city state and functioned as a direct democracy wherein all the free citizens took part in the public assemblies, judged in assemblies and stood the chance of being elected to responsible offices, thanks to the dangerous device of election by lot, yet so democratic withal.

If the city state was politically rich as ensuring the love and devotion of its citizens, economically and militarily it was poor. Sparta was content to be proud of her poverty and nourished it as the best bulwark against political slavery. So did Plato seek to rear his Republic by withholding the lure of gold and silver from the Guardians. Periclean Athens departed from the rule of poverty, spent lavishly in beautifying herself out of money that was meant for the defence of Greece against the Persians. This aroused the jealousy alike of Persia and Sparta and the destiny of Athens worked out in ruins that still bear witness to the "Glory that was Greece." The inference is clear. With wealth came inequality and with it went democracy. The city state with all its cultural achievement could not withstand the might of Macedonia or of Rome and died but to live in the splendour that was Rome.

Rome had a democracy, which for some three centuries resounded with the pride of *Civis Romanus sum*. This democracy centred round a city state but from the first it tended to be imperialistic and it did not rest till the city of Rome became the mistress of the whole Mediterranean world aspiring off and on to be the mistress of the East as well. Such a democracy could not last long and it did not. So long as the Romans were content to exercise their authority through the Senate things went well. When the masses began to assert themselves more obtrusively, the ambitions of individuals also arose. *Panis et circenses* served as a dope to the masses and the establishment of the absolute Roman Empire was only a matter of time. The pomp and the prestige of the Roman Empire killed democracy for a millennium and a half, till the unbridled autocracy of kings once again roused the slumbering democracy of the people. The doggerel of John Ball:

"When Adam delved and Eve span,
Who was then the gentleman?"

was almost the first assertion of the democratic principle in the later Middle Ages. But two centuries more had to pass before democracy reared its head with the formulation of the Social Contract theory. Even in Hobbes with all his passion for an unadulterated absolutist sovereignty the centre of gravity in political speculation shifted from the divine right of kings to the will of the people. All the logical subtlety of Hobbes could not prevent a straightforward development of the Social Contract Theory on the lines of full-fledged democracy in Locke and Rousseau.

With Rousseau's General Will we are on the threshold of modern democracy. "Man is born free but everywhere he is in chains" was his clarion call. He struck the key-note of democracy in his emphasis on freedom. For that very reason he felt no enthusiasm for the parliamentary government of England. Montesquieu may have been in raptures over it, but Rousseau saw in it nothing to admire. "The English nation thinks it is free," says he, "but it is greatly mistaken, for it is so only during the election of members of parliament; as soon as they are elected, it is enslaved and counts for nothing." He shared also the Spartan distrust of wealth: "Give money and soon you will have chains." He knew well that money is the enemy of freedom, for with money comes inequality, and inequality endangers freedom. That is why of all the great modern political thinkers he alone has had the courage to advocate the revival of the ideal of the city state, for only within the bounds of the city state is it possible to maintain equality and with it freedom. But it was a vain hope. The day of the city state is gone and the world will not go back to it except as a case of infantile regression.

The day the Bastille fell, on the very threshold of the French Revolution, has generally been looked upon as the day when humanity awoke from his long slumber under the spell of absolute monarchs. Even the placid and conservative England was shaken to her innermost core. If Burke thundered against Rousseau and his child the French Revolution, Wordsworth could warble:

"Bliss was it in that dawn to be alive,
But to be young was very Heaven."

The slogan of the French Revolution was *Liberte, Egalite, Fraternite*. Neither the mobs in Paris that shouted themselves hoarse with it nor their leaders that guillotined some of the fairest and

the most innocent in the name of liberty and fraternity knew how to equate liberty and equality. It was their faith and they acted on the simple maxim: *apres moi la deluge*. And yet this slogan concealed within it one of the most difficult political conundrums, and our age has had to face it. Fraternity is just an elegant term with a moral flavour about it. The real crux of the difficulty centres round the concepts of liberty and equality, and each of them is capable of varied interpretations, not necessarily mutually compatible.

Liberty may bear any of these interpretations:

- (1) Liberty to do whatever one likes. This makes any social life impossible, for no man can do what he likes without trespassing on the right of others to do what they like. It would lead to mere license and to anarchy, for such liberty is incompatible with ordered social life. No thinker can accept it. It remains the privilege of demagogues and raw students and bears on its face the hall mark of immaturity.
- (2) Liberty may mean liberty to do what the law allows. This is the sense in which Hobbes allows it within his *Leviathan*. It comes to nothing much in his politics, but it does have an important bearing, if it is coupled with the implication that the law itself carries with it the consent of the people, and so.
- (3) Liberty may mean the right to frame or at least to accept the laws.
- (4) Liberty has the broad ethical significance that every man must be free to develop his personality. But as there is a danger of mutual conflict, law is necessary to lay down the bounds within which, and the extent to which, such development may be permitted consistently with the general well-being of the community, and the right of others to their development.

This last meaning of liberty has a philosophical and spiritual bearing and is the most vital as giving a meaning to human life. Despotism of any type whether connected with the absolutism of kings or the tyranny of the majority as John Mill envisaged it, is incompatible with the demands of human personality at its highest. Thus it becomes the most fundamental problem of practical

politics: how to secure the rule of law without sacrificing the freedom for the development of personality.

The term equality too is by no means free from ambiguities. It may mean:

- (1) Equality before law, impartiality in the administration of law being of its essence.
- (2) Political equality in the sense of equality in political rights and privileges. This is ensured by universal franchise, and untrammelled right to hold even the highest offices in the country consistently of course with the nature of the office, the qualifications needed for it and the conditions of holding it.
- (3) Equality of opportunities, e.g., in education and in the economic sphere.
- (4) Absolute economic equality which constitutes the ideal of communism.

It is clear that these different meanings of the terms *liberty* and *equality* are by no means compatible with one another, and so if democracy is to be successfully broadbased on the dual basis of liberty and equality, it would have to be made clear in what sense they are used and in what sense they will be compatible with each other.

There can be no denial of the fact that the 19th. century saw a remarkable development of the democratic ideal in politics. It was taken for granted that liberty and equality were so akin that they could live in fraternity. This assumption has been slowly corroding and now in the 20th. century stands exploded by the ruthless logic of the industrial revolution. Perhaps it was the misfortune of the democracy of to-day that its history has synchronised with the heyday of industrialism. The spiritual values of democracy have had to rub shoulders with the unabashed commercialism of industrialism. Hence it is that the partnership between liberty and equality in the firm of democracy has become very unstable and there has been an open breach between the two in countries like Italy and Germany on the one hand and Russia on the other. This process in its broad outlines is by no means difficult to understand.

Industrialism in the very moment of its birth was captured by capitalism and produced fabulous dividends on the one hand and squalor and slums on the other. The wealth of a few and the poverty of the many seemed to be racing with each other, and the division of society into capitalists and the proletariat was inevitable. The proletariat was becoming self-conscious and goaded by hunger avidly took up the Marxian cry of "property is theft." Their education and their vote only whetted their appetite for equality. Freedom in its deeper spiritual significance had no hold on them. The only freedom they valued was the freedom to be equal, equal in terms of hunger and the capacity to assuage it.

Socialism is an economic theory fundamentally. But in a society dominated by politics with politics dominated by the capitalists, economic socialism had to be political. To succeed in politics it had to develop its own peculiar ideology or philosophy, and that is why Karl Marx's *Das Kapital* is much more than a book on economics. It is a book on the whole of social philosophy. It believes in freedom as the ultimate ideal when men will be so good and the earth will be so flowing with milk and honey that men can live in peace with one another and can develop themselves as they like. Political anarchism as dreamed of by Prince Kropotkin and accepted by the Marxists is still in theory the goal of socialistic politics. But this is something far off. The real and immediate task is to do away with the capitalists and to introduce a classless society where equality reigns supreme. They have no use for democracy with its majority and minority. They that are not with them must continue to be the helots till they are broken and impoverished and thus entitled to enter the aristocracy of labour, yes aristocracy, for in spite of all socialistic repudiation of aristocracy, the governing class in a society cannot deny its aristocratic character and such an aristocracy in Russia to-day is that of labour.

"The Russian Soviet Republic is established on the basis of a free union of free nations, as a federation of national Soviet Republics." Thus runs the second paragraph in the Declaration of Rights of the Labouring and Exploited Masses in the Russian Constitution as adopted on 10th July, 1918. But this freedom is only the initial freedom to join the Union. Once in it the individual is subjected to an iron discipline, which erases the term freedom from their dictionary. Their attitude is at least logical. Men must have bread—even Gandhiji has said "Even God does not come to the poor except in the shape of bread"—and bread will come to all only with the scheme of communism. But com-

munist must first of all settle down free from all danger of attack by the capitalistic societies. Till this danger is over there can be no talk of individual freedom, and even Trotsky must go, if his will clashes with the will of the Soviet Government!

Since communism is the most logical type of socialism, it is not necessary to deal with Syndicalism of France or Fabianism of England. The former with its policy of sabotage and big and petty annoyances to the employers is too negative to be taken seriously. It has no policy for the future and so takes refuge in the *élan vital* of Bergson with its freedom and unpredictable future. Fabianism is less spectacular than communism and is too slow to satisfy the impatient revolutionary. But with its recognition of private property apart from the large scale industrial concerns which have to be worked by the State alone, there is a certain sanity and poise about it, which might make it in future a serious rival to capitalism, which for the time being reigns supreme in England and America. But Fabianism has not had a full trial and in its appeal to the working classes it is being completely eclipsed by the communism of Russia.

But even in Russia communism has not been a complete success. Lenin could confiscate the lands of the Tsarist aristocracy, but he could not force the peasants nurtured in the traditions of private property to cultivate them. He had to yield and succeeded in persuading them to produce food only when he had promised to buy it from them. In factories the scheme of paying equal wages to all workers has not worked, and Stalin has had to pay higher wages to the skilled workmen. Nor has equality in the management of factories worked well and the foremen have had to be introduced. On the other hand, it must be said to the credit of the Soviet government that they have worked wonders in the realm of education both of the young and the old and also in the rapid industrialisation of a country which barely twenty years ago was fundamentally agricultural.

Even the limited success of the communistic régime has created a hope and an ambition in the working classes all over the world which is perhaps out of all proportion to the results so far achieved or ultimately achievable. But what is of greater importance is the fear that has been created by this limited success of communism, the fear that has resulted in the birth of Fascism and Nazism. Both of them are types of socialism, National Socialism as Hitler insists on calling it.

Both Communism and National Socialism have many things in common, probably because both are the children of the same forces that govern the world to-day. Both are governed by

parties, and the parties are governed in both by individual leaders, who like the proverbial Sultan of Turkey will brook no brother near the throne. Dictatorship is the type of government in both. Both have wholeheartedly repudiated liberty as the right of the individual though both are fond of speaking of the liberty of Russia or Germany or Italy as the case may be. The birth of Nazism in Germany has meant imprisonment, exile or death for some of the choicest geniuses in Germany, and the leaders of the Nazi movement seem to be quite unperturbed about it. On the contrary they seem to be quite proud of their achievement. The Reich Statt Halter of Thuringia is reported to have said in 1933: "I am ordering you now to be intolerant with everything else. In future there must be in Thuringia one political faith only." And he added: "The Nazis claim the right to be intolerant in view of the necessity for uniform thinking and acting in the nation as a whole." The world shall never forget what it owes to German Universities of the past, when they commanded the homage of the world as temples of freedom and sanctuaries of research, wherein wealth and labour alike were at the disposal of the votary of truth. To-day the Education Minister feels no compunction in reverting to the medieval view that "It is less important that a professor makes discoveries than that he trains his assistants and students in the proper view of the world." And the scientist is told that he is "only free to search for truth as the State sees it." No wonder if the universities have come to be just educational barracks as Mr. Joad aptly calls them.

With this barefaced repudiation of freedom one might expect an avowed emphasis on equality. It is there, though it is veiled behind the might of Hitler and his lieutenants. Hitler believes neither in monarchy of the old hereditary type nor in aristocracy. He believes in the absolute equality of all Germans, all of them liable to work in the labour corps as well as to serve in the army. His slogan is neither liberty nor equality. It is: *Ein Volk, ein Reich, ein Fuhrer*. But under the leader all are equal, for all Germans are the aristocrats of humanity. *Mutatis mutandis* the same may be said of Mussolini's claims on behalf of the Italians. But both Fascism and Nazism are at heart socialistic in spite of their in-season and out-of-season denunciations of Russian communism. They are socialistic in the sense that even while they do not repudiate private property as the communists do, all activities, whether in the sphere of banking or shipping, agriculture or industries, the press or the laboratory are rigidly controlled by the party machine, and there can be no doubt that under the Fascist-Nazi regime the number of million

aires will dwindle as surely and as steadily as under the Fabian economics of England. Mussolini states explicitly: "The fascist State has drawn into itself even the economic activities of the nation, and through the corporative social and educational institutions created by it, its influence reaches every aspect of the national life and includes, framed in their respective organisations, all the political, economic and spiritual forces of the nation."

Making allowance for superficial distinctions it would be justifiable to conclude that both Bolshevism and National Socialism repudiate liberty and seek to maintain their hold on the masses by emphasising equality and solving the problem of unemployment whether by foreign conquest or exploitation of the minorities opposed to the dominant party. The aim of both is the same: the production of a standard type of man: "a collectivized man, a collective man, living collectively a collectivized existence and collectively thinking, feeling and aspiring"—as Arthur Feiler puts it strikingly.

The present day reaction against democracy is at bottom economic. The sins of capitalism have been visited upon the head of democracy, for democracy has identified itself with freedom and freedom in the economic sphere has spelled inequality. Capitalism has produced millionaires richer than kings, but it has also produced slums the worst that humanity has seen. The West End and the East End of London have become symbolic of economic inequality: surfeit of food, beauty and luxury on the one hand, and starvation, the drabness and squalor of life on the other. Capitalism has multiplied armaments and has made man hate man. Capitalism has made life on the one hand an orgy of song and dance, stilling the inner voice of conscience, and on the other it has produced a life of endless struggle. The capitalist is conscious of the gnawing poverty of millions, but he has not hesitated to burn tons and tons of precious wheat and coffee to maintain his price. No wonder if this state of affairs has produced a definite revulsion of feeling among the masses against freedom. Freedom based on an empty stomach reduces itself to emptiness. Hence the immense vogue of socialism, which of course cannot be appreciated by those who have never felt the pain of hunger with not a meal in sight. Einstein was not wrong when he said that the success of Hitler would last as long as there are empty stomachs. But National Socialism can have only a limited appeal and that to the nation concerned. The doctrine of militant nationalism with which Hitler and Mussolini have identified themselves can only make enemies of the rest of the world. Its

stability is bound up with the genius of the leaders, but Mussolini and Hitler are no more immortal than Alexander or Napoleon. Communism, on the other hand, is not based on the loyalty to one leader. It has its own philosophy and its own technique. It claims to be as broad as humanity itself and is, therefore, international in character. Based as it is on the symbol of the clenched fist, it has yet a soft side with its love of the children and the poor. It fights for the disinherited and in its zeal to secure food for all it does not hesitate to uproot humanity from its moorings hallowed by centuries. That is why in every country there is a band of communists, wild and dreaming, an odd mixture of love and hate, with much that reminds one of the gentle Christ and yet much that reeks of sulphur and brimstone.

But will it last? There is a passage in Arthur Feiler's *Experiment of Bolshevism* which challenges thought:

"It was a Communist who ironically showed me the lavatories in one of the huge central administrative buildings as a symbol of the new collective way of living. Long rows, separated only for men and women, but otherwise without any screening partitions for individual isolation,—public, common, collective. They are constructed in like fashion in the urban parks. Even here there is no room for prudishness, no bourgeois craving for individuality—every human institution is collective! This sounds grotesque, but Bolshevism is partial to such whimsicalities."

And it is possible to expand this picture of collectivised life, which has no room for real homes, for children are sent away to nursery schools to be drilled into orthodox communists and wives can be changed as whim dictates, and meals can be had in huge restaurants with lines after lines of endless tables and standardised food. And then there is the dull round of work in factories or fields according to the scheduled hours, where a man must work or go without food. And at the end of it all there is the bare pittance of a wage which can be spent only in the limited approved ways of the official hierarchy.

The tragedy of modern politics stands naked before our view. To escape the pangs of hunger we are prepared to sacrifice freedom and hug equality to our heart, but when we have satisfied our hunger the humanity in us cries out for adventure and there can be no adventure without freedom. Mankind has progressed not through the sufficiency of bread, rather through the want of it,

which has made man dive into the unknown, regardless of comfort and ease. In this uneasy situation one feels like appreciating the wisdom of the Greeks, who were content to be free within their city walls. Rousseau, the founder of modern democracy, would feign revert to the type of city state. But the clock of humanity cannot work backwards. And the world that has grown accustomed to everything large scale will not be content with that small world of a few clashing intellects that enlivened the streets and porches of the Athens of Socrates. In a moment of despair one might even feel tempted to go the whole hog with Mahatma Gandhi and repudiate all that has gone to the making of our complex civilisation. But even this is no solution of the political problem, for there is no politics in the Gandhian Swaraj, any more than lawyers or doctors.

And so our thought moves in a vicious circle. From the Scylla of democratic freedom with the attendant evils of capitalism we fly to the Charybdis of socialism, but we feel stifled by the standardised mankind round us and hanker after a breath of freedom so that we can be real live men and women instead of being mere machines at the beck and call of the communist Stalin or the National socialist Hitler or Mussolini.

And so the dilemma remains: liberty or equality? The solution is not easy. The satisfaction of hunger is a basic need and, therefore, so long as the problem of unemployment is not solved politics will continually be vacillating. Let it not be forgotten too that all political ideals are subject to the unfortunate limitations of human nature. The dictum of Pope two centuries ago has not still lost its edge:

"For forms of government let fools contest,
That government's the best which governs best."

Fascism and Nazism show that even to-day the rôle of the hero is not a matter of past history to be contemptuously dismissed as primitive. When a great ruler emerges people will still blindly follow him. But such rulers are rare. The absolute ruler, whether by heredity or election, does not often rise above mediocrity and often falls below the level of even ordinary mediocrity. When a ruler is weak, some unscrupulous favourite dominates him and his people. When the people tire of such rule, democratic slogans begin, and whether by evolution or revolution democracy comes into being. When democracy is dominated by men with a purpose and a lofty character it commands respect and flourishes, and that is the secret of success in the case of English democracy. But when the leaders of

parties are selfish, out to make money or name, corruption sets in, hunger begins to reign in the homes of the masses. There is a revulsion of feeling against the government of the day, and a Hitler or a Mussolini has only to raise his little finger to make the masses hail him as their saviour.

Nevertheless, it will have to be conceded that given the right spirit and even a modicum of character, democracy has a good deal to its credit and holds out a promise of ultimate victory. It gives a certain dignity to the humblest voter and this has a distinct ethical value. It makes absolute tyranny impossible, for the strongest government may be turned out by the free vote of the people. It lives in such an aroma of publicity that lapses on the part of ministers do not long go undetected and they have ultimately to pay for their sins of commission and omission. If only all can be sure of employment and their daily bread, the chances are that any government, and particularly democracy, will willingly come to be accepted. Economic discontent rouses political passions and is a menace to any government.

It is questionable whether absolute equality will ever be achieved, and even if it were achievable, is it really desirable? Nature itself has stamped humanity with inequality in endowments. Life is an adventure and there is always room for a genius, and genius thrives best where freedom has made her home. Therefore, the future of humanity requires that freedom should not have its wings clipped, especially the freedom to think, to create beauty, to work for one's development. That is why Fascism and Communism can hope to have only a temporary lease of life, for they are enemies of freedom. Freedom is the most precious inheritance of man and it goes with democracy and that is why democracy as a political ideal will always have a future. But let it not be forgotten that democracy requires a price for its blessings: the spirit of service, and service is impossible without discipline. License is the enemy of freedom and, therefore, also of democracy.

Does democracy make for peace? Every genuine brand of it must, but a democracy that is not prepared to fight for its existence will have to go under. A Fascist general, Lt.-General D. von Taysen writes, (and I quote him as just a sample of the Fascist views on war): "War is as old as mankind. It conforms to the subsequent stages of development of mankind. Its outward forms change. Its ultimate laws remain unaltered. War will continue to exist as long as man exists, with his natural instincts, his good and evil qualities, his spontaneous and conscious striving. War is not opposed to natural law; it is the ultimate agent of natural

law. No people can evade war." If it is pointed out to him how ruthless modern war has become and what a menace it is to civilisation, and if he is asked whether it is not desirable to limit the ruthlessness of modern engines of destruction, he coolly replies: "To presuppose that a nation struggling for its life, would ever renounce by its own free will the use of effective means of warfare, supplied by science and engineering, would be rather an utopian conception. If it did so this would happen only in order to put still more effective ones in their place."

Who can venture to say that the blood-stained pages of history do not bear witness to this inevitability of war? And yet who that has faith in freedom, in the highest human values, will not strive to rise above this fatalism of history? There has not been, and there is not likely to be any finality in politics. There may or may not be war in future, but there will continue to be a perpetual see-saw between the forces of equality and freedom and with it there will be an ebb and tide in the history of democracy. In this ebb and tide each generation will have to play its part, always remembering that bread may be basic, but freedom is the soul of humanity. In the political drama we have but a replica of the glorious drama of nature with its autumn and spring, only in politics we move on a higher plane for the actors in the drama are conscious human beings, ever discontented, ever striving to leave the world better than they found it. Herein lies the vitality of democracy, for real democracy is not merely a matter of vote, it is the life of spirit always free and creative, always aspiring to be unbeaten.

To sum up: socialism, whether as communism or nationalism, is that philosophy of life which seeks to create and maintain economic equality, even by sacrificing liberty, whereas democracy is that philosophy of life which values economic equality only as an equality of opportunities as a means of achieving freedom.

THE THEORY OF THE CONSTITUENT ASSEMBLY

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The beginnings of the Constituent Assembly are far earlier than the French National Constituent Assembly of 1789 which made the French Revolution and served as the model for subsequent Constituent Assemblies and gave them their name. Its history is a part of the history of modern democracy and is inseparable from it. The theory of a special representative assembly to lay down the fundamentals of government was developed during the great democratic revolutions of the 17th and 18th centuries. It originated during the English Revolution in the 17th century and its first practical application came about during the American Revolution during the next century. The French Revolution saw the most complete development of the doctrine.

The conception of a Constituent Assembly is complementary to that of the written constitution which is a code of the fundamental laws determining the organisation, powers, functions and procedures of the more important agencies of government. Both were part of the technique designed to secure the liberties of the individual against the arbitrariness of government and to settle government on the broad foundation of the consent of the governed. They were the indispensable instruments for the vindication of the "inalienable natural rights of man" held dear by the philosophers of the 17th and 18th centuries. This will become evident if we trace the parallel development of the two ideas in history.

The first suggestion of a representative body to frame the constitution appears in the two Agreements of the People which the Levellers placed before the Army Council in 1648 and 1649 which debated the future of England at the close of the Civil War. The Levellers were from the rank and file of the army and it is noteworthy that the democratic idea of a Constituent Assembly has thus a popular origin. The proposal is as follows:

- "1. That some persons be chosen by the Army to represent the whole body and that the well-affected in every county (if it may be) choose some persons

to represent them and those to meet at headquarters.

- "2. That those persons ought not to exercise any legislative power, but only to draw up the foundations of a just government and to propound them to the well-affected in every county, to be agreed to. Which agreement ought to be above the law, and therefore bounds, limits, and extent of the people's legislative deputies in parliament, contained in the Agreement, (ought) to be drawn up into a formal contract to be mutually signed by the well-affected people and their said deputies upon the days of their election respectively." (From the Second Agreement, 1849).

The essentials of the theory of the Constituent Assembly are to be found in the Agreements. The object of the proposal is stated in its long and full title: Foundations of Freedom or an Agreement of the People: Proposed as a Rule for Future Government in the Establishment of a lasting Peace. . . . The Agreement is, as has been pointed out by several writers, the logical culmination of the idea of the covenant which the Puritans had long applied to their churches.¹ The Church to the Puritans was a voluntary association of believers through a covenant, from which they could withdraw at pleasure. This idea is extended to the secular sphere in the Agreements. The agreement is to be a social pact by which the people voluntarily place themselves under a government constituted under its terms. They reserve to themselves their "inalienable natural rights." The government has no unlimited authority, it has only a limited commission. It is bound by the Agreement which sets it up, defines its powers and prescribes its duties. Parliament is only a body of deputies and its powers are delegated to it by the people. Laws made by it, if not in conformity with the Agreement are to be void. Finally, a special method is postulated to draft the Agreement and for its ratification. This emphasizes the distinction between the constituent power which is sovereign and the ordinary legislative power which is not.

¹ Lindsay: *Essentials of Democracy*; A. S. P. Woodhouse: *Puritanism and Liberty: The Army Debates*; and Pease: *The Leveller Movement*. The Text of the Agreement may be found in any book of constitutional documents of the Stuart period. It is given in Woodhouse's book above referred to.

There is a further statement of the theory of the Constituent Assembly in England belonging to the same period. Sir Henry Vane's "The Healing Question" (1656) refers to the special body to make the fundamental agreement in the following words:

"The most natural way for which would seem to be by a general council, or convention of faithful, honest, and discerning men, chosen for that purpose by the free consent of the whole body of adherents to this cause in the several parts of the nations, and observing the time and place of meeting appointed to them (with other circumstances concerning their election) by order from the present ruling power, but considered as general of the army.

"Which convention is not properly to exercise the legislative power, but only to debate freely, and agree upon the particulars; that, by way of fundamental constitutions, shall be laid and inviolably observed as the conditions upon which the whole body so represented doth consent to cast itself into a civil and politic incorporation, and under the visible form and administration of government therein declared, and to be by each individual member of the body subscribed in testimony of his or their particular consent given thereunto. Which conditions so agreed (and among them an act of oblivion for one) will be without danger of being broken or departed from; considering of what it is they are the conditions and the nature of the convention wherein they are made, which is of the people represented in their highest state of sovereignty"²

The method of convening a special representative assembly for framing the fundamental agreement setting up the government is here more elaborately laid down. The "most natural way" of settling the future constitution is said to be through a general council or Convention chosen for the purpose by the whole body of the people and confined to it. This agreement is declared to be inviolable and the supreme law and the faithful observance of it is the condition for obedience to government. The nature of agreement or Constitution which is the result of full and

² Somer's *Tracts*, VI, 312; quoted by McLaughlin: *Foundations of American Constitutionalism*, pp. 102-103.

free debate and the method of making it which is a Convention representative of the people in their highest sovereignty are seen to be the guarantees of the inviolability of the Agreement. The central ideas behind the Constitutional Convention are stated in Language which is modern.

The theory of a special representative body to lay down the fundamentals of government was held by too small a group to influence in any measure the course of English constitutional development. England was not democratic enough to accept the Levellers' doctrines of equality, or inalienable natural rights and the sovereignty of the people, to rewrite her constitution on their basis. The Levellers were suppressed and with them the idea of a constituent body disappears from English history. But the written constitution was tried. The Heads of Proposals (1643), the Instrument of Government (1653) and the Humble Petition and Advice (1654) were attempts to base the Government of England on a written code of fundamental law. The most interesting of these is the Instrument of Government and it broke down due to the fact that the Parliament constituted under it refused to be confined to its proper sphere and would not draw the line between Cromwell's Fundamentals and Circumstantials, necessary for its successful functioning. The Instrument crashed on the theory of parliamentary sovereignty and at the Restoration, England returned to her historic constitution.³

The limited or constitutional character of English Government is not built upon theory of a written constitution limiting the Legislative power, but is a product of understandings. It has been nourished by the memory of the execution of a king, the expulsion of another and numerous impeachments of the ministers of the crown. Though the sovereignty of Parliament is an unquestioned constitutional dogma, the practical limitations on the legislative power of Parliament are well understood. A subtle difference between laws of a fundamental character and others can be noticed in English Government. The conventions of the Constitution may be said to require a specific mandate from the electorate for legislation of any constitutional importance. Though the agency for the exercise of the Constituent and ordinary legislative powers remains the same, the manner of their exercise would seem to point to the existence of a factual distinction.

The first attempt to translate into fact the conceptions of the written constitution and the Constituent Assembly was made in

³ D. L. Keir: *The Constitutional History of Modern Britain*.
F. 3

America during the next century. The experiment was a conspicuous success and the written constitution and the Constitutional Convention are to-day normal features of American democracy. The ideas were revived by the sheer necessity of the situation when the Colonies revolted in 1774. Royal governments collapsed and the void left by them had to be filled. The normal functions of government had to be provided for. The old representative legislatures or newly assembled conventions of representatives stepped into the breach and set up the new governments. In the years between 1775 and 1780 the Colonies settled the outlines of their future governments and in 1789 the Federal Government was established. Having taken up arms to get rid of a practical tyranny, the colonies made an effort to avoid a repetition of such tyranny in their new governments. They sought to realise their cherished ideals of government; neatly summarised in the Declarations of Rights that constitute the preambles to their constitutions, the sovereignty of the people, government by the consent of the governed, and the preservation of the inalienable rights of men to life, liberty, property and happiness.

The movement for State government began in Massachusetts in 1775. That colony requested the Continental Congress for advice on the matter of "taking up and exercising the powers of civil government." The Congress advised generally that representatives, elected as for the older legislatures, should take over the functions of government till normal conditions should return. After the Declaration of Independence in 1776, it authorised the States to frame definitive Constitutions and set up governments "sufficient to the exigencies of affairs" in the States.

From the autobiography of John Adams we can gather the ideas behind the revolutionary constitution-making in the American colonies. He reports having advised the Congress when the application from Massachusetts was being considered "that the case of Massachusetts" was only the most urgent, but that it could not be long before every other Colony must follow her example. That with a view to this subject, I had looked into the ancient and modern confederacies for examples, but they all appeared to me to have been huddled up in a hurry, by a few chiefs. But we had a people of more intelligence, curiosity and enterprise, who must all be consulted, and we must realize (*i.e.* make real) the theories of the wisest writers, and invite the people to erect the whole building with their own hands, upon the broadest foundation. That this could be done only by conventions of representatives chosen by the people in the several colonies, in the most exact proportions. That it was my opinion that Congress ought

now to recommend to the people of every Colony to call such conventions immediately, and set up governments of their own, under their own authority; for the people were the source of all authority and the original of all power. To the question: "How can the people institute governments?" he had answered, "By conventions of representatives, freely, fairly and proportionately chosen." To the further question, "When the convention has fabricated a government, or a constitution rather, how do we know the people will submit to it?" his reply was, "If there is any doubt of that, the convention may send out their projects of a constitution, to the people in their several towns, counties, or districts, and the people may make the acceptance their own act."⁴

The process recommended by John Adams was substantially adopted in the making of the revolutionary constitutions 1775—1780. The making of the constitution of Massachusetts and its ratification by the people exemplified the procedure at its best. Professor McLaughlin remarks: "By their words and acts, the constitution makers of Massachusetts made actual the theory of the origin of government in the will of the people."⁵ Both in content and origins the early constitutions display a popular origin. The Massachusetts legislature met in 1777 and framed a constitution. It had no specific authority to do so. On this ground and on the ground that it contained no bill of rights, it was rejected by the people to whom it was submitted for acceptance. Subsequently, a vote was taken on the matter of holding a Convention. The Convention which made the constitution was then elected. The draft framed by it was submitted to the people and accepted by them in 1780. The procedure initiated by Massachusetts soon became the normal one for the making of constitutions, and for their revision and amendment.

The rejection of the first draft constitution in Massachusetts was preceded by discussion in every town-ship and the resolutions of the town-meeting of Concord, held on October 21, 1776, are of great interest as setting forth clearly the procedure that should be followed in constitution-making. The meeting "Resolved, secondly, that the supreme Legislature, either in their proper capacity or in Joint Committees, are by no means a Body Proper

⁴ John Adams: *Works*: III, p. 16. Prof. McLaughlin thinks that there is some exaggeration in this report, but that substantially it is correct.

⁵ McLaughlin: *Foundations of American Constitutionalism*, p. 98. Also his *Constitutional History of the United States*.

to form and establish a Constitution of (or) form of Government for Reasons following *viz.*—first because we conceive that Constitution in its proper Idea intends a system of principles (sic.) established to secure the subject in the possession of, and enjoyment of their Rights and Privileges against any encroachment of the Governing Part. Secondly, because the same body that forms a Constitution have of consequence a power to alter it. Thirdly, because a Constitution altered by the supreme Legislative is no security at all to the subject against encroachment of the Governing Part on any or all their Rights and Privileges.”⁶

It was observed that the early constitution framers sought to make the constitutions popular in content as well as in their source. The Bills of Rights that were included in most of the constitutions make this clear. These invariably assert the sovereignty of the people, the inalienability of the rights of men, and the nature of government as a limited trust that is derived from the people. The Virginian Bill of Rights asserts: “That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants and at all times amenable to them.” (d.2.) The Massachusetts Constitution defines the Body Politic in the Preamble in the following words: The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good.”⁷ It may be added that besides these general declarations, the revolutionary constitutions contained provisions which made them the most liberal and democratic for their age.

It was said above that the theory of the written constitution and a special representative body for its framing received its fullest development during the French Revolution. Three writers, Thomas Paine, Condorcet and the Abbé Siéyès, may be singled out as conspicuous in their advocacy of these institutions. Paine had taken part in the American War and had recommended a Continental Congress to devise a common government for the independent colonies.^{8a} He was an ardent republican and took up the cause of defending the work of the French Constituent Assembly against the attacks of Burke. He holds a written consti-

⁶ Quoted by R. S. Hoar: *When Concord invented the Constitutional Convention.*

⁷ G. Jellinek: *Die Erklärung der Menschen-und-Bürger-echte*, pp. 21-22.

^{8a} Paine: *Crisis Extraordinary.*

tution as essential to a free state and challenges the existence of a constitution in England where a written constitution is not to be found. He writes of the Constitution:

“A Constitution is not a thing in name only, but in fact. It has not an ideal, but a real existence; and wherever it cannot be produced in a visible form there is none. A Constitution is a thing *antecedent* to Government, and the Government is only the creature of a Constitution. The Constitution of a country is not the act of its Government, but of the people constituting a Government. It is the body of elements, to which you can refer, and quote article by article; and which contains the principles on which the Government shall be established, the manner in which it shall be organised, the powers it shall have, the mode of elections, the duration of Parliaments, or by what other name such bodies may be called; the powers which the Executive part of the Government shall have; and in fine, everything that relates to the complete organisation of a civil Government, and the principles on which it shall act, and by which it shall be bound.”^{8b}

Members of the Constituent body, he asserts, are to be regarded as the “deputies of the Nation in its *original* character, while the members of the ordinary Legislature are to be treated as its representatives in its *organised* character. The Legislature cannot have the power of altering the law which calls it into existence. The Nation in its original character alone has the right to form the constitution. In its body the constitution must contain provisions for its amendment. Paine holds that the “right to reform is in the nation in its *original* character, and the constitutional method would be by a general convention elected for the purpose.”

It may not be true as Paine argues that there can be no free state where a written and visible constitution does not exist. But it must be admitted that for any country which begins an experiment in democratic government to-day a written constitution is inescapable. The description of a constitution can hardly be improved. The reasons for distinguishing the constituent power from the ordinary legislative authority is certainly the need to limit governments. Self-limitation is not practical politics.

^{8b} Paine: *Rights of Man.*

Paine's method to achieve this result like that of the English theorists before him in the 17th century, is a special representative constitutional convention.

A simplicity and straight-forwardness characterises Paine's ideas. This is not the case with the theory of the Constituent power as put forward by the Abbé Siéyès. Siéyès was an unfrocked priest who had been elected to the Third Estate in 1789 and it was on his motion that that body transformed itself into the revolutionary National Constituent Assembly. He had become famous by his pamphlet, "What is the Third Estate?" published before the meeting of the Estates-General in 1789. He was a notable figure throughout the French Revolution and was considered in his time a constitutional oracle. His theory was an effort to graft Rousseau's metaphysical notion of the General Will to the idea of the Constituent power.

The first element of his theory is the sovereignty of the Nation and to him the Third Estate is the Nation. "The unprivileged classes embracing nineteen twentieths of the population, satisfying by their varied toil and activity all the needs of social life, and constituting in fact the real strength of the community has in itself the essentials of the Nation."⁹ It is on their power that the Constitution should be based. "We ought not to hide it; the guarantee of political liberty can only rest where the real force of the community resides. We can be free only with the people and through them."¹⁰

The Nation determines the forms and laws of the government. The sum of these is the Constitution. "We see nearly the whole of the Constitution in the central public establishment, that is to-day, in the part of the political machine which makes the law, and in the part which procures its execution from a central point throughout the entire country."¹¹ The Nation has the right always of re-examining and revising the constitution and even the power to determine that such a revision shall take place at stated intervals whatever the necessity for it may be.

But there is only one method of constitutional revision that he admits, namely a constitutional assembly or convention consisting of extraordinary representatives of the people. The convention is to be constituted on the basis of the three principles, universal suffrage, equal representation of the population, and the

⁹ Dunning: *Political Theories from Rousseau to Herbert Spencer*.

¹⁰ Siéyès: *The Third Estate*.

¹¹ Siéyès: *In the Constitutional Committee of the Convention*, 1795.

imperative mandate. Its decisions ought to mirror the will of the people, must contain equally the will of every citizen. The Convention acts not as a body of representatives with an inherent will of its own, but as the interpreter of the General Will. Its decisions are, therefore, to be arrived at after full and free debate. In whatever a convention does, it acts in place of the Nation. Its acts have the same validity as if they were performed by the nation. The people cannot themselves make the constitution in a general assembly.

Siéyès added the interesting suggestion for a Constitutional jury of elders and the élite to safeguard the Constitution and to judge in cases of complaint of its violation.¹²

The theory of Condorcet is the result of an outlook that tended to reduce everything to system. He had seen the American Revolution at first hand and had been a member of the Convention 1792—95 and was the reporter of its first Constitutional Committee which produced the project for a Constitution in 1793. He was, in large part, its author. A constitution, to him, is the regulation of the forms for the exercise of its functions by the Legislative body. He holds that a people has the right to self-determination. The Legislative power ought not to have the power of determining its own competence. It cannot be a judge in its own cause.

A special body of representatives ought to frame the constitution and give it legal force. The Constitution is an act of national decision or self-determination. A preliminary Convention of representatives to draft a Constitution and a second Convention of representatives to express the Nation's sanction are necessary in the making of a Constitution. "The National Convention, that is the criterium for an effective constitutional representation, naturally requires a first representative body from whose decisions the Constitution emerges."¹³

The Constitution should contain in itself the method by which it could be improved and the danger of its wrecking is avoided. Condorcet suggests the setting up organisations which would periodically re-examine the Constitution and the Declaration of Rights. An elected Commission at intervals of ten years which will proceed to the summoning of Provincial and General Conven-

¹² Redslob: *Die Staatstheorien der Französischen National-Versammlung von 1789*.

Acton: *Lectures on the French Revolution* and

Zweig: *Die Lehre vom Pouvoir Constituant*, Ch. 4.

¹³ Zweig: *Die Lehre vom Pouvoir Constituant*.

tions every twenty years are his specific for this purpose. Actually in the project for a Constitution of 1793 automatic revision every five years is provided for.

The Convention is to be kept rigidly separate from the legislative body. The separation is both organisational and functional. The duty of the Convention is the realisation of the rights of man. Its power is to discover the "constitutive laws" of a country and so its power is limited. It can bind the community only for a period of time. Condorcet holds that each generation has the right to examine the social pact and to express its consent.

The theories summarised were not merely academic; they had a practical importance and permeated the halls of legislative bodies and influenced decisions. The following words from the speech of Pétion in the French National Assembly delivered on August 29, 1789, will bear witness:

"Would you establish national conventions which will be charged with the duty of revising the constitution or would you confide this care to the Legislatures? . . . Conventions appear to me of such great utility and of so absolute a necessity that in my eyes you would have achieved nothing if you had not provided for them. Without them the edifice you have raised with so much trouble, perseverance and courage, would soon tumble down. Conventions would be the keystone of the construction which would maintain its several parts in perfect harmony and union and would make for its strength and durability. What is the Constitution? It is the division of powers; it is the act which fixes the limits of the legislative power, of the executive power and of the secondary powers that emanate from these principal ones. The Conventions have, therefore, the object of fixing these limits and of preventing their transgression. This recognised, I would make a further remark . . . How would it be possible to endow the Legislative body with the character and power of a Convention? This body, receives its manner of being, acting, force and extent from the Convention, if one were to make it also a Convention, ordaining and modifying itself, it is to give it the power to constitute and alter its constitution as it pleases. Nothing would be more absurd and more monstrous than a body entrusted with the duty of correcting the abuses which arise in its own constitution. Such a body will quickly augment its powers in the most terrible and formidable manner for liberty, it will place itself above the nation, on which all bodies ought to depend and would govern as a despot. I believe, I have proved that without the most fatal of consequences and the most serious danger to liberty we cannot place in the

hands of the Legislature or the Executive or in both of them together, the constituent power, the power by which the Legislative ought to be modified, limited, suppressed, from which, in a word, it ought never to cease to be dependent. I maintain that the political liberty of England would have no solid basis so long as the Parliament and King have the power of laying hands on the Constitution."¹⁴

The amending clauses of the several Constitutions of the Revolutionary period in France bear ample testimony to these ideas. Invariably the convention method is prescribed for the amending of the Fundamental Law, and the Declarations of Rights state the inherent right of the Nation to give itself whatever constitution it likes. They include the rights to Revolution among the natural rights of man.

A few comments may be permitted here on the theories summarised above and their validity at the present moment.

We have seen that the written constitution as well as the Constitutional Convention have had a revolutionary origin. But revolutionary origins, it need hardly be said, do not discredit an institution. We have seen that the case for the latter was built upon a mass of abstract theory of which the chief elements are the social contract, inalienable natural rights, the conception of the people as the original of all just power, popular sovereignty and the General Will. It is now fashionable to decry abstract rights. But it cannot be denied that in the evolution of modern democracy these have played a most significant part. Expediency may be sound, but it cannot supplant principle. In great moments in the history of peoples appeals have been made to first principles and in our country to-day such an appeal would seem to be necessary if only to serve as a corrective to the unreality of our politics which mistakes the shadow for the substance, the phrase for the thing and forgets the facts of poverty and misery around us and stages a fight about percentages in the Legislatures, jobs, and other less important matters.

Inalienable natural rights, the social compact, the conception of government as a trust on behalf of the people, and established by them, popular sovereignty and the General Will were historically the slogans of great popular movements of the 17th and 18th centuries in their struggles against absolutism. They were the doctrines or dogmas, if that term is preferred, with which the older dogma of the "divine right of kings to govern wrong"

¹⁴ Quoted by Redslob: *Die Staatstheorien*; translation by the writer of the article.

was overthrown. Human history would indeed have been dull and barren if these doctrines of the political thinkers had not been the battle cries in the struggles of the newer social classes for power. It is well to remember that in the ascent of man towards civilisation political theory, albeit abstract—has been a force of some value.

To-day most of these notions that were revolutionary in the 17th and 18th centuries are commonplaces. But they are not accounted as self-evident propositions or of absolute validity. The State is not now regarded as the product of any voluntary agreement between its members, nor is the constitution of the State regarded as the social pact bringing a society into existence. It is no longer held that inalienable natural rights exist outside of society and government. Popular sovereignty and the general will are viewed as conceptions that cannot be defined with any exactness or be made a part of the scheme of government.

One need not, however, concern one's self with the theoretical correctness of these notions. It is enough if we understand the importance of the two things they emphasize and which the written constitution and the constitutional convention sought to realize and which are as pertinent to-day as when they were first put forward, namely self-government and free government. The former is government by consent of the governed through their chosen representatives and the latter is a limited government that respects the rights of the individual to certain fundamental liberties.

What is the technique for achieving these? The answer of the theorists is the written constitution or fundamental law binding government and subject alike and made by the representatives of the people themselves. It would be difficult to give a definition of the constitution better than the one which we have quoted from Thomas Paine. (See above) The central purpose of the constitution as conceived by the earlier theorists is the limitation of the government. The notion is still with us, though in an attenuated form. To-day the constitution is regarded as a description of the chief agencies of the government, a definition of their powers, functions, procedures, inter-relationships and the manner of their coming into being. These are partly written in the Fundamental Document known as the Constitution and partly unwritten or fixed by custom and convention. We can, in fact, distinguish between two conceptions of the constitution, one narrower and the other wider in scope. By the former we may mean merely the Fundamental Law that describes the institutions of government; by the latter we may mean "that assemblage of laws, institutions and

customs, derived from certain fixed principles of reason . . . that compose the general system according to which a community has agreed to be governed."¹⁵ A constitution in the broader sense would, besides the written document, include the large body of custom that arises in the working of institutions, the administrative system, the party system, and the political moves of a people. No constitution has yet succeeded in describing a constitution in this broader sense and yet it is important in human government. This must be remembered as otherwise one is apt to over-emphasize the function of the Constitutional Convention. A convention makes a constitution in the narrower sense.

A constitution that is conceived as the method or process by which the governance of a people is carried on, the political issues fought and resolved, is an essential to freedom. It is the mark of a free state as Paine pointed out. Where a traditional or historic constitution is not to be found a written constitution must be resorted to. This is the case in all countries outside of England.

The constitution, if it is to be operative, must be given the character of a supreme law. This can be done in two ways. It may be declared to be the supreme law and the courts of law may be invested with the duty of preserving this character by the power of pronouncing upon the constitutionality of laws. This is done most in federal states. Secondly, a distinction may be drawn between the constituent and ordinary legislative powers. The constitution emanating from the former would necessarily acquire a superior character.

These two kinds of legislative power are, in fact, different though at the margins they may be indistinguishable. The *de facto* constituent power in any community must be a power without any limits except of course physical ones. It comes into action so to speak in revolutionary crises. It is the power that belongs to the victorious group which may be a minority or a majority that acquires by revolution or by other means the power to lay down the structure of government, and the manner in which the government of the people shall take place.

In democratic theory this power is vested in the majority of the people and is brought into exercise in the process of amending the constitution. Now the object of vesting this power in the people and of prescribing the methods of its exercise is simply to endow the governmental system with stability and to make room

¹⁵ Henry St. John, first Viscount Bolingbroke, *Dissertation on Parties*, 1733; quoted by the Webbs in *Soviet Communism*.

at the same time for the indispensable adaptations in the structure of the government to meet changes in circumstances. It is to prevent revolutions that the constitution has to prescribe definite modes of amending itself in a lawful way. The ordinary legislature or the government cannot be invested with this power without limits since the limitation of the government by the constitution would then become unreal. It is by the recognition of the constituent power as distinct from the ordinary legislative power and by vesting the former in agencies other than those normally fulfilling the functions of the government and by prescribing definite modes of its exercise does it become possible to invest the constitution with that superior character necessary to secure constitutional government.

The decisions concerning government are obviously of supreme importance to the community. They have, therefore, to be made with the utmost care. The constitution has to be an instrument for the realisation of the rights and liberty of the individual as well as the interests of the public. It has to set up a government that would act with the consent of the governed. It has to make the institutions of government adequate to the purposes of government which are constantly expanding as the result of what one may call the growth of a social conscience. It has to lay down a procedure of action for the government that will ensure fairplay. Professor Friedrich has insisted on the nature of the constitution as a political process or method of action,¹⁶ which he describes as being analogous to the rules of a game for ensuring fairplay. This shows the importance of the constitutional law. Its fundamental idea of limitation cannot be realized unless the constitution is actually a supreme law. There must be a guarantee that the constitution will be obeyed and will be fair. In a country like ours this aspect is vitally important. The constitution can be made the means of devising effective restraints upon the arbitrariness of more numerical majorities. For the safeguarding of the essential rights of minorities and of individual freedom this may prove to be immense service.

It is the importance of the task of constitution-framing that precludes the possibility of entrusting it to any small group of self-selected men, however eminent they may be in public life. That is why the theorists of the 18th century rightly insisted that special conventions of representatives must be chosen to make the constitution and that the finished work should in all cases be submitted to the people who have to live under it, for approval.

¹⁶ C. J. Friedrich: *Constitutional Government and Politics*.

In the recent discussions of the subject in this country the importance of fundamental agreement has been stressed if the constitution is to be a success. Sir Maurice Gwyer even pressed the theory of the social compact to reinforce his plea for an agreement of heart as the preliminary to constitution-making for us. No constitution can indeed be built on assumptions about vital matters as Sir Maurice Gwyer quite rightly points out. It has to be built on the fact of agreement, not merely the hope of it. But it is not alone the agreement among a chosen few that matters. What a few people can make a few others can unmake. This is the fatal weakness of such a plan. What is needed is a fairly final and authoritative agreement made on behalf of the people. This can be made only by duly accredited representatives of the people. This is the experience of this country, for agreements have been made and unmade in the last three decades without reference to the wishes of the people by self-chosen men or by the Government. What is needed is the agreement of the community. Can the real and abiding agreement of the community or communities be manufactured by a handful of men arguing among themselves for the most part of trivial matters? Any agreement arrived at in advance, small groups can only succeed only to the extent that it anticipates the genuine agreement to be arrived at by the representatives of the people. There seems to be no better way of securing a lasting agreement than through the representatives of the communities elected by them to make it.

This appears to be the meaning of the insistence of the creators of modern democracy on representative assemblies specially elected for the purpose of making the constitution. The nearest approach to the agreement of the people is to be realised through this means. The case for the Constituent Assembly is thus the same as the case for democracy and representative government. If it is true that what concerns all must be consented to by all in the ordinary matters of government, *a fortiori*, it follows that in the matter of so important a matter as the future of their government the people should be consulted. The only manner in which this is possible under modern conditions is through a representative body. This may be called a Constituent Assembly or Constitutional Convention. The name is immaterial. What is important is the representative principle.

The history of constitution-making would seem to reinforce these conclusions of political theory. With the spread of democracy, the use of a representative assembly, which has been either the ordinary legislature or a specially elected convention has been

invariably the agency for the framing of constitutions. The failure, partial at least, of the great Constituent Assemblies of France in 1789, 1792, and 1848, of that of Germany in 1848 and that of Russia in 1918 and the circumstances of revolution which they set in motion or in which they were trapped have got to be set against the background of the remarkable success of representative institutions elsewhere and at other times. The Federal and State constitutions of the United States of America, the constitutions of the British self-governing dominions, more especially those of Australia and Ireland, the constitution of France under the Third French Republic, those of Switzerland of 1848 and 1875 were all the work of representative bodies. In the cases where the Constituent Assembly has failed it has not been shown that failure was due to the representative principle while it could be established in other cases that success was a consequence of the representative principle. We may conclude that both on the basis of theory as well as of practice the demand of Indian parties that the future constitution of India should be made by a body fully representative of India is a perfectly legitimate one.¹⁷

¹⁷ The practical side of the question of a Constituent Assembly for India as well as the Dominion analogies are dealt with at some length in a forthcoming volume by the present writer entitled: *The Making of Our Constitution*."

THE NATURE OF THE GOVERNOR'S INSTRUMENT OF INSTRUCTIONS: IS IT A LAW?*

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I

Sub-section (1) of Section 53 of the Government of India Act, 1935 (hereinafter called "the Constitution Act"), has, as is well-known, made provision for the issuing of an Instrument of Instructions to the Governor of a Province in India. It is actually worded as follows:—

"53.—(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued."

And, for example, we may observe here that on 8th March, 1937, an Instrument of Instructions under this provision of the Constitution Act was issued to the Governor of Bengal under the Royal Sign Manuel and Signet.¹ And we may also presume that similar Instruments of Instructions have been issued by His Majesty to the Governors of other Provinces.

* A paper read at the Second Indian Political Science Conference, Lahore, January, 1940.

¹ What has been stated in this paper in regard to the Instrument of Instructions which has been issued to the Provincial Governor under Section 53(1) of the Government of India Act, 1935, is also to apply equally, *mutatis mutandis*, to the Instrument of Instructions yet to be issued to the Governor-General under Section 13(1) of the said Act. It may be noted here that the Instrument of Instructions which was issued to the Governor-General of India on 8th March, 1937, was intended to guide him during the operation of the provisions of Part XIII of the Government of India Act, 1935. It was issued by the Crown in the exercise of its prerogative as before, and not under Section 13(1) of the aforesaid Act.—*Vide* Notifications (Government of India: Reforms Office) No. F.5/11/37-G. (A), dated at New Delhi, 1st April, 1937. (All italics in this paper are author's).

Now the question we propose to discuss in the paper² is whether the Instrument of Instructions, provision for the issue of which has been made, as shown above, in Sub-section (1) of Section 53 of the Constitution Act, and which has accordingly been actually issued to our Provincial Governors, belongs to the law of the Indian Constitution. That is to say, can we regard it, juristically speaking, as a part of the law of the Indian Constitution? Can it be properly called law at all? The question is a vexed one and there has naturally been, as we shall shortly see, a sharp difference of opinion among both lawyers and publicists.

For example, when the Special Bench of the Calcutta High Court, composed of the Chief Justice (Sir Harold Derbyshire), Mr. Justice Syed Nasim Ali and Mr. Justice B. N. Rau, were considering in May³ last the two references which had been made to the High Court by the Additional Chief Presidency Magistrate and the Chief Presidency Magistrate of Calcutta, and in which both the Magistrates had sought⁴ the authoritative decision of the Court on a question of law, in connexion with two cases of sedition under Section 124-A of the Indian Penal Code, pending before them⁵, Mr. Justice Nasim Ali asked the Advocate-General (Sir A. K. Roy) who had appeared for the Crown, and who had, in the course of his argument, referred to the Governor's Instrument of Instructions several times in support of a certain contention of his, whether the said Instrument of Instructions had "the force of law."⁶ The Advocate-General said in reply, "Yes."⁷ Mr. Justice Nasim Ali, however, does not appear to have agreed with this view of the Advocate-General. His Lordship observed,⁸

² *Vide* the Home Department (Government of Bengal) Notification No. 8374 A.R., dated 1st April, 1937.

³ On 22nd 23rd May, 1939. The relevant case before the High Court is known as the *Emperor V. Hemendra Prosad Ghose and another* case. The judgment of the Court was delivered on 7th June, 1939.—*Vide* *The Calcutta Weekly Notes* of July 10th, 1939; also *The Calcutta Law Journal* of June, 1939, Vol. LXIX, No. 12. Also see footnote 5 below.

⁴ See *The Statesman* of May 24th and 25th, 1939, Dak Edition.

⁵ Against Hemendra Prosad Ghose and Sashi Bhusan Dutt, the editor and the printer and publisher respectively of the Bengali daily *Dainik Basumati* (Calcutta). See in this connexion the author's Note on "Ministers and the Law of Sedition in India" in *The Indian Journal of Political Science*, July-September, 1939.

⁶ See *The Statesman* (Dak Edition) of 25th May, 1939.

⁷ See the *ibid.*

⁸ See the *ibid.*

"If the Governor does not act in accordance with the Instrument of Instructions he cannot be held responsible and that goes to show that it has no force of law. If you take the Instrument of Instructions as a rule of law, it will militate against sec. 49 of the Act which vests the Executive authority in the Governor. Can the Governor shirk his responsibility in that way under the Act? In my opinion the implication appears to be that it will not have the force of law."

Thus we find that the Advocate-General of Bengal and Mr. Justice Nasim Ali of the Calcutta High Court held diametrically opposite views on the question we are considering here.

Again, the present Secretary of State for India (Marquess of Zetland) was reported⁹ not long ago to have said, in reply to a representation made by certain European commercial interests,

"The Instruments of Instructions under the India Act will not be subject to judicial interpretation, nor are they expected to be construed by those to whom they are addressed from a meticulously legalistic point of view."

What the Secretary of State has been reported to have said does not seem to be very helpful to our purpose. By using such expressions as "will not be subject to judicial interpretation," and "nor are they expected," etc., he appears to have evaded the point of law involved in the question. They are more or less *ipse dixit* on his part and, therefore, inconclusive for the purpose we have in view. He cannot, and has not been able to, as we shall see hereinafter, prevent a judicial notice being taken of the Instrument of Instructions by a competent Court of law.

Thirdly, going further back we find that there was a considerable discussion of the question we are now dealing with, in 1933, when Sir Samuel Hoare gave evidence as the then Secretary of State for India, before the relevant Joint Select Committee¹⁰ of Parliament, during the consideration by this body, in consultation with Indian "representatives," of the Proposals of His Majesty's

⁹ See *The Statesman* and *The Amrita Bazar Patrika* of January 6th, 1939 (Dak Edition).

¹⁰ See the proceedings, dated July 11th, 13th and 14th, 1933 and also dated October 12th, 17th, 18th and 19th, 1933, of the Select Committee of the House of Lords appointed to join with a Committee of the House of Commons to consider the future Government of India and, in particular, to examine and report upon the Proposals contained in Command Paper 4268, (of 1933).—*Vide Secretary of State's Evidence before the Joint Committee on Indian Constitutional Reform, Parts I & II*, 1933, Manager of Publications, Delhi.

Government for Indian Constitutional Reform, as embodied in Command Paper 4268 of 1933, popularly known as the White Paper. The discussion, however, does not seem to throw much light on the question. On the other hand, there appears to have been an attempt, perhaps deliberate, on the part of some of those who took part in the discussion, either to evade the issue, if not to confuse it by a jugglery of words, or, at least, to refuse to face it directly. This will be evident from what follows.

From want of space, however, we shall only give here extracts from, or reproduce the substance of, some of the answers given by Sir Samuel Hoare in reply to questions put to him when he appeared before the Joint Select Committee,¹¹ in connexion with the subject of the Instruments of Instructions then proposed to be issued to the Governor-General and the Provincial Governors. Sir Samuel first said in reply to various questions: "*Special sanction* is to be given to those (Governor's) Instructions by *making them subject to a vote of both Houses of Parliament*."¹² "It would be the *standing Instructions* both to the Governor-General and to the Governor."¹³ "'Standing' would mean that they were a uniform thing issued to every Governor of every Province when he went out."^{13a} "It is our intention that Instructions in the future should have *Parliamentary sanction* behind them for this reason, that we are making them the vehicle of so many important developments."¹⁴ "The main directions in the Instruments we intend, under the White Paper, to *have the sanction of both Houses of Parliament*."¹⁵ "What we have principally in mind is that the Instructions should be laid on the Table of both Houses, and there should be an opportunity for both or either House to vote upon them, if they wish."¹⁶ If they so voted upon the Instructions, they (*i.e.*, the Instructions) would "have a binding effect."¹⁷ "They are mandatory."¹⁸

In regard to the question of the variability of the Instructions from time to time, Sir Samuel said that after any Instrument of

¹¹ See the *ibid.*

¹² Reply to Question 5669. *Ibid.*

¹³ Reply to Question 5672. *Ibid.* 13a Reply to Question 5681. *Ibid.*

¹⁴ Reply to Question 5675. *Ibid.*

¹⁵ Reply to Question 5679. *Ibid.*

¹⁶ Reply to Question 5855. *Ibid.*

¹⁷ Reply to Question 5856. *Ibid.*

¹⁸ Reply to Question 6063. *Ibid.*

Instructions had been once approved by Parliament, it could not be varied without its authority; and that any special directions to be subsequently issued to the Governor either by the Governor-General or by the Secretary of State for India, must not be inconsistent with the Instructions to which Parliament had previously given its assent.¹⁹

In regard to the legal character of the Instrument of Instructions, Lord Eustace Percy asked Sir Samuel Hoare:

"What will be the position of the Governor's Instructions if they are mentioned in the Act, and are subsequently approved by both Houses of Parliament. Will that give the Instrument of Instructions a legal validity?"

Sir Samuel said in reply:

"It would give the Instrument of Instructions a Constitutional validity within, I assume, the Terms of the Constitution Act."²⁰

We must confess that what Sir Samuel Hoare implied by his reply is not very clear to us. If a thing has a constitutional validity within the terms of the Constitution Act, it should *ipso facto* have a legal validity. But he was not prepared, as will appear from his replies to some other questions put to him, to accept this implication of his reply. For example, when Lord Eustace Percy next asked him:

"It would be merely a Constitutional validity. Supposing the Governor did order some executive action without the consent of his Minister; supposing it were known that his Minister dissociated himself from that action, and supposing a case were brought into the Courts to declare that action of the Governor invalid on the ground that it did not properly come under his special responsibilities, could the Governor's Instructions be invoked as a legal document?"

Sir Samuel said,²¹ "My answer would be, no such action so far as I can see could arise. The Governor's decision is the last word." Further²²,

Lord Eustace Percy: "At any rate it is the intention of the Government that the Instructions should be so worded as to make a recourse to them in the Courts impossible?"

¹⁹ See Replies to Questions 5685-5689 and 5919-5922. *Ibid.*

²⁰ Reply to Question 5815. *Ibid.*

²¹ Reply to Question 5816. *Ibid.*

²² See Question 5817 and the reply thereto. *Ibid.*

Sir Samuel: "Certainly, but, much more important than that, whether the question arises out of the Instructions, or whether it does not, the last word would be the Governor's, and it could not be challenged in a Court of Law."

In connexion with another question, Sir Samuel said,—The Governor "would act in accordance with his Instructions and the Instructions *would be within the spirit of the Constitution Act.*"²³

Later on, Sir Phiroze Sethna took up the matter and asked:²⁴

"Was any Instrument of Instructions in the past placed before Parliament?"

Sir Samuel: "No."

Sir Phiroze:²⁵ "The White Paper states that the Instrument of Instructions will assume a position of great importance as an ancillary to the Constitutional Act. You say it will be placed before the two Houses?"

Sir Samuel: "Yes."

Sir Phiroze:²⁶ "Which will give it the elaborateness of a Parliamentary statute, yet in answer to Lord Eustace Percy you said the other day that it will have no legal validity."

Sir Samuel's reply is very interesting. He said,—"No. I do not think I said that, did I? I should like you to refer me to the question, and the answer I gave, because I do not remember what I said."

Sir Phiroze:²⁷ "Never mind. May we take it then that the Instrument of Instructions will have legal validity."

Sir Samuel: "It has sanction, to this extent, that nothing can be inserted in the Instructions that is not within the framework of the Act. The Instructions cannot go outside the Act. *The Act, therefore, has full legal validity, and the Instructions must be within that frame-work.*"

Sir Phiroze:²⁸ "Then there (they?) are more than recommendatory?"

Sir Samuel. "They are the interpretation that the Government and Parliament place upon the provisions in the Act."

At this stage, the Marquess of Salisbury asked,²⁹—"But

²³ See Reply to Question 5829. *Ibid.*

²⁴ See Question 6058. *Ibid.*

²⁵ See Question 6059. *Ibid.*

²⁶ See Question 6060. *Ibid.*

²⁷ See Question 6061. *Ibid.*

²⁸ See Question 6062. *Ibid.*

²⁹ See Question 6063. *Ibid.*

they (*i.e.* the Instructions) are more than recommendatory; they are mandatory, sometimes?"

Sir Samuel said,—"They are mandatory; but I understood Sir Phiroze Sethna's question to deal with the definitely legal aspect, as to whether they were statutory, or not. They are certainly mandatory."

But Sir Samuel does not appear to have answered Sir Phiroze Sethna's question to the point. He seems to have evaded the direct answer to his question by introducing certain other points.

Perhaps this made the Marquess of Salisbury put this straight question to Sir Samuel:³⁰

"Could the subject plead the Instructions in a Court of Law?"

Sir Samuel said: "My answer would be, no."

Then Sir Phiroze Sethna asked,³¹

"Then there is no legal validity?"

Sir Samuel answered:

"There is the legal validity of the Act upon which the Instructions are based."

Again, Sir Samuel evaded the real point. And when a little later on Sir Hari Singh Gour asked the question,³²

"In a word, the Letters of Instructions create a moral as distinct from a legal obligation (on the part of the Governor)?" Sir Samuel did not appear to be very clear either, in his reply to him. He said, "No. I do not think so. The Act creates the rights. The Instructions interpret the way in which the Governor is to apply his duties towards those rights."

So far he seems to have been rather groping. But at a still later stage of the discussion of the question, however, he appears to have taken a more definite view on it. Lord Eustace Percy asked him,³³—

"I want to make sure about the point which was raised the other day. Is it the intention that the Federal Court should have no power to interpret in any way the Instrument of Instructions of the Governor-General or the Governor?"

His reply was—

"Yes, that is so. The Instruments of Instructions will be not a part of the Act. They will not be scheduled. They will

³⁰ See Question 6064. *Ibid.*

³¹ See Question 6065. *Ibid.*

³² See Question 6074. *Ibid.*

³³ See Question 14088. *Ibid.*

be referred to in the Act, but they will not be referred to in such a way as to bring them into Court."

He made his position further clear in his replies³⁴ to certain questions put to him by Mr. Y. Thombare. He first said,—

"The Instrument of Instructions confers no power whatever on the Governor-General or the Governor. It merely instructs him as to the relations between his Ministers, and so on, but it confers no new powers upon him." And, therefore, he concluded, 'any interpretation by the Courts of any Federal Law or any constitutional issue would not be affected in any way by the Instrument of Instructions.'

Before we proceed further to state our own views on the question, we may notice here what the Marquess of Reading, Sir Tej Bahadur Sapru, and the then Lord Chancellor (Viscount Hailsham) said in regard to it.

The Marquess of Salisbury asked the Marquess of Reading:³⁵

"Perhaps Lord Reading would indicate—no man can do it better than himself—to the Committee if there was a lawsuit which turned upon the Act of Parliament, could it be pleaded as a valid explanation of the Act of Parliament that certain things were contained in the Instrument of Instructions?"

The Marquess of Reading said³⁶ "No, I should say not, because the Letter of Instructions, the Instructions of the King, are not part of the Act of Parliament"

Sir Samuel Hoare agreed with Lord Reading and observed:³⁷

"Yes, that is, generally, the position"

Sir Tej Bahadur Sapru did not concur with Sir Samuel in this view, and the following discussion³⁸ took place as between him, Sir Samuel, the Marquess of Reading, Viscount Burnham, Lord Eustace Percy and the then Lord Chancellor.

Sir Tej Bahadur Sapru—

"May I put it to Sir Samuel, that it would be extremely dangerous for anyone, without an actual suit arising, to commit himself to any particular view; that a Court of Law might take a view which we do not imagine to be possible now; and, in point of fact, the Instrument of Instructions has played a very

³⁴ See Questions 14253—14255 and Replies thereto. *Ibid.*

³⁵ See Question 6071. *Ibid.*

³⁶ See Question 6072. *Ibid.*

³⁷ See Reply to Question 6072. *Ibid.*

³⁸ See Question 6073 and the discussion connected therewith. *Ibid.*

great part in the development of the Constitutions in the Dominions. There are cases in which Instruments of Instructions have been referred to. Therefore, I say it would be very dangerous for anyone to assume what view the Courts of Law might take, until you have the concrete facts?"

Sir Samuel Hoare—

"Yes, except to this extent, that here the case does somewhat differ from the kind of cases that Sir Tej has in mind, does it not, from the fact that there is this list of special responsibilities in the body of the Act. I would have thought—I speak with great deference in the presence of big lawyers such as we have got here to-day—that in a case of that kind both the Court and the complainant would base their case upon the provisions in the Act, rather than upon anything outside the Act."

Sir Tej Bahadur—"But I did not exclude the Instrument of Instructions altogether—that is the point. The point I am making is that the Instruments of Instructions which you are providing are statutory Instruments of Instructions. There is no reference to the Instrument of Instructions in any one of the Dominion Constitutions, and that is a point we went into last year with you, that we want the Instrument of Instructions not to be merely a conventional document, but to provide a statutory basis."

Marquess of Reading—

"May we just get this clear, Sir Tej? Although letters of instructions may possibly be referred to by a Court in (of?) Law in trying to construe what is intended, it does not affect the position. No rights are founded upon it by the subject, that is, no rights which can be dealt with by a Court of Law we also have to remember that hitherto Letters of Instructions have never been the subject of Acts of Parliament we have to be very careful that in this Committee³⁹ we do not do anything which will interfere with the prerogative rights of the Sovereign. The Sovereign issues his Letters of Instructions to his Governor-General or his Governor, and, of course, on the advice of the Minister who is responsible to Parliament; that Minister, naturally does not go beyond the rights which are in the Act of Parliament. I think that helps to keep the whole thing perfectly clear in our own minds."

Viscount Burnham—. . . . "Would it be true to say that in future in Courts of Law the Acts of Parliament have to be read and treated in the light of the Instructions?"

³⁹ i.e. the Joint Select Committee.

Marquess of Reading—

“No, most certainly not. The Act of Parliament—I speak in the presence of the Lord Chancellor and other lawyers—would have to be construed by the words of the Act of Parliament, including everything in the Act of Parliament, and, consequently, it may be that there may be reference to the provisions in the Act of Parliament which has definitely enacted that certain things must be in the Letter of Instructions, but beyond that, no.”

Further—

“What I have been trying to point out is that, in my view, a subject would have no right of action on the Letters of Instruction.”

Lord Eustace Percy—

“Why not?”

Marquess of Reading—

“Because it is the King’s Prerogative to issue that Letter of Instructions; it is not part of the Act of Parliament. It is a confusion between two things. *For the first time* an Act of Parliament is to prescribe certain things which must be included in the Letter of Instructions . . . but once the Letter of Instructions is issued the Letter of Instructions in itself cannot give a right to a subject to bring any action in a Court of Law. He must turn to his statutory rights.”

Lord Eustace Percy—

“The Clause in the Statute saying that certain things including the action of the Governor on the advice of his Ministers, were to be included in the Letter of Instructions would give a basis to the subject.”

Marquess of Reading—

“On the Statute, but not on the Letter of Instructions. If no Letter of Instructions was issued that position would be exactly the same because the Governor remains liable; he remains under the obligations to do the things, as the Secretary of State has pointed out, by the Statute. The Letter of Instructions is the thing which is issued to him, and which tells him to carry them out. I remember when I went out as Governor-General a Letter of Instructions was given to me from the King . . . The rights of the subject and the rights to be construed by the Court are the rights which are prescribed within the Statute itself, and cannot travel outside. I think the Lord Chancellor will agree with that. It is not difficult at all to a lawyer.”

Lord Chancellor—

“I quite agree with what the Noble Marquess has said. If you translate it into very simple legal language there is an Act

of Parliament which every subject is entitled to take advantage of. There are certain instructions to the Governor. He has to do A, B, C, D and E. Supposing he fails to do A, B, C, D and E, no subject can sue him in his private capacity, and no subject can rely upon his failure to do it in any suit that he has against any other subject.”

The question of suing the Governor in his private capacity was not, to our knowledge, raised by anybody, and the Lord Chancellor’s remarks do not appear to have clarified the position. Indeed, the whole discussion seemed to be so puzzling that even a person like Mr. Austen Chamberlain had to observe⁴⁰—

“May I say that my layman’s mind has not yet got quite clearly before it the actual condition of affairs as portrayed by Lord Reading and the Lord Chancellor?”

We may also, perhaps quite rightly, quote here an extract from what the Lord Chancellor observed in the House of Lords on July 2nd, 1935, in connexion with a certain amendment moved by the Marquess of Salisbury when Clause 13(1)⁴¹ of the Government of India Bill was before the House in Committee. The extract⁴² is:—

“When we come to the Instrument of Instructions, which is the document we are dealing with here, I think I am right in saying that we are introducing in this Bill *an unprecedented concession to the control of Parliament*. So far as I know, the Instrument of Instructions, which has always existed with regard to all the Dominions in the old days and the Colonies, and with regard to India to-day, is essentially a Prerogative matter which has been decided by the Executive of the day, and which has never been submitted to Parliament at all. Having regard to the importance of the Instrument of Instructions under this Constitution, to the novelty of some of the points which will arise, and to the part which it plays in the proposed new Constitution, the Government have thought it right in this clause to ask Parliament to undertake a responsibility which it has hitherto never imagined, it would be called upon to discharge. Parliament has been asked to come into consultation with regard to the Instrument of Instruc-

⁴⁰ See Mr. Chamberlain’s remarks in connexion with Question 6074. *Ibid.*

⁴¹ “Provisions as to Instrument of Instructions.”

⁴² See *The Parliamentary Debates (Official Report)*, Fifth Series, Vol. XCVII, House of Lords, 1934-35, May 28th to July 5th 1935, column 1067; also M. Ramaswamy, *The Law of the Indian Constitution*, Longmans, 1938, pp. 144-145.

tions; but the Instrument of Instructions still remains a document which has to be sent under the Prerogative on the advice of the Executive, and is essentially an Executive matter."

And he characterized the proposed Instrument of Instructions as "essentially an Executive document."

II

The true Character of the Instrument of Instructions.

We have carefully examined the views we have quoted above, and have equally carefully examined Section 53(1) of the Constitution Act together with the Instrument of Instructions which has been issued by the Crown to the Governor of Bengal, under it. We believe that there is a fundamental difference between *this* Instrument of Instructions and the Instruments of Instructions which had been issued by the Crown before the Constitution Act came into force.^{42a} The latter had been issued by the Crown in the exercise of its prerogative on the advice of the relevant Executive Authorities of the day, and had never been, as the Lord Chancellor admitted in his speech in the House of Lords we have quoted above submitted to Parliament at all. Nor had they been based upon, or issued in accordance with the requirements of, any provision of any Act of Parliament. They had been purely "Executive Documents." This was also admitted, as we have seen before, by both Sir Samuel Hoare and Lord Reading. But if we look into the Preamble to the Instrument of Instructions which has been issued, say, to the Governor of Bengal, we find that it contains, among others, the following clause⁴³—

"And whereas a draft of these Instructions has been laid before Parliament in accordance with the provisions of subsection (1) of section fifty-three of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be *issued in the terms of these Instructions*."

This is an important departure from the previous Instruments of Instructions, due to Section 53(1) of the Constitution Act. Neither Sir Samuel Hoare, nor Lord Reading, nor the Lord Chancellor appears to have given, we feel constrained to remark, a sufficient importance to this aspect of the question. They could not shake off their old notion of the Instrument of Instructions, although they were proposing a fundamental change in regard to

^{42a} This statement also applies to the present Instrument of Instructions of the Governor-General of India. See footnote 1 before.

⁴³ Clause 4 of the Preamble,

it. Perhaps it was natural. "A habit," Mr. Ramsay MacDonald has said, "has more influence upon an Englishman than a reason."^{43a} Similarly, we may also state that the nature of the Instrument of Instructions which may be issued to the Governor-General under Section 13(1) of the Constitution Act, will be different from that of the Instrument of Instructions which had been issued to Lord Reading on his appointment as the Governor-General of India. What he said, therefore, in regard to his own Instrument of Instructions does not apply, juristically speaking, to any Instrument of Instructions to be *issued* under Section 13(1) of the Constitution Act.

Even Sir Samuel Hoare had to admit—

"The Act . . . has full legal validity, and the Instructions must be within that framework."

Again—

"There is the legal validity of the Act upon which the Instructions are based."

We agree with Sir Tej Bahadur Sapru's view that the Instruments of Instructions are "statutory Instruments of Instructions." And whatever solicitude Lord Reading might have had for "the prerogative rights" of the Crown, the terms of these Instruments cannot be, as we have already seen, varied by it "without the authority of Parliament." We, therefore, maintain that the Instruments of Instructions issued under the provisions of the Constitution Act, are instances of what may be termed "subordinate," or "subsidiary," or "delegated," legislation.⁴⁴

And when the Crown issues them, it acts by virtue of a delegated authority, and exercises only a statutory power, and not a "prerogative right." Indeed, this "unprecedented concession to the control of Parliament," to use the Lord Chancellor's words already quoted, as provided for by Sections 13(1) and 53(1) of the Constitution Act, has been a great interference with the royal prerogative in this matter. But there is nothing unusual or strange in it.

As President Lowell⁴⁵ has observed,

"Many parts of the (royal) prerogative (in England) have been regulated and modified by statute," in the past. Provisions in the Constitution Act as to Instruments of Instructions, provide one more instance of such regulation. If we may give an analogy,

^{43a} See Ramsay MacDonald, *The Government of India*, p. 45.

⁴⁴ See in this connexion Craies, *A Treatise On Statute Law*, 3rd Edition (Pease & Gorman), Sweet & Maxwell, 1923, Part II, Chap. III.

⁴⁵ See his *Government of England*, Vol. I, 1919, p. 19.

*Hemendra Prosad Ghosh and another*⁵⁶ the Special Bench of the High Court to which we have already referred, based its judgment⁵⁷ in regard to the specific points⁵⁸ on which the opinion of the Court had been sought by two Presidency Magistrates of Calcutta, partly upon the Instrument of Instructions which had been previously issued by the Crown to the Governor of Bengal. This will be evident from the following extract from the Judgment:—

“The Government of India Act, 1935, defines the rights and duties of ministers and their relation to the government of a province. Section 49 (1) of the Act provides

Section 59 (1) provides

Section 50 (1) provides

Section 51 (1) provides

Sub-section (4) of Section 51 provides

Sub-section (5) of Section 51 provides

Section 53 provides that the Instrument of Instructions which it is proposed that His Majesty shall issue to the Governor shall be laid before Parliament previous to issue.

In paragraph VIII of the Instrument of Instructions issued to the Governor of Bengal it is stated:

‘In all the matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless’

Again, the Instrument of Instructions, which cannot be and does not purport to be, in contradiction of the Act, clearly contemplates the Governor exercising the powers conferred upon him (save where in certain instances specified he acts alone), ‘guided by the advice of his ministers.’ The Instrument of Instructions contemplates the Governor, and not the ministers, exercising executive authority.

⁵⁶ See footnote before. Also see *The Calcutta Weekly Notes* of July 10th, 1939, and *The Calcutta Law Journal* of 30th June, 1939 (Vol. LXIX, No 12).

⁵⁷ See the *Ibid.*; also author's Note on “Ministers and the Law of Sedition in India” in *The Indian Journal of Political Science*, Vol. I, No. I.

⁵⁸ See the *Ibid.*

The position appears to be, etc. . . . (then follows the concluding part of the judgment).

It is clear from the above that, notwithstanding what Sir Samuel Hoare, Lord Zetland, or Lord Reading may have said, the Calcutta High Court has judicially recognized the Governor's Instrument of Instructions. This does certainly satisfy Prof. Dicey's definition of law or legal rules as stated before, and should, therefore, remove all doubt about the legal character of the Instrument of Instructions.

Lastly, the implication of Sub-section (2) of Section 53 is very clear. The Sub-section declares—

“The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.” Had not the authors of the Constitution Act had any difficulty in their minds, notwithstanding whatever some of them might have professed, in regard to the legal character of the proposed Instrument of Instructions, they would not have inserted this saving sub-section in the Act. The Sub-section was intended, first, to make the Governor the sole judge of the propriety of any action which he might take, subject to the provisions of the Constitution Act, under the Instrument of Instructions; and, secondly, to prevent litigation in a Court of Law for an alleged breach of any of the Instructions, which might not only often prove very vexatious and embarrassing to the Government, but also sometimes hold up the course of administration. As a result, the Instrument of Instructions has been rendered, to quote the language of the lawyer, a non-justiciable matter, that is, a matter which is not capable of being adjudicated upon by any Court of Law. But that does not mean, therefore, that the Instrument of Instructions is not a law of the Constitution. It only implies that, although the Instrument is a law, there is no remedy against its violation, obtainable from any Court of Law. And we must also remember that the Instrument has been so worded that any reference to any Court of Law for an alleged violation thereof, even if it were permitted, would be either impossible or useless. The position is certainly anomalous. But such an anomaly is not a novelty of the New Constitution of India. Examples of such non-justiciable matter were also to be found in the now repealed Government of India Act and Rules made thereunder. For instances, we might mention Sections 67-A (4) and 84 (2) of the Government of India Act and the Devolution Rules 4 and

we may say that the legal validity of these Instruments of Instructions is of the same nature as that of the statutory rules which could be made under the provisions⁴⁶ contained in the second paragraph of Section 19-A, and in the Proviso to Section 129-A, of the now repealed Government of India Act.

Secondly, in judging of the legal character of the Instrument of Instructions, we should not be guided by what took place in connexion therewith, either in Parliament or in any of its Committees. Nor should any Court of Law in India be so guided. It is true that it may be reasonably argued that opinions differ even among eminent jurists⁴⁷ as to "what sources of information outside a statute may be used for throwing light upon its meaning," or as to the extent to which the Courts of Law may admit "extraneous circumstances as an aid to interpretation." Nevertheless, there is a respectable body of opinion in favour of the principle of legal interpretation as embodied in the following observation⁴⁸ :—

"I think, where the meaning of a statute is plain and clear, we have nothing to do with its policy or impolicy, its justice or injustice, its being framed according to our views of right, or the contrary. If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it—to administer it as we find it; and I think to take a different course is to abandon the office of judge, and to assume the province of legislation."—*Miller V. Salomons* (1852), 7 Ex. 475, at p. 560; 21 L. J. Ex. 161, at p. 197, Pollock, C.B."

But so far as we in India are concerned, we do not think we can, in view of the judgment⁴⁹ of the Judicial Committee of the Privy Council in the case⁵⁰ of *The Administrator-General of Bengal (Defendant) V. Premlal Mullick (Plaintiff)* and others,

⁴⁶ For want of space we cannot quote the provisions here. The reader may kindly refer to them in the now repealed Government of India Act for the verification of my statement.

⁴⁷ See Craies, *A Treatise on Statute Law*, 3rd Edition, Part I, Chap. IV; also Beal, *Cardinal Rules of Legal Interpretation*, 3rd Edition, pp. 321—331.

⁴⁸ See Beal, *Cardinal Rules of Legal Interpretation*, 3rd Edition, 1924, p. 326.

⁴⁹ See *The Indian Law Reports*, Calcutta Series, Vol. XXII, 1895, pp. 788—800; also Craies, *A Treatise on Statute Law*, 3rd Ed., p. 120; also *The Calcutta Weekly Notes* of June 5th & 12th, 1939.

⁵⁰ On appeal from a decree, dated 16th May, 1894, of an Appellate Bench of the Calcutta High Court. See I.L.R., Calcutta Series, Vol. XXII, 1895.

have recourse, legally speaking, "to anything beyond the four corners" of the provisions of the Constitution Act as to the Instruments of Instructions, for the purpose of ascertaining what the intention of Parliament was when it passed them. In the case referred to above, the Judicial Committee held in essence that "the Proceedings of the Legislature in passing a statute" should be "excluded from consideration on the judicial construction of Indian, as well as of British, statutes." In delivering their Lordship's judgment, Lord Watson declared on March 30th, 1895, among other things⁵¹ :—

"Their Lordships observe that the two learned judges who constituted the majority in the Appellate Court, although they do not base their judgments upon them, refer to the proceedings of the Legislature which resulted in the passing of the Act⁵² of 1874 as legitimate aids to the construction of section 31.⁵³ Their Lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British Legislature are under construction, are equally cogent in the case of an Indian Statute."

The language of Section 53(1) of the Constitution Act is very plain and clear, and we should not, therefore, have recourse to anything else to determine the legal character of the Instrument of Instructions based upon, and derived from, that Section. If then we have referred, in the earlier part of this paper, to some historical matters, we have done it deliberately with a view to indicating the vexed nature of the question.

Thirdly, while discussing the nature of the "law of the constitution" in his classical work *Introduction to the Study of the Law of the Constitution*, Prof. Dicey has remarked that it (i.e., the law) consists "of rules enforced or recognised by the Courts."⁵⁴ He has also defined therein "the legal rules" as "rules recognised by the Courts."⁵⁵ If we accept this definition of law or legal rules—and there is no reason why we should not—then also there is no doubt about the legal character of the Governor's Instrument of Instructions; because such judicial recognition has been accorded to it by the Calcutta High Court. In the case of *the Emperor V.*

⁵¹ See the *ibid.*

⁵² i.e. the Administrator-General's Act of 1874 (Act No. II of 1874).—*Ibid.*

⁵³ i.e. Section 31 of Act No. II of 1874.

⁵⁴ See Dicey, *Introduction to the Study of the Law of the Constitution*, 8th Edition, p. 413.

⁵⁵ See the *Ibid.*, p. 30.

7.⁵⁹ These Sections and Devolution Rules were so worded that no action could be taken in a Court of Law against a decision of the Governor-General or a Provincial Governor, as the case might be, affecting a certain matter within the scope of these Sections or Rules, even if that decision might appear to a subject to be very unjust, and even though he might feel a sense of legitimate grievance against it. But no one would, therefore, contend that they were not laws of the Indian Constitution. We may also note here what Messrs Wade and Phillips have observed in connexion with the Constitutional law of England. "Many of the problems of Constitutional Law," they say, "are not in practice the subject-matter of litigation, *even though they relate to law proper*. Thus the duty of the Speaker of the House of Commons in regard to the certification of Money Bills is defined by the Parliament Act, 1911, but it is probably safe to predict that the Courts will never be called upon to interpret these provisions."⁶⁰ The Instrument of Instructions is in an analogous position.

We, therefore, conclude that, whatever might have been in the minds of some of the authors of the Constitution Act, we are justified in holding, in view of the language of Section 53(1) of the Act and in view of what we have said above, that the Governor's Instrument of Instructions, being based upon and derived from this Section of the Act, is a law of the Indian Constitution.

⁵⁹ For want of space, we cannot quote here the relevant Sections and Devolution Rules. The reader may kindly refer to them, for the verification of my statement.

⁶⁰ See E.C.S. Wade and G. Godfrey Phillips, *Constitutional Law*, Longmans, 1931, p. 8.

THE UNITED PROVINCES EMPLOYMENTS TAX*

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Like the sales tax in Madras and the property tax in Bombay, the proposed Employments Tax in the United Provinces¹ has given rise to great controversy. Political leaders, associations, legal minds and the Press have taken sides. Meetings have been held and memorials have been prepared about the tax. The U.P. branch of the European Association, for example, submitted a memorial to the Viceroy against the levy of the tax. The bill was reserved by the Governor of the United Provinces for the Viceroy's assent and only as late as 6th December the Viceroy viewed the bill.² In the words of *the Hindu* of Madras "To withhold assent without valid reasons or resort to dilatory tactics by reserving it to the signification of His Majesty's pleasure may result in provoking a first class constitutional crisis. . . . Does the bill infringe the rights of the Government of India? Is it in any way objectionable on the ground that it violates the rights of third parties? Affirmative answers have been given to both these questions by certain leaders in the United Provinces and it is just possible that the bill was reserved by the Governor for the consideration of the Governor-General on account of their representations."³

The importance of the U.P. tax may be judged from the fact that it has necessitated a modification of the Government of India Act by the introduction of the India and Burma (Miscellaneous Amendment) Bill in the British Parliament.⁴ Clause 2 of this bill proposes to place beyond dispute the distinction, which it was always intended, should be drawn between taxes on income

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(I am highly indebted to my friend Mr. B. R. Subba Rao in the preparation of this paper—Author).

¹ *The United Provinces Employments' Tax Bill, 1939* (Passed by the Legislature of the United Provinces) L. 297—L.A. 20-7-39—104.

² Press Note: *The Hindu* 6th Dec. 1939. P. 8.

³ *The Hindu*, dated 16th August, 1939, Page 8.

⁴ I have depended for facts relating to this bill on the report of the Associated Press of India (*The Hindu*, dated 6-12-39. P. 8.).

on the one hand and taxes on profession, trades, callings and unemployments on the other.”⁵

The controversy and publicity associated with the U.P. tax are not found in respect of the Employments tax in Bengal. This essay is concerned primarily with the former.

The U.P. tax has raised three issues. Firstly, about the *nature of the levy*. In the official bill the impost is termed “The U.P. Employments tar,” and is referred to as a tax on employments. Its opponents, however, hold a different view. As the *Capital* of Calcutta puts it⁶ “The consensus of legal opinion, both in India and in England, is that the tax is not a tax on employments but is, without a shadow of doubt, an income tax.” In Lord Zetland’s words “Some little time ago, the legislature of the United Provinces enacted a taxing bill under the heading ‘Employments tax’ which was, in fact, nothing more than an income tax”.

Secondly, there is the issue about the *object of the levy*. It has been suggested that the measure is “directed against the I.C.S. whose salaries they (the U.P. Government) cannot otherwise reduce,” and that “its effect upon others is merely unfortunate.”⁷ Since the levy will fall on members of the Public Services among others,” writes *the Hindu*⁸ “the bill has been construed as a measure imposing a cut in the salaries of public servants—even of those whose salaries are subject to revision only with the sanction of the Secretary of State. It has been suggested that, what the ministry cannot do directly, it has sought to do indirectly in order to get round the provisions of the Government of India Act.”

Thirdly, there is the *Constitutional issue*, namely, whether the Provincial Government has the power to levy the tax under the Government of India Act of 1935 (item 46 of the Provincial list) which mentions “taxes on professions, trades, callings and employment.”⁹ This question is closely dependent upon the first one, namely, the nature of the levy.

⁵ Lord Zetland’s speech as reported in *the Hindu*, 8th December, 1939, P. 6.

⁶ *The Capital*, dated 20th April, 1939.

⁷ *Ibid.*

⁸ *The Hindu* dated 16th August 1939, P. 8.

⁹ Compare Section 142-A of the India and Burma (miscellaneous amendment) Bill introduced in Parliament Dec. 1939 for the classification of the constitutional position. Also *vide* Lord Zetland’s speech in the House of Lords while introducing this bill,

This essay is concerned only with the first of these issues and not with the other two. Even the nature of the levy is considered on theoretical grounds from the viewpoint of public finance.

I shall first analyse the U. P. bill only so far as the underlying principles are concerned. The administrative aspects, such as refunds, appeals etc., are not dealt with except so far as they effect the nature of the tax. I shall next consider how far these features of the U. P. tax are similar to those of the income-tax. Lastly, I shall point out why the proposed tax is not an income-tax but is an employments tax. Wherever necessary, I have compared it with parallel imposts in other countries.

The U. P. tax applies to employments of all kinds, public or private, excepting the defence forces. It refers to “service of any kind to the Crown, a local authority, or to any person, whether whole-time or part-time, for a salary, but it does not include employment in His Majesty’s military, naval or air forces.”¹⁰ The salary of these employees is liable to taxation and is the basis of assessment. “Salary” refers to all income received in the course of employment, regularly or at irregular intervals, within or outside the Province so long as the recipient is in service in the United Provinces. The comprehensive definition of the term salary in the bill is as follows.¹¹ It “includes all salaries, wages and any allowances, fees, commission, perquisites or profits in lieu of, or in addition to any salary or wages payable by the employer to the employee on account of remuneration for employment, whether periodically or at irregular intervals, and earned in the United Provinces, whether received or receivable in or outside the Province; but it does not include pensions or any contribution to a provident fund made by the employer, or any travelling or halting or conveyance allowances or professional earnings.” Rent-free quarters and leave salary are included for purposes of assessment.¹² Such salary is taxable when it becomes due though not actually paid to the employee.¹³ The employer has to furnish an annual return of the salaries of his employees.¹⁴

¹⁰ Section 2 (2).

¹¹ Section 2 (8).

¹² *Ibid.* Explanation.

¹³ Section 2 (11).

¹⁴ Section 5.

According to the amount of their salary the assesseees are grouped into 28 classes of employment which are taxed as under¹⁵:

SCHEDULE
Classes of Employments

Class of employment	Total salary earned in U. P. by an employee during year ending March, 1931		Tax Payable
	Rs. Exceeds	Rs. But does not exceed	
1.	2500	3500	75
2.	3500	4500	150
3.	4500	5500	225
4.	5500	7500	325
5.	7500	10000	475
6.	10000	12500	650
7.	12500	15000	850
8.	15000	17500	1100
9.	17500	20000	1400
10.	20000	22500	1725
11.	22500	25000	2100
12.	25000	30000	2500
13.	30000	35000	3000
14.	35000	40000	3600
15.	40000	45000	4300
16.	45000	50000	5100
17.	50000	60000	6000
18.	60000	70000	7000
19.	70000	85000	8200
20.	85000	100000	9500
21.	100000	125000	11000
22.	125000	150000	13000
23.	150000	175000	16000
24.	175000	200000	20000
25.	200000	250000	25000
26.	250000	300000	30000
27.	300000		32000

The classification of the employee does not refer to the kind of employment or profession followed but is based on the amount of his salary irrespective of the job. It may be noted

¹⁵ Schedule in the bill. Twenty-seven classes are mentioned but I have included the exempted class also.

that it is not based on the whole of his income but only on what he receives as salary. Penalty is prescribed for concealment of salary "with the intent that he may not be placed in the class of employment to which he belongs" and "has returned it below the real amount," since the amount of tax payable varies among the classes.

Those whose salary is Rs. 2500 or less are exempted from the tax. As between the twenty-seven classes which are liable to taxation, the rate of levy is progressive and varies from 3% on the minimum in class 1 (*i.e.*, Rs. 75 on a salary of Rs. 2501 in the class 2501-3500) to 10·6% in the 27th (*i.e.*, Rs. 30000 on a salary of 300,001, the minimum in the class exceeding Rs. 300,000). But within any particular class, the tax is regressive since it is a lump sum tax. Thus, *e.g.*, in classes I to III of the tax paying section the rates are as follows:

	Salary	Amount of tax	Rate
	Rs.	Rs.	%
I	2501	75	3%
	3000	75	2·5%
	3500	75	2·1%
II	3501	150	4·3%
	4000	150	3·75%
	4500	150	3·3%
III	4501	225	5·0%
	5000	225	4·5%
	5500	225	4·1%

It is worth while noting not only how within each class there is regression but also how there is a sudden increase in the rate between the maximum of one and the minimum of the next higher features, which, as pointed out later, are not found under a true income-tax as contrasted with a pseudo one.

However, the tax is to be deducted at the source,¹⁶ "levied and collected in advance" by the employer. It may be observed in passing that in the case of the income-tax the practice is the other way round. The tax is levied and collected on the income of the previous year or of a number of years. To proceed with the explanation of the United Provinces bill: If an employee has not paid the tax in advance and leaves the Province, he is liable to pay the impost on the amount he has earned during the period of his stay in the Province; if he dies in similar circum-

¹⁶ Section 4.

stances, the tax is payable by his representative "out of the estate of the deceased person."¹⁷ The Provincial Government, however, may exempt any class of employment or any person or class of persons from paying the tax.¹⁸

This analysis of the proposed tax naturally leads to the question: Is it an income-tax? Two of the grounds for regarding the U.P. tax as not an employments tax may be disposed of summarily from the point of view of financial theory. It is contended that a true employments tax is generally a local source of revenue and that the burden it imposes should be small. Lord Zetland observes¹⁹ that the purpose of including this and similar taxes in item 46 of the Provincial List "was to keep alive a right which Provincial Governments had exercised in the past empowering local authorities, such as municipalities and district boards, to levy rates for local purposes which are commonly described as taxes on professions, circumstances and property. It was, of course, characteristic of these taxes that their incidence upon the individual tax-payer was a very small one."

It is hardly necessary to point out that it is administrative convenience and financial need that determine whether a source of revenue should be local, provincial or central. Further, the same tax may be levied at the same time by more than one authority, e.g., the land and income taxes in Australia.²⁰ Likewise, the burden of the levy does not change the nature of the tax. The rate depends on the financial needs of the state. The changes in the rates of the income tax in England and even in our country are an instance in point. The British Income Tax does not cease to be such and become an employments tax if the rate is reduced from seven shillings, six pence to only six pence in the pound.

The answer depends on two considerations. First, should an income-tax be universal or can it be levied only on a section of the people of a state or a part of their income? Although for reasons of justice and equity and since income is the best test of ability, the tax is generally universal above the exemption limit, it need not necessarily be so and, in fact, is not so always. In our own country, for example, the ruling princes, the heads of provinces, and charitable and religious institutions do not pay

¹⁷ Section 21.

¹⁸ Section 34.

¹⁹ Reported in *the Hindu*, 8th Dec., 1939, P. 6.

²⁰ *Report of the Royal Commission on Taxation in Australia*, Section VIII.

income-tax. Nor is it necessary that all incomes should be included. Writing about the income-tax, Seligman observes,²¹ "The term, however, is used in two senses. It may refer to a tax on the income from a special source like wages, interest or rent or to a tax on the entire income from whatever source derived. In the one case it is called a partial income-tax, in the other, a general income-tax. A general income-tax, like a general property tax, is a personal tax, or a tax on the person whose ability is measured in this case by his entire income, as in the other case by his entire property. A partial income-tax, like a specific property tax, is indeed paid by some person—the recipient of the income or the owner of the property—but only in relation to a particular source of income or a specific piece of property. For a partial income-tax, there is no generally accepted name . . ."

Such a tax which affects only a part of the income and not the whole is prevalent in France, Italy, the Swiss Cantons, Massachusetts, etc., where is found the composite income-tax as contrasted with the unitary and presumptive types.²² In the foregoing governments, the tax is composed of a series of separate quasi-personal taxes, assessed on the particular sources of income with a super-imposed personal tax on the income as a whole. The French income-tax is composed of two parts. One consists of a general tax upon the entire income as in the case of the federal tax in the U.S.A. Another part consists of taxes on the separate constituents of income, such as income from land, from professions, from moneyed capital, from business and the like. Each of these taxes on the constituent kinds of income is or has been levied at a different rate.²³ Likewise, in some Swiss Cantons such partial income-taxes are levied in order to reach wages and professional earnings. These are primarily subsidiary taxes and are of limited application. So also in Massachusetts²⁴ the partial income-tax has been levied on intangible personality with a much lower rate on professional and trade incomes. In our own country, agricultural incomes were, until recently, not liable to

²¹ *Encyclopaedia of Social Sciences*, Vol. III, P. 626.

²² *Ibid.* P.627.

²³ Seligman: *Studies in Public Finance*. P. 66. Also see Kennon: *Income Taxation*.

²⁴ See *the Income Tax of the Commonwealths of the United States* by D.O. Kinsman, specially Chapter II (*American Economic Association Publications*, Third Series, Vol. IV. No. 4. P. 17).

taxation, i.e., income-tax was levied not on the entire income but only on a part of it. In this respect, no doubt, the United Provinces Employments tax resembles the partial income-tax in so far as employees only are taxed and only on that part of their income received as salary and not on their entire income. Of course the term 'salary' includes many kinds of income but, all the same, it excludes many others, e.g., dividends on investment, income from land, etc.

The second consideration referred to above is the basis of assessment and the classification of the tax-payers. It is on this score, which appears to me to be fundamental, that the Employments tax differs from the income-tax either of the general or the partial type, and, therefore, is not an income-tax but only a tax on employments.

The United Provinces bill groups, as already pointed out, assesseees into 28 classes (including the exempted class) and as between these groups levies a progressive rate. This may lead to the supposition that, since the rate is progressive the levy should be considered as income-tax, particularly in view of the income basis of classification. Further, the supposition is strengthened by the fact that the Bengal employments tax is at a flat rate and that the Bengal Government was not permitted by the Government of India to impose a graduated tax. The absence of progression in the Bengal tax is largely responsible for the feeling that the tax is not an income-tax and for not giving rise to any constitutional issues. But graduation is not the monopoly of the income-tax. It is merely a better and juster method of burdening the tax-payer. Its basis is primarily equity and secondarily larger revenue. We have progression in property taxes, death duties, inheritance taxes and many more of the important direct taxes lending themselves to a graduated levy.²⁵

It has been pointed out above that the U.P. tax is a lump sum levy. In Holland, pre-war Austria, Bavaria, Prussia and some parts of Switzerland, for example, in the city of Basel, taxes coming under the head "income-tax" are also on a lump sum basis. Other points of similarity between the U.P. and these continental imposts are in the classification of assesseees on an income basis, the existence of regression along with progression and, in some cases the prevalence of regression not only with reference to different incomes in the same group of assesseees but also as between two classes. Writing about the Prussian income-tax,

²⁵ Kennan: *Income Taxation*,

Kennan observes²⁶ "It will be noticed that the rate is regressive from the percentage standpoint as to the amounts in any of the 26 grades. For example, in the case of the third grade embracing incomes from 1200 to 1350 M., the tax of 12 M. would be one per cent of the first amount but would be only eighth-tenths of one per cent of the latter amount. In one case even the *grades* are partly regressive so that 2100 M. in the eighth grade really pays a smaller per cent than 1800 M. in the preceeding grade. In the higher grades the tax is intended to approximate four per cent. The rate is proportional (at three per cent) from 9500 to 30,500 M. as to the arithmetical mean of the extremes of each grade. For incomes over 10,000 M. the rate is proportional at four per cent on the lowest amount of each grade.

A tax very closely resembling the U.P. one was the supplementary tax on salaries in pre-war Austria. "In addition to the general income-tax comments Kennan"²⁷ all persons who receive from the state or corporations or individuals, an annual

²⁶ *Ibid.*, p. 95 footnote. The following table of rates (*Ibid.*, p. 94) is interesting:—

Income in M		Tax in M		Percentages on	
Exceeding	Not exceeding			Minimum	Maximum income in grade
900	to 1050	6		·66	to ·57
1050	to 1250	9		·85	to ·76
1250	to 1350	12		1·00	to ·88
1350	to 1500	16		1·18	to 1·00
1500	to 1650	21		1·4	to 1·27
1650	to 1800	26		1·57	to 1·44
1800	to 2100	31		1·72	to 1·47
2100	to 2400	36		1·71	to 1·5
2400	to 2700	44		1·83	to 1·63
2700	to 3000	52		1·92	to 1·73
3000	to 3300	60		2·00	to 1·81
3300	to 3600	70		2·12	to 1·94
3600	to 3900	80		2·22	to 2·00
3900	to 4200	92		2·35	to 2·19
4200	to 4500	104		2·45	to 2·31
4500	to 5000	118		2·62	to 2·36
5000	to 5500	132		2·64	to 2·4
5500	to 6000	146		2·65	to 2·43
6000	to 6500	160		2·66	to 2·46
6500	to 7000	176		2·7	to 2·51
7000	to 7500	192		2·74	to 2·56
7500	to 8000	212		2·82	to 2·65
8000	to 8500	232		2·9	to 2·73
8500	to 9000	252		2·96	to 2·8
9000	to 9500	276		3·06	to 2·9
9500	to 10000	300		3·15	to 2·85

²⁷ *Op. Cit.* P. 41.

salary or allowance amounting to 6400 crowns or more, are subject to a supplementary tax. The scale of the rate is progressive rising from four tenths of one per cent on incomes from 6400 to 8000 crowns to six per cent on incomes of 30000 crowns or more. The person or corporation who pays the salary is required to retain the tax for each month and turn it over to the government within fourteen days from the last day of the month." One interesting point of difference is that this Austrian tax was at a progressive rate and not a lump sum levy as the U.P. one is. But there are certain important features common to the two. Thus, the Austrian tax on salaries was in addition to the general income-tax,²⁸ which in our country is levied by the central government different from the authority levying the employments tax; it was also collected at the source.

But these resemblances of the U.P. tax with the foreign levies regarded as income-taxes do not make any of these imposts income-taxes. For, they are more or less administrative conveniences and are superficial in character, and do not affect the kernel of the levies. Nor does the name by which a tax is called indicate its true nature. Thus, in some states of the U.S.A. the income-tax goes by the name of a 'franchise' or 'excise' duty, and even in our own country there were the 'license taxes of the 19th century. As an American publication puts it,²⁹ "The legislative characterization of a tax as a franchise, excise or income-tax is not always conclusive as to its nature when a question of constitutionality is raised in the courts. The legislatures of some of the states have probably been influenced to enact the tax on business in the form of an excise to avoid state constitutional restrictions growing out of the rule of uniformity, and complications arising out of the commerce clause of the Federal Constitution."

Not only is the legislative nomenclature of the impost immaterial but its financial importance and scope are irrelevant to the consideration of the real nature of a tax. Thus in advanced and rich countries, such as the U.S.A. and the United Kingdom, the income-tax is to-day a very important source of revenue; but in other countries and particularly in the pre-war world it was a minor tax. But whether the income-tax is a basic or a complementary one, a general or partial one, a universal or sectional or

²⁸ The general income-tax in Austria was also a lumpsum levy.

²⁹ *State Income Taxes* Vol. II. Chapter XIV. (National Industrial Conference Board, New York, 1930).

particular one, is not the factor which determines the nature of the tax.

The *sine qua non* of a tax is its true basis and in this respect the U.P. tax like its parallels on the continent fails to satisfy the "income-tax test." This conclusion is substantiated below by an analysis of the theoretical nature of the lump sum levy or the existence of "regression with progression," and by pointing out that such a feature is inconsistent with a true income-tax and that the U.P. and other imposts are pseudo income-tax.

It is a fundamental axiom of modern public finance that ability should be the basis of taxation.³⁰ Ability is subjective but its best objective test is income. The change in the test of ability has been from expenditure and property to income, and the former are regarded to-day as at best very partial and undependable standards. "We are so wedded to the income conception," writes Stamp,³¹ "that even those capital taxes we possess, such as death duties, and the expenditure taxes, such as the taxes on tea, sugar, etc., we endeavour to express in terms of a tax upon income." What constitutes income, how much of it is to be assessed and at what rate are not material to our present discussion. All that matters is that the essence of an income-tax is that it is based upon the ability to pay, *i.e.*, income and therefore bears a direct relationship to the income of the tax-payer. Any impost not directly affecting income or ability cannot be an income-tax.

For purposes of taxation, income is considered principally, in its quantitative aspect, though the 'time' "economic" domestic circumstances and 'economic surplus' aspects modify the former.³² The quantitative aspect is expressed in terms of the monetary unit and its multiples of the taxing country, *i.e.*, in rupees, dollars, marks, francs, etc. A larger income, other things being equal, denotes a greater ability and income-tax, based as it is on the ability-to-pay-principle, must affect each multiple of the unit. For various reasons, a part or the whole of the income of an individual or a class may be exempted from taxation, *e.g.*, on political grounds, the incomes of the princes and the Governors are not taxed; on economic grounds incomes below the exempted limit; and on social grounds, the incomes of certain charitable

³⁰ Seligman: *Progressive taxation in Theory and Practice*; Stamp: *The fundamental principles of taxation in the light of modern developments*, Chapters I and II.

³¹ *Op. Cit.*, P. 13.

³² Stamp: *Op. Cit.*, P. 15-16.

and religious institutions; in the case of the partial income-tax only the whole or a part of the income from a particular source may be taxable.

But whatever the assessable amount, every part of it has to bear its share of the burden. For example, when income-tax is levied at the rate of 3 pies in the rupee between Rs. 2,000 and Rs. 3,000, an income of Rs. 2,000 pays on each of the two thousand rupees (*i.e.*, two thousand pice, while a higher income, say Rs. 2,500, also pays on each of two thousand five hundred rupees (*i.e.*, two thousand five hundred pice). The rate of the levy is the same, *i.e.*, 3 pies per rupee but the larger income must pay a larger *sum*. The amount paid, though not necessarily the rate, must increase with the increase in income. The relation between the *amount* of the tax paid and the income is thus direct. If the *sum* paid is the same whether the income is Rs. 2,000 or 2,500, *i.e.*, if the extra income of five hundred rupees is not taxed, the extra ability is not burdened and the impost ceases to be an income-tax for its very foundation is destroyed.

The United Provinces tax is not a percentage levy nor is it levied at so many pies in the rupee; it is a lump sum levy. Thus salaries between Rs. 2,500 and Rs. 3,500 pay a fixed sum of Rs. 75 as tax. The tax paid by an employee with a salary of Rs. 2501 is the same as that paid by one getting Rs. 3,500. The latter escapes taxation on Rs. 999 which denote his greater ability. Under an income-tax the extra ability should have been burdened. The partial or special income-taxes found in France, Italy and other places are not lump sum levies. Though they apply only to some particular types of incomes, *e.g.*, wages, they are also a per centage levies of such incomes so that except the exempted minimum every franc or lira or dollar is liable to taxation.

The grouping of employees on the basis of salaries earned and the variation in the rate of taxation as between the different groups may lead us to regard the tax as an income-tax. But these are to be found in taxes on professions and trades recognised as such.³³ The levy of the tax at different rates on the different groups is due to the inevitable application of the faculty theory. Nobody has seriously regarded the tax on professions and trades, for example, as it prevailed in Madras, as an income-tax, although those who followed the professions and trades were grouped into ten classes according to their monthly income; and although one class getting less than Rs. 100 a month was exempted and the other groups paid taxes ranging from about 2½ per cent in the last

group to about 10 per cent on the minimum of the first group. As in the proposed U.P. tax there was progression in the rates of the tax on profession in Madras but the Taxation Enquiry Committee regarded it merely as a tax on professions and trades and not an income-tax. There is thus no reason why the U.P. tax should be considered otherwise than as an employments tax

³³ *Indian Taxation Enquiry Committee*, Report PP. 317-18.

THE EVOLUTION OF THE LEGISLATURE IN HYDERABAD

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Mughal Connections.—A major part of the larger Indian States are the remnant of what was once the mighty and magnificent Mughal Empire, and this is true much more of Hyderabad than of any other part of India, for in no other State is the historical continuity with that Empire more patent than in the history of the dynasty which rules it and which goes back to Khwajah 'Abid Qulich Khan, Commander of the Emperor Aurangzeb's army which besieged and finally captured Golconda.¹ It is no wonder then, that the early Asafjahi rulers of the Deccan and Berar tried to carry on the tradition of Delhi, and this continuity was greatly helped by the large influx of nobles who left Delhi for the Deccan along with the first Asaf Jah.

An attempt will be made in this paper to give a historical *résumé* antecedent to the recent reforms enunciated in Hyderabad this year and the peculiar theory of representation couched in it, and here it might be of some interest to give a brief outline of the conciliar experiment in the Mughal Empire from which Hyderabad traces its connection. It is instructive to note that there were councils existing in that Empire which included both official and non-official members, although, of course, elections were unknown and recourse was taken to nominate non-officials. We find such councils discussing and presenting their recommendations before the Emperor, and even find the Emperor nominating a high official to take his place while he himself retired to another room in the Palace.² We have records of these Councils in the pages of our authorities, and mention might be made here of a Council held by the Emperor Akbar at which Prince Salim, Khan-i-A'zam Koka, Raja Todar Mal, Qasim Khan, Shaikh Abu'l-Faiz Faizi, Mahesh Das, Raja Bir Bar, Hakim Abu'l-Fat-h and

* A paper read at the Second Indian Political Science Conference, Lahore, January, 1940.

¹ Yusuf Husain Khan: *Asaf Jah I*, 1936, p. 9.

² Ibn Hasan: *Central Structure of the Mughal Empire*, 1936, p. 197.

Shaikh Abu'l-Fazl were among those present, and it is interesting to learn that matters such as the question of infliction of capital punishment in certain cases, charities, judicial inspectors, the building of caravanserais, the holding of a census of population and other important affairs were freely discussed. But this is not the only instance of its kind and we have a description of a number of such councils in the pages of Monsereate, Akbar-namah, and other contemporary authorities.³

These semi-official councils were not copied by the early Asaf Jahs for obvious reasons. When Asaf Jah I took over the charge of the Deccan and Berar this Mughal province was in a state of utter turmoil and the machinery of the Central Government at Delhi had entirely failed to withstand the strong centrifugal tendencies which had upset the whole country. Although no one could excel Asaf Jah in his loyalty to the Emperor, he had to fight regular pitched battles in order to save at least this part of the Mughal heritage from utter destruction. He had then to conciliate the Mahrattas without and the enemies within. Such circumstances were naturally most unfit for any experiments in conciliar administration, and we see that practically the whole time of Asaf Jah I was taken up in putting his hard-acquired Dominions in order, while his son, Asaf Jah II was preoccupied in giving his patrimony as much freedom from external interference as possible.

Sir Salar Jang's Reforms.—Unfortunately the government or the lack of government during the rule of Asaf Jah II's immediate successors led to tremendous financial troubles with the result that the edifice built up by Asaf Jah I was shaken to its very foundations, and had it not been for the timely arrival of the youthful Salar Jang on the scene in 1853, the future of the Dominions would have been dark indeed. Salar Jang was an institution in himself and may with veracity be called the second organiser of Hyderabad, and his twenty years' ministry again put the administration of the State on a thoroughly sound basis. We see his masterly hand in every branch of administration; and legislation, naturally, could not escape the watchful eye of the sagacious minister. We find that from 1869 to great statesman's death in 1883 a number of attempts were made to codify the laws and to put them on a sound basis by means of committees and commissions. Thus in 1869 a committee was appointed to draft laws for the State on modern lines, while in 1875 a permanent

³ *Ibid.*, p. 299.

legislative department was created for the purpose and another committee was appointed consisting of all High Court Judges and other high officials.⁴ This resulted in the passing of a number of circulars and the translation of many British Indian codes. It is interesting to recall that it was a short time after this, in 1881, that the services of the late Mr. Justice Mahmūd of the Allahabad High Court, son of the great Sir Syed Ahmad Khan, founder of the Aligarh movement, were taken over.⁵ These experiments in legislation by experts continued even after Sir Salar Jang's demise, and we find in 1891 Law Commissions composed of the Chief Justice and two other Judges engaged in collecting local customs, existing circulars and other rules and trying to knot them into a composite whole.⁶

The Qanuncha-i-Mubarak.—The first step in legislation by a proper Council was taken by His late Highness Nawab Sir Mir Mahbub Ali Khan Bahadur when he issued the famous Qanuncha-i-Mubarak of 1892 reorganising the whole administrative machinery, and separating the executive and the legislative functions. By a farman of the 20th of February, 1893, a separate permanent Legislative Council was created for the first time consisting of the Chief Justice, a Judge of the High Court, the Inspector General of Revenue, the Director of Public Instruction, the Inspector General of Police and the Financial Secretary. As will be seen, although this was called the Legislative Council, it was more in the form of a committee of Heads of Departments, and the procedure which was adopted for the enactment of Legislation proves that it was different for the legislatures as we know them. It was laid down that the Head of a Department was to frame rules, forward them to the Judicial Secretary who would then publish them in the Government Gazette and invite suggestions from officials as well as the general public. The *résumé* of these opinions was to be placed before the Legislative Council by the Assistant Judicial Secretary and the Council was to make a decision on the date appointed for the purpose. This decision

⁴ In this committee we find the name of Moulvi Mushtaq Husain who, as Nawab Wiqarul Mulk became the Secretary of the M.A.O. College, now the Muslim University.

⁵ Unfortunately Mr. Syed Mahmūd left Hyderabad before he could do anything at all.

⁶ For a brief survey of the early history of Hyderabad see Fathulla Khan: *A History of Administrative Reforms in Hyderabad State*, Hyderabad, 1935.

was to have a finality only after the signatures of His Highness the Nizam.⁷

This embryo of a Legislature soon changed its appearance, and within twelve months of its inauguration we find a farman dated, the 19th of January, 1894, ordering an enlargement of the Council and the inclusion of a non-official element for the first time. This was a great step forward in a State, the social life of which was permeated with ideas of aristocracy, of rank and hierarchy, of classes. The device which had recently been adopted in British India of including *ex-officio* members, nominated officials, nominated non-officials and elected members was adopted *in toto*.⁸ The newly organised Council held its first sitting on the 6th of May of the same year, and this date might be said to mark the beginning of a new principle in Hyderabad, that of the active co-operation of His Highness' ministers with the non-official element.

The composition of the Legislative Council was now as follows:

- I. Ex-officio,—The Chief Justice, the Judicial Secretary, the Legal Adviser.
- II. Nominated Officials, 6.
- III. Elected non-officials to be nominated by the Prime Minister, 4,—of whom Jagirdars, 2, Wakils, 2.
- IV. Nominated Non-Officials, 2.

Total 15 (Officials, 9; Non-Officials, 6, of whom elected, 4).

The Growth of the Legislature, 1892—1911.—Although the history of the Legislative Council from 1892 to 1911 is that of the gradual extension of the elective element, still there is no perceptible change in its character of an appendage of the Government as the maker of the laws for the peace and prosperity of the country. The members were to be concerned mainly with what was put before them in the form of Bills and they had no right to ask questions or discuss the Budget or to initiate legislation on more important matters without the previous consent of the Government.⁹ In 1900 two nominated members were added to

⁷ Qanuncha-i-Mubarak, Part II, p. 10: *Constitutional Rules of H.E.H. the Nizam's Government*, Hyderabad Deccan, 1935.

⁸ *Report of the Reforms Committee*, 1939, (ref. to here as R.R.), p. 32. For a short description of British Indian reforms of 1892 see Horne: *The Political System of British India*, 1922, p. 56.

⁹ See *Hyderabad Legislative Council Regulation*, 1912 (ref. to here as L.C.R.), p. 34.

the Council, one of whom was to represent the Paigahs or premier jagirs while in 1905 two extraordinary nominated members were added, one of whom was to be chosen from among the retiring non-officials and the other was to be one with a specialized knowledge of the particular Bill under consideration.¹⁰

Reign of H. E. H. Asaf Jah VII.—On the accession of His Exalted Highness the present Nizam, the Legislative Council was composed of the following members:—

- I. Ex-officio, 3 (The Chief Justice, the Judicial Secretary, and the Legal Adviser).
- II. Nominated Officials, 9.
- III. Elected Non-Officials, 4, of whom Jagirdars, with income of Rs. 6,000 per annum or more, 2;¹¹ Wakils, of the High Court, 2.
- IV. Nominated Non-Officials, 2, of whom Sahukar, 1, Mir Majlis-i-Paigah, 1.
- V. Extra-ordinary members, 2.

Total, 20¹².

It was further laid down that if an elected member ceases to be a member his place should be filled by nomination by the Prime Minister from among the class to which the member belonged.¹³

It is interesting to record that the people at large were empowered to exercise a modified power of suggesting amendments by petitioning to the Council through the proper channels about a Bill which was being proceeded with, provided they were "written in temperate and respectful language."¹⁴ Members were allowed to move on the petitions, but if no member volunteered to do so they were simply to be recorded.¹⁵ As regards the Bills proper it was laid down that they must be based on Islamic Shari, Hindu Shastras, the special law of a community, or current custom, although "assistance from the laws of British

¹⁰ L.C.R., 4—11 A. Even the 'elected' members were to be appointed by the Prime Minister; see 4 B.

¹¹ L.C.R., 5.

¹² R.R., 36.

¹³ L.C.R., 13.

¹⁴ L.C.R., 27.

¹⁵ L.C.R., 30.

India" was allowed.¹⁶ Moreover, Bills relating to financial matters, to the religious beliefs of His Exalted the Nizam's subjects and to the Legislative Council Regulations were not allowed to be moved without the previous sanction of the Prime Minister.¹⁷

It will thus be seen that the Council was composed mainly of officials and of members nominated by the Government, although it must be confessed that there were certain elements in it which clearly pointed to a more liberal and democratic goal. In 1911, His Exalted Highness added two non-official members by way of experiment, one from the Municipality of the City of Hyderabad and the other from the local Boards attached to the Headquarters of the four subahs of the Dominions,¹⁸ in rotation, while in 1913 a representative of the Sarf-i-Khas or the Royal Domain was added.¹⁹

Antecedents of Reforms.—All this was evidently not to the satisfaction of His Exalted Highness, and when he was pleased to institute an Executive Council in 1919 and give in its charge a large amount of powers which had so far been exercised by the Sovereign himself, H.E.H. also issued a *farman* in which he remarked that the "minor changes" effected since the institution of a Legislative Council by His late Highness were not "sufficient to meet the requirements of the present times nor do they give promise of the fulfilment of those duties and functions which I consider necessary for the prosperity and advancement of my beloved subjects." With this object in view H.E.H. ordered the President of the Executive Council, the late Sir Ali Imam to arrange for the collection of material on which a liberal scheme for the enlargement of the Legislative Council might be based with due regard to

- (a) a substantial introduction of the elective element;
- (b) direct voting;
- (c) the representation of all important classes and interests;
- (d) the effective protection of minorities;
- (e) conditions of franchise;
- (f) the official element; and

¹⁶ L.C.R., 35 A.

¹⁷ L.C.R., 34.

¹⁸ This reform was effected almost immediately after H.E.H.'s accession.

¹⁹ R.R., 32.

(g) powers and functions.²⁰

Thus it will be seen that as long ago as 1919 His Exalted Highness contemplated a very liberal extension of the Legislative Council and was definitely of opinion that such an extension would lead to the "prosperity and advancement" of the country.

The period between 1919 and 1937 was taken up mostly by far-reaching administrative educational and judicial reforms. By a farman dated 24th February, 1920, H.E.H. appointed an ex-judge of the High Court, Rai Balmukand Bahadur to collect material for the purpose outlined above, and the report covering 260 pages was presented to the Government after a labour lasting more than eighteen months. It was, however, rightly thought that the general raising of the level of the administration which was to follow the establishment of a collegiate government in the form of the Executive Council had a priority over the formal extension of the Legislature, and as a matter of fact the first twenty years of the reign were too crowded with means for the uplift of the people and provision for their better education to allow much time for a definitive enactment of Rai Balmukand's voluminous report as law.

This report was, however, considered by the Government as an alternative to Sir Ali Imam's proposals, and it is interesting to note that there we find proposed a bicameral legislature with an Upper House of 68 and a Lower House of 120. Of the 68 of the Upper House 26 were to represent the larger Jagirdars of the Deccan, two were to be from the University and the rest nominated, while the Lower House was to consist of 90 elected and 30 nominated members. It can only be gauged that if such a legislature had been brought into existence there would have been frequent deadlocks between the two Houses as the outlook of each House would have been entirely antagonistic to the other, and as the Legislature which it was intended to replace was mainly an official body there would have been no traditions or experience to guide this large body of nearly two hundred members.²¹

Gestation of the Reforms.—However that might have been, the schemes of the late Rai Balmukand and of the late Sir Ali Imam were not embodied in the constitution of the State, and the next step did not come, mainly for reasons stated above, till nineteen years after the establishment of the Executive

²⁰ R.R., 33.

²¹ For a gist of the late Rai Balmukand's and the late Sir Ali Imam's recommendations see R.R., chart 3, opp. p. 37.

Council. It was not long after the Right Hon. Nawab Sir Akbar Hydari had succeeded Maharaja Sir Kishan Parshad Bahadur as President of the Executive Council that on 22nd September, 1937, he bore a gracious message of His Exalted Highness the Nizam to the Legislature in which H.E.H. says that he had given "constant and anxious thought to the problem of increasing the association between my people and my government by the creation of a body or bodies representing the main interests in my State from which my government could derive adequate and constant knowledge of the needs and desires of my people."²² For this purpose a committee consisting of two officials and three non-officials (of whom two were eminent Hindus of the State) was formed with a member of the Hyderabad Civil Service as the Secretary, to formulate definite proposals for the achievement of this goal. The terms of reference are remarkable in their broad outlook; they were as follows:

"Keeping in view the conditions in and the requirements and circumstances of the State, to investigate and report on all suitable alternatives for the more effective association of the different interests in the State with the Government whereby the latter may be placed in continuous possession of their needs and desires."²³

The labours of the Committee were arduous and prolonged and it worked hard from the time of its appointment on the 22nd of September, 1937, up to the 31st of August, 1938, when its report was presented to the Government. This report was released for publication along with the Arzdasht of the President of the Executive Council (the Right Hon. Sir Akbar Hydari) and the accepting Farman-i-Mubarak, on the 19th of July, 1939.

Principles Underlying the Reforms.—The reforms as adopted by the Farman-i-Mubarak form a bold, unique and definite departure from the principles which were supposed to have been the last word in the application of democracy to India. We know and we have suffered from the shortcomings of the graft of a purely European democracy to Indian conditions, and it was rightly decided that the steps to be taken must obviate these drawbacks and must be true to the real conditions of the country. It is well known that the orientation of Indian politics is such as to make the appeal of both leaders and candidates for election purely communal in its essence, and everyone is aware that this has proved baneful to the interests of the country as a whole, besides

²² R.R., vi.

²³ R.R., vi and vii.

being unreal and unscientific in its essence. Hyderabad has made history in turning its face from this appeal and has brought real economic factors (which are, as everybody knows, so closely knitted with politics) to the fore by dividing the Dominions into a series of economic rather than geographical constituencies. To quote the Reforms Report, "with the advance of civilization, economic interests are multiplying so rapidly and are growing so complex, that it is not possible to expect any person to possess a close and expert knowledge of all the interests of any particular territorial unit or constituency to represent them adequately."²⁴ Apart from the need of expert knowledge under modern conditions, the persons who might represent an economic interest will always have their hands on the pulse of the special concern which he might be representing. Moreover, there is no danger of his forgetting the larger interests of the State, as is sometimes said, for the simple reason that most of the economic constituencies formed would be State-wide and the representatives would have no occasion to think otherwise than in terms of the State taken as a whole.

The second achievement of these reforms is that a unicameral Legislative Assembly has been definitely and finally chosen instead of the bicameral legislature which held the field since the late Sir Ali Imam's proposals.²⁵ There were many reasons why a bicameral legislature should have been preferred, and, as has already been remarked, for a land with an aristocratic tradition like Hyderabad a Second Chamber should almost have been taken for granted. We should remember that the Royal Domain, the Samasthans and the Jagirs cover 41.5% of the total area of the land and the Government controls only 58.5%, so that if a demand had effectively been made it would not have been much off the point. But it is gratifying to note that everybody, including the Jagirdars who own lands worth lacs of rupees a year, are realising that they are as much sons of the soil as the poorest of His Exalted the Nizam's subjects and "their representatives who are returned to the Municipal Corporation and the Legislative Council take an appreciable interest" in matters with which they have to deal.²⁶ It is for this reason that it has been decided to institute a unicameral House in which the representatives of all classes should sit and put their heads together to effect means for the betterment of the whole of the Dominions.

²⁴ R.R., 54.

²⁵ This question has been thoroughly discussed in R.R., Ch. 2, 3.

²⁶ R.R., 38.

The third remarkable thing about the new Legislature is the tremendous increase in the number of elected members—from 4 to 42! and it is doubtful if in any other recent constitution such an advance is to be seen. Practically all the professions—not excluding the agricultural profession (which is represented by its own constituencies returning 16 out of the 42 elected members to the Assembly) are represented. Then again, while in the old Council there were barely six non-officials out of a total of 20, the new Assembly is to consist of only 21 officials (including the ministers) out of a total of 85. So far as election proper is concerned a new furrow has been cut in the profound hope of bearing consequences which might help to obviate the communal rancour which has been eating into the body politic of our unfortunate country. It would have been absurd from the nature of things to divide these economic constituencies into unreal communal compartments in the same way as it would be absurd to deny that there are some points on which the two major cultures of India might choose to disagree. The difficulties in the way of a solution of the problem were many, and some very extreme views were expressed before the Reforms Committee. It is instructive to see how one side advocated the futility of reforms in the present atmosphere of distrust and disunion, another side pointed out that joint electorates would be harmful to the interests of the minorities and depressed classes, a third group put forward the plea for joint electorates without any reserve on the approved British style while a fourth demanded complete communal representation of the Muslim League pattern.²⁷ As the well-wisher of all classes of the people and as a sincere seeker of the progress of the land, His Exalted Highness was pleased to accept the recommendations of the Reforms Committee to choose a *via media*. Firstly, what has yet to find its way to British India has been achieved in Hyderabad and joint electorates have been instituted here. Moreover, fully realising the realities of the situation and the actuality of the existence of certain diverse interests, elected seats to the extent of 50% have been reserved for the Hindus and 50% for the Muslims.²⁸ In passing our judgment on this proportion we should consider the whole perspective of the problem. In the first place, from the time of the establishment of the electoral principle in the Legislative Council it has been an unwritten law that bodies such as the High Court Bar

²⁷ See R.R., Part III, where gists of 85 representatives of the public are given. They make a very interesting reading.

²⁸ *Farman-i-Mubarak*, 1.

Association have been choosing 2 representatives, one of whom has always been a Muslim and the other a Hindu.²⁹ It is remarkable that ever since His Exalted Highness appointed the Balmukand Committee in 1920 each successive committee and commission (including always their Hindu members) has been unanimous in the opinion that the peculiar political and historical position of the Muslims in Hyderabad is such that at least half the elected seats should be filled by them. This view started with the late Rai Balmukand in 1922, was followed by the Committee of four appointed by the Farman-i-Mubarak of March 1, 1924, of which Raja Bahadur Krishnamachari was a member and was upheld in the proposals enunciated by the late Sir Ali Imam.³⁰ Acting on the same principles the Executive Council (which has, among others, an honoured Hindu member in the person of the Hon. Raja Shamraj Rajwant Bahadur) accepted the recommendation of the Reforms Committee that 50% of the elective seats in the Assembly should be reserved for each of the two major communities, and this recommendation has in turn received the sanction of His Exalted Highness. Moreover, in order to assure as true a representation to the minorities as possible in consonance with the principles of joint electorates, it has been laid down that every representative must poll at least 40% of the votes of his community in order to be returned.³¹

So much for the attempt to face the realities of the situation. But it seems that the Government would not let their thoroughly national, non-communal point of view get blurred even while they were faced with these realities, and the President of the Executive Council, the Rt. Hon. Sir Akbar Hyderi thus lays stress on this matter when he says in the Arzdasht placed before His Exalted Highness on the 15th of July, 1939: "The Council . . . is confident that there are sections in both communities anxious to co-operate and desirous of accommodation in the full knowledge that no real advance is possible otherwise. It was in this belief that, with Your Exalted Highness' approval, this faithful servant emphasized in his speech in the Council last year the importance of a common platform."³²

The Legislative Reforms.—With these observations I would now go on to the actual composition of the new Legislative Assembly:

²⁹ *Arzdasht* of the 15th of July, 1939, (ref. to here as A.), 6.

³⁰ A., pp. 7 and 8.

³¹ A., 6.

³² A., p. 7.

EVOLUTION OF THE LEGISLATURE IN HYDERABAD 435

The Legislative Assembly (Life, 3 years) ...	...	...	85
A. Elected members ...	...	...	42
Samasthans and Jagirs ...	4		
Maashdars ...	2		
Agriculturists ...	8		
Pattadars ...	4		
Tenants ...	4		
Labour interests ...	2		
Industries ...	2		
Commerce ...	2		
Banking ...	2		
Legal Profession ...	2		
Medical Profession ...	2		
Graduates ...	2		
District Boards ...	2		
District Municipalities and Town Committees ...	2		
Hyderabad Municipal Corporation ...	2		
B. Nominated ...	...	...	36
Officials ...	14		
Non-officials ...	14		
University ...	1 ³³		
Harijan ...	5		
Lingayat ...	1		
Christian ...	2		
Parsi ...	1		
Women ...	2		
Contractors ...	1		
Journalists ...	1		
The three Paigahs ...	...	3 ³⁴	
Maharaja Sir Kishan Pershad Bahadur's Estate ...	...	1 ³⁵	
Salar Jang Bahadur's Estate ...	...	1 ³⁶	
The Royal Domain ...	...	3 ³⁷	
C. Ex-officio (the Seven Ministers) ...	...	7	
Total Assembly ...	...	85	

³³ A., p. 13, Contemplates the possibility of the nomination of a non-official member of the Senate to the Legislative Assembly.

³⁴ Paigah representatives to be nominated by the Amirs of the Paigahs.

³⁵ Representatives of Maharaja Bahadur's Estate to be nominated by the Maharaja Bahadur.

³⁶ Representatives of the Salar Jang Estate to be nominated by Nawab Salar Jang Bahadur.

³⁷ Representatives of the Sarf-i-Khas to be nominated by His Exalted Highness.

Of these 85 members, only 21 would be officials, 21 appointed or elected by the aristocratic elements and the remaining 52 would be non-officials representing the various economic interests in the State.³⁸

The Powers of the Legislature.—The last matter which requires to be mentioned in this connection is that of the powers of the Legislative Assembly. This has been considerably simplified in the annexure to the *Arzdasht* in which matters excluded from the purview of the Legislature have been laid down,³⁹ and it is remarkable that the seventeen items so excluded are such as have little bearing on the day-to-day life of the people. They relate mainly to His Exalted Highness and his royal domains (which have ever been outside the purview of the civil government), external relations, *Paigahs*, *Samasthans* and other great jagirs, the Police, titles and warrants of precedence, the public debt and other matters of the same *genre*. It is further clearly laid down that “no Bill shall be moved without the previous sanction of the Government in writing and subject to such conditions as the Government may prescribe in that behalf, which may in any manner affect the religious beliefs and practices of any community or sect.”⁴⁰ In a list appended to this annexure is a long list of fifty-three cases about which “any member of the Assembly shall have the power to introduce or move in the Assembly any Bill or motion or resolution or interpellation or any other proceedings.”⁴¹ These include what might be termed the Nation-building departments, as also such matters as markets, money-lenders, poor relief, water, education (except control), corporation, banking, Post Office Savings banks, registration, contracts, legal procedure, etc., while there are just over a dozen matters which can come up before the assembly only if moved by members of the Government.⁴²

³⁸ The Assembly as thus constituted is different to the Legislative Council proposed by the Reforms Committee which consisted only of 77 members, of whom the 7 ministers were to be ex-officio members of the Council, 18 were to be nominated officials, 19 to be nominated non-officials, while the remaining 33 were to be elected on the functional basis. Thus while the Reforms Committee recommended that there should be 25 official members out of a total of 77, the *Arzdasht* and the *Farman-i-Mubarak* have instituted an Assembly of 85 with only 21 officials. See R.R., Chart 4 opp. p. 66.

³⁹ Gazette containing the *Arzdasht*, pp. 30 ff.

⁴⁰ Gazette, 30.

⁴¹ Gazette, 31.

⁴² Gazette, 31.

So far as the Budget is concerned, the official members of the Reforms Committee were of opinion that it should be left to the Government to decide as a matter of policy whether the Budget should be introduced in the Legislature or not, and if the Budget should be so introduced there should be only a general discussion and that there should be no voting on items at all.⁴³ It should be borne in mind that up till now the theory has been that the Budget comes entirely within the purview of the Executive and the Legislature has no business to meddle with it. However that might be, the Reforms as accepted by His Exalted Highness make it obligatory that the Budget *in toto* should be laid before the Legislative Assembly and the members should have the power to move resolutions with respect to all items which refer to matters not excluded from the purview of the Assembly; these resolutions would be given deep consideration by the Government, and revised estimates duly published.⁴⁵

Other Means of Effective Association.—So much for the Legislative Assembly. Other avenues have, however, been explored in order to bring about an “effective association of the different interests of the State with the Government” as enjoined by the terms of reference. The Government has accepted, with certain modifications, the recommendations of the Committee with regard to the following:

- (a) Statutory Advisory Committees relating to agriculture, education, finance, industrial development, public health, Hindu and Muslim religious affairs, attached to the Departments concerned;
- (b) Annual District Conference at which the public would be able to express their needs;
- (c) District Boards with elected majorities;
- (d) District Municipalities for towns with population above 15,000, and Town Committees for towns with a population from 5,000 to 15,000, all with elected majorities;
- (e) Panchayats for all towns with population between 2,500 and 5,000. These institutions, however,

⁴³ R.R., 79.

⁴⁴ A., paragraph 5. This power is more or less identical with the Budgetary powers enjoyed by most of the major Indian States. See R.R., Chart 7 opp. p. 66.

would deal either with the Executive branch of Government or else with Local authorities, and as such fall outside the purview of this paper.

It will thus be seen that if we were to consider the Legislature which has been established by the Farman-i-Mubarak of His Exalted Highness the Nizam, dated the 17th of July, 1939, we would come to the conclusion that it is a great step forward in the matter of representation, composition and powers of the Assembly, and in certain respects can even serve as a pointer to British India.

A CRITICISM OF STREIT'S 'UNION NOW'*

BY

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The defenders of democracy are increasing. Many of them are persons for whom the world has a high regard. But the most noteworthy feature of the last few years is that the American writers have come to the fore to present the world with theses on democracy. It looks that America has begun to lead and to re-establish faith in democratic forms of government. The repeal of the arms embargo act has been in the field of action a significant move in the battle of democracies with totalitarian states in Europe.

The reasons for the publication of *Union Now* are that the League of Nations has failed to give a world government and that there can be no other practicable organisation to take its place as a state of states than a Federal Union of all existing democracies serving for the time being as a nucleus of the future world-state.

Streit's scheme is briefly described as follows:—

'The way through is Union now of the democracies that the North Atlantic and a thousand other things already unite—Union of these few peoples in a great federal republic built on and for the thing they share most, their common democratic principle of Government for the sake of individual freedom.

'This Union would be designed (a) to provide effective common government in our democratic world in those fields where such common governments will clearly serve man's freedom better than separate governments, (b) to maintain independent national governments in all other fields where such government will best serve man's freedom, and (c) to create by its constitution a nucleus world government capable of growing into universal world government peacefully and as rapidly as such growth will best serve man's freedom.

* A paper read at the Second Indian Political Science Conference, Lahore, January 1940.

'By (a) I mean the Union of the North Atlantic democracies in these five fields:

- a union citizenship,
- a union defence force,
- a union customs-free economy,
- a union money,
- a union postal and communications system.

'By (b) I mean the Union government shall guarantee against all enemies, foreign and domestic, not only those rights of man that are common to all the democracies but every existing national or local right that is not clearly incompatible with effective union government in the five named fields. The Union would guarantee the right of each democracy in it to govern independently all its home affairs and practise democracy at home in its own tongue, according to its own customs and in its own way, whether by republic or kingdom, presidential, cabinet or other form of government, capitalist, socialist or other economic system.

'By (c) I mean the founder democracies shall so constitute the Union as to encourage the nations outside it and the colonies inside it to seek to unite with it instead of against it. Admission to the Union and to all its tremendous advantages of the individual man and woman would from the outset be open equally to every democracy, now or to come, which guarantees its citizens the Union's minimum Bill of Rights.

'The Great Republic would be organized with a view to its spreading peacefully round the earth as nations grow ripe for it. Its Constitution would aim clearly at achieving eventually by this peaceful, ripening, natural method the goal millions have dreamed of individually but never sought to get by deliberately planning and patiently working together to achieve it. That goal would be achieved by Union when every individual of our species would be a citizen of it, a citizen of a disarmed world enjoying world free trade, a world money and a world communications system. Then Man's vast future would begin.'

It will be noticed that Streit has simply adopted the American plan for the constitution of the world state. The suggestion of an executive Board of Five instead of a single President is likely to be criticised, but the point is worth discussing.

The scheme is elastic and progressive. It suits the temperaments of the Saxon and the French peoples who have lately shown

great affinity in the joint conduct of war against Hitler's Germany. Streit's scheme is also conservative in so far as it tries to introduce no new political institution in the existing international system but to give a new vitality and force to the League of Nations by an internal reform in every member-state.

The economic aspects of Streit's scheme require further elaboration. It is, however, too true that in modern times economics is a shadow of politics. The will of the people can bring about or sanction anything that material life prescribes or demands. Similarly, the future Federal Union, if it brought into existence, can provide a free and full development of national cultures without disturbance from any foreign power.

We in India have been unfortunately left out of the Union by Streit. In his opinion we have no qualifications for an original membership in that great corporation. One of his arguments is really funny. It is his statement that 'to seek to free Indians this way is to deprive them of all the freedom that the organisation of a sound nucleus of world government would bring the whole species, and to expose them more than ever to the dangers to which all mankind is now exposed.' Obviously, Streit does not know India. It is sad indeed that Federal Union of the world's people should start without Indians. But the situation is yet not hopeless and the chances for admission are great. One of the reasons for believing like this is that India is the only country in the world which can give true character and spirit to the future international polity. Whatever Indians lack, they are not certainly wanting in individual character. The influence of India upon foreigners has in recent times been entirely spiritual, and this tendency is bound to increase in course of time.

The case of Streit for his Union is briefly this: the League of Nations has failed, the world is in disorder, but America leads and let the world follow her leadership and build a Federal Union as a nucleus of the world-state. We agree with Streit but call upon him to say that India must inspire if the Union should succeed.

THE I.L.O. AS AN AGENCY OF WORLD PEACE*

BY

DR. P. P. PILLAI.

The actual outbreak of hostilities in Europe, after twenty years of recurring alarms and excursions, brings again to the foreground the vital question whether the international institutions which were set up after the Great War as the guarantors of peace can be accepted hereafter as agencies capable of functioning effectively and discharging adequately the onerous duties with which they are entrusted. The three outstanding institutions in this sphere are the League of Nations, the International Court of Justice and the International Labour Organisation; this paper is concerned only with the last of them—the International Labour Organisation. The world in which we live and struggle is big with new ideas and conflicting ideologies—still uncertain, indefinite, confused—arising out of the great upheavals of the War and post-War period. The emergence of totalitarianism, with its inevitable concomitant of dictatorships, the ruthless manner in which intense national cults have cut athwart the principles of internationalism which were gradually obtaining currency, and the actual outbreak of hostilities on a major scale in Europe naturally occasion considerable searchings of heart even among the most pronounced devotees of internationalism, and lead to anxious questionings about the vitality and usefulness of the trio of international institutions referred to. Will the International Labour Organisation, or to be brief, the I.L.O., be able to contribute materially towards replacing the chaos generated by conflicting ideologies by the principle of collaboration, and function as an agency working for the conservation of world peace?—this is the main question posed here.

But, first a word as to what the I.L.O. is and how it works. It was the realisation that political peace was not possible without industrial peace that led to the setting up of the I.L.O. as a sister institution to the League of Nations. The I.L.O. is a permanent official agency created after the Great War to eradicate one of the potential causes of War—the social unrest which is generated

by miserable conditions of life and work, and the check to advance in progressive countries which is imposed by the necessity of competing in commerce against backward countries. The founders of the Organisation proceeded from the starting point that the seeds of international strife will never be wholly eliminated so long as there remain conditions of employment which entail the denial of social justice. They accordingly set to work to establish a means whereby the Governments, employers and workers of all countries, collaborating in common action, might build up uniform minimum standards of well-being for wage-earners, no matter in what part of the globe they lived. The League of Nations stands for peace between the various countries of the world, while the I.L.O. stands for peace between the various economic strata of the population in the different countries; the League of Nations stands for horizontal peace, while the I.L.O. stands for vertical peace.

The I.L.O. functions through an annual Conference, a Governing Body, and a permanent secretariat. The Conference is composed of four delegates appointed by each country, two of whom represent the Government, and one each the organised workers and employers of the country. Each meeting of the Conference discusses a report presented by the Director of the I.L.O. on the work of the Organisation during the preceding year and considers specific questions relating to conditions of work with a view to agreement on international measures. The decisions of the Conference generally take the form of Draft Conventions or Recommendations. A Draft Convention is a proposed treaty. In compliance with the provisions of the Treaty of Versailles, the Government of each Member-State of the I.L.O. must submit Draft Conventions within eighteen months of their adoption to its own Parliament or other competent authority for decision as to whether it can be accepted and applied within its country. This is the process of ratification of a Convention, and it is worthwhile remembering that each Member-State possesses full authority for rejecting or ratifying any of Geneva's Conventions. In case of ratification, however, the State becomes a party to the Treaty with other ratifying States and is under an obligation to see that its own law and practice are in accordance with the Convention. This is no empty formality, since each ratifying country has to report every year to the Conference on the steps taken to give effect to the Convention and these reports are very carefully scrutinized at Geneva. Since the Conference consists of the representatives of Governments, employers and workers in the proportion of 2:1:1, and since the

F. 11

* A paper read at the Second Indian Political Science Conference, Lahore, January 1940.

adoption of any Convention requires a two-thirds majority, it is apparent that a Draft Convention adopted at Geneva represents the highest common measure of agreement reached between Governments, employers and workers.

It remains to be seen how far the I.L.O. has succeeded in achieving the social objectives which it has set for itself and ensuring vertical industrial peace. By 1939 the I.L. Conference had adopted 67 Conventions covering a wide variety of subjects. In illustration of the scope of the International Labour Code thus evolved, we may picture the position of a worker whose country has put the major labour treaties into operation. First of all he cannot be employed until he is 14 years old, in industry or commerce. While under the age of 16 he may not work at night in any industry, and in most industries not till he is 18. His hours of work in any industrial occupation may not, as a rule, exceed 48 per week, and he will be entitled to one day's rest in seven. If he meets with an accident or is stricken by any of the principal industrial diseases, he will have compensation guaranteed to him by law, and he will have the protection of a Government-controlled fund against sickness, old age or invalidity. Finally, if he is unemployed, Government employment Bureaus will help him to find a job, and if he cannot do so, he and his family will be saved from destitution by a State scheme of insurance relief. If he is a seaman, he can apply for a job to an employment office jointly administered by shipowners and seamen. When he is engaged, it will be under articles of agreement protecting his rights and if he meets with shipwreck, he will be entitled to be repatriated and compensated during the period of unemployment at the cost of the shipowner.

These social aims, however worthy of achievement, are only the short-range objectives of the I.L.O.; apart from salvaging the world's workers from the shipwreck of human happiness that followed the industrial revolution and the unleashing of the terrifying forces of greed and exploitation—the dragon crop of great scientific discoveries and technological progress—the I.L.O. is also striving for the achievement of certain long-range objectives with which the future peace and progress of the world are indissolubly bound up. While endeavouring to fulfil through the usual legislative channels its sacred duty of abolishing the injustice, hardship, and privation to which large numbers of the world's population are subject, the stress of circumstances has led it to expand its activities, and seek many other directions for the accomplishment of its purpose. One of these circumstances is the changing centre of gravity of the industrial world. We have

all been brought up in the belief that in all industrial matters Europe is supreme, and it is, therefore, not easy for us to assimilate the inferences which follow from any impartial survey of present world conditions of production. Europe's superiority in this matter is now being formidably threatened by the growing industrialisation of several non-European countries both in America and in Asia. The United States, which exported only about 1,566 million dollars worth of manufactured goods in 1913 exported them to the value of 3,547 millions in 1929. The old equilibrium was destroyed by the War, by the modification of the previous classification of creditor and debtor countries, and secondly by the growth of a new doctrine of national self-sufficiency. In Asia, countries like our own, China and Japan are taking long strides towards industrialization. And even more important than this phenomenon is the comparative rate of industrial advance, which is higher in the newly industrialized areas than in the older ones.

What does this indicate? From the I.L.O.'s point of view it shows that the social problems arising from industrialization, which formerly were confined to limited areas in Europe are now encircling the whole globe. In consequence, the I.L.O.'s mission is now becoming genuinely universal, for industrial evils like industry itself, are international in character. The I.L.O. realizes that the spread of industry in Asia and other places is bound in the long run to benefit rather than injure the old manufacturing countries of Europe by creating a demand for all kinds of necessities and luxuries which were not previously within the reach of the newly industrialized populations. But the short-range effect of this development is to produce dislocations and embitterments, and to precipitate a battle between higher and lower standards of living. One of the slogans invented during this battle of the standards is the slogan of 'social dumping.' It was, therefore, only in the fitness of things that the I.L.O. should have taken up the study of the social conditions prevailing in some of the countries against which this charge has been brought. Enquiries of this character, the object of which is to ascertain the fair competitive price of goods entering the international markets, have perforce to travel beyond questions of hours of work and wages and to take due account of all the important elements involved in production and distribution.

Finally, attention has to be drawn to an yet greater service for humanity that the I.L.O. is engaged in doing. The present is a time when democracy and totalitarianism are engaged in a life-and-death combat. At a time when an effort is being made

to enlarge the frontiers of democracy in India, the examples of Russia, Italy and Germany are flung in on our faces as conclusive proofs that the days of democracy are past. If, however, democracy has proved a failure in some countries, the fault lies not with democracy itself, but with the men who work it. It is commonly assumed that universal suffrage and the setting up of representative forms of Government constitute the infallible signs of democracy. What is here overlooked is that democracy postulates something more than equality of political rights; it implies equality of opportunities also. There is no meaning in extending equality of political rights to the workers—and workers, agricultural, industrial and clerical, constitute over 75 per cent of the population in any country—as long as conditions and circumstances are allowed to continue which make it practically impossible for the working man to exercise his political judgment. As long as economic equality and distributive justice are denied to him, as long as he is deprived of the leisure needed for the comprehension and exercise of his duties as a citizen, as long as he continues to be harassed by the uncertainty of obtaining employment, as long as he remains exposed to industrial risks and their demoralizing consequences, as long as he is not guaranteed the freedom of his children and women-folk from cruel and degrading exploitation, so long will the bestowal of rights, as signified by the vote, remain a meaningless gesture. Every effort of the I.L.O. is directed to the abolition of those conditions and circumstances which prevent the worker from making a considered use of his political rights; and viewed in this light, its pleas for the improvement of wages, the reduction of working hours, the prevention of unemployment, the establishment of social insurance systems, the regulation of the work of women and children, acquire a new meaning, and reveal that its true social purpose is to usher in an era of genuine democracy.

In subserving the objectives outlined above, the I.L.O. has more than fulfilled the liveliest expectations entertained about it. The I.L.O.'s living teaching and the marked success that has attended the daring experiments in this great laboratory of social peace have fully demonstrated that we live in an age in which pursuit of anti-social policies connotes political suicide and that in the hammering out of broad and far-reaching social programmes the democratic method of agreement and conversion by the gentle art of persuasion yields the most satisfactory results. The importance and serviceability of the cadre of international civil servants which the I.L.O. has gradually built up and perfected for its purposes deserve conspicuous mention here. On the

administrative side, the staff has to prepare the way for international agreement. The whole of its energies is organised and directed to that end, and it thus becomes a powerful factor in bringing about conciliation between national interests which might otherwise prove impossible. Similarly, on the research side it is better qualified to collect and sift the information relating to 'industrial life and labour,' which flows into it from every quarter, than any national or more homogeneous body. The strength of the I.L.O., as a bulwark of world peace, lies in the fact that its staff is composed not of colourless cosmopolitans, but of men and women who are representative citizens of the various countries, and therefore able to interpret them correctly.

The successful working of the I.L.O. has shown international co-operation may not only be possible but decidedly fruitful. True, at the moment the I.L.O. is beset with difficulties arising from the fact that in some countries the health, happiness and freedom of the individual are regarded as relatively unimportant and entirely subordinate to the war-power of the nation. This frame of mind is clearly incompatible with an ordered international society in which the conflicting interests of the component national units are to be subordinated to the common good, and so long as such an attitude commands adherence, the endeavours of the I.L.O. and other agencies working for world peace and a better social order are likely to be seriously impeded. It is, however, a counsel of despair to think that the newly-fledged totalitarian creed has latent in it elements of permanency or that it will finally emerge triumphant. Institutions like the I.L.O., in so far as they foster the growth of a broad and tolerant international outlook and stimulate faith in human values, furnish the surest protection against totalitarianism and allied creeds of rabid nationalism. It is, therefore, not too much to hope that when the present storm clouds have disappeared and reason resumes its empire, the I.L.O. will function as an ideal agency for furnishing much of the material for social and economic reconstruction—the most insistent need of a war-weary world.

Convincing testimony of the esteem in which the I.L.O. is held was forthcoming at the first war-time session of the Emergency Committee of the Governing Body of the I.L.O. held in September, 1939. 28 Governments of Member-States which had by that time replied were unanimous in declaring that the I.L.O. should endeavour to function as completely as possible during the war. The representative of the Government of the U.S.A. endorsing this opinion said, that the maintenance of the I.L.O. as an instrument of co-operation between Governments,

employers and workers will be of the utmost value during the War and during the difficult period which may be immediately expected after the cessation of hostilities. It was this endorsement which emboldened Direct Winant to assert in a recent statement that "the function of the I.L.O. in this unprecedented crisis in the destiny of man is to contribute to the preservation of the common heritage of civilisation," and the volume of support which the I.L.O. has received from the Member-States shows that Mr. Winant's belief is widely shared throughout the world.

War does not in any way lessen the importance and urgency of social problems or detract from the value of the I.L.O.'s work; on the other hand, the experience of the past clearly shows that the I.L.O.'s work is such that both belligerents and neutrals are equally interested in its maintenance. The I.L.O. will always continue as a centre of information and study, the services of which are open to the whole world, and war conditions will only accentuate the need for such a central clearing house for authoritative and impartial information. The comparative study of the new labour and social problems which the War will force to the forefront, and the examination of the even more difficult problem of the future peace settlement with the active collaboration of the workers, employers and Governments in both neutral and belligerent States will be its legitimate domain. As an organ for action, it will have to concert practical measures to limit, both in and outside the war-zone, the moral and material havoc which may be wrought by the present catastrophe. The intensive industrialisation which war conditions usually bring about may entail adverse social consequences, which it will be the duty of the I.L.O. to avert or mitigate. And, when the war is over, reversion to peace-time economy will have to be preceded by a vast series of readjustments, and the I.L.O. will have to devise methods by which the change-over might be effected without producing undesirable social repercussions.

DEVELOPMENTS IN LAW, CONSTITUTION AND ADMINISTRATION: PERIODICAL SURVEYS

PROVINCIAL AUTONOMY IN THE PUNJAB (APRIL 1937—OCT. 1939)*

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Introduction.—In order to understand the working of a constitution in its true setting, one must look at the social and economic background. The Punjab has peculiar features of its own and these have to be taken into account in the study of the working of the provincial autonomy in the province. Among¹ these may be mentioned:—

- (1) the Punjab's conspicuous progress in agricultural organization;
- (2) the position of the peasant-proprietor in the economic and social structure of the province;
- (3) his martial traditions which have earned for this province the proud title of the sword-arm of India;
- (4) the extent to which the agriculturist of the Punjab is indebted to the money-lender;
- (5) the happy co-operation between the land-owner and the tenant in this province, not only on the agricultural farm, but also at the polling station; and
- (6) the finely balanced position of the majority and the minorities among the religious communities of the province in the provincial Legislature.

These circumstances have to a very great extent determined and invariably influenced the political development of the

* A paper read at the Second Indian Political Science Conference, Lahore, January 1940.

¹ *Vide: 18 Months of Provincial Autonomy in the Punjab*, published by the Director, Information Bureau, Punjab.

province and during the period of autonomy, which is to be reviewed in this paper, they have dominated the political situation.

New Elections.—Elections to the provincial legislatures under the Act of 1935, were held in February, 1937. Several parties came into the field but of these by far the most organized was the Punjab Unionist Party. The Unionist party had been founded by Mian Sir Fazl-i-Hussain in 1923. The basic principles of the party are thus described by Sir Chhotu Ram, who was the leader of the party in the Legislative Council under the Mont-Ford reforms. "The cardinal principles which tinged the whole policy and moulded the whole programme of the National Unionist Party were, and have always continued to be, four in number:—

- (a) Need of all reasonably possible co-operation between the state and its subjects for common good of society;
- (b) Superiority of constructive effort to destructive action for the attainment of political freedom;
- (c) Acceptance of community of secular interests as a sound basis for the formation of parties;
- (d) National importance of raising backward areas, as nearly as possible, to the level of the rest.²

A further exposition of the nature of the party was given by Sir Fazl-i-Hussain in a speech at the inauguration of the Punjab Unionist Party Head-Quarters on the 19th April, 1936:—

"What is the nature of this organization?" Sir Fazli asked his audience. "Is it a communal organization, is it a class organization, is it an organization for the Zamindars only, are its doors shut to the Urbanites or to Hindus or Sikhs?" "The reply is extremely simple," he added, "It is non-communal, it is non-tribal, it is the unity of the underlying principle which holds the party together. Persons of all communities, races, classes, tribes are welcomed by the party provided they subscribe to its creed, provided they adopt its method or work, provided they are prepared to make sacrifices for the uplift of the poor and the weak. It stands for self-respect and patriotism but it eschews racial animus or malice of any kind. It has undertaken

² *Punjab National Unionist Party*, by R. B. Ch. Chhotu Ram, M.L.C. Vox-Populi Series, pp. 2 and 3.

to fight for the masses but does not aim at destruction of private property or capital. It is for far-reaching economy in administration but not to the extent that Rs. 500 is the maximum salary which the province can pay to its highest official. Our doors are open to the capitalists provided that they are not so intensely selfish as to oppose reasonable schemes of alleviating the troubles due to acute indebtedness. In short, we welcome all provided there is an agreement on essential principles between them and the party."

These aims and objects were further clarified in the election manifesto of the party.³ "The economic readjustment and planning of the province," said the manifesto, "is the main plank of the party's programme. In this connection the party pledges itself to work for agricultural and industrial development, the encouragement of cottage industries, the raising of income and production per head, the relief of indebtedness, the removal of unemployment, and an equitable adjustment of the reasonable claims of the 'Haves' and the 'Have nots,' of the landlords and the tenants, and of the employers and the labourers." We shall see in the course of this paper, how far these objects have been realized by the Unionist government.

Other Parties.—There were other important parties in the province, besides, the Unionists. In fact, as many as eight parties, apart from a few independent members, took part in the election. Had all these other groups combined together on some common programme they could give a good fight to the Unionists. But the Unionists enjoyed certain initial advantages. In the first place, they were the most dominant group numerically in the last Legislative Council and had been in the political field for the last 14 years, while many of the other parties were freshly improvised for the election purpose. In the second place, Sir Fazl-i-Hussain, the Unionist leader, gave it to understand that even if his party secured a majority of seats, he would form a coalition cabinet. In a cabinet of six, three seats would be reserved for the Unionists (2 Muslim and 1 Hindu), while the other three would be distributed amongst such other groups (Hindu, Sikh, and Muslim, 1 each) as would be able to co-operate with the Unionists and work their programme. This proved to be a trump card. The opposition parties, instead of working together, vied with each other to secure the Unionist favour in order to ensure the cabinet seats earmarked for the non-unionist groups. The opposition groups,

³ *Manifesto of the Punjab Unionist Party*, p. 8.
F. 12

weak already, were further disintegrated. Mr. Jinnah aimed at a combination of the Ahrars, the Muslim League and the Majlis-Ittihad-i-Millat against the Unionists. This was no longer possible. Amongst the Hindus, the Hindu Mahasabha was broken into two or three factions. Amongst the Sikhs, the Khalsa Nationalist party and the Ahrars drifted away from each other.

The election resulted in a solid majority of the Unionists who captured 101 seats (16 Hindu, 81 Muslim, 2 Indian-Christian, 1 Anglo-Indian, and 1 European) out of a total of 175. The Unionist party had no Sikh member in it but this difficulty was solved when the Khalsa nationalist party that had captured about 16 of the 33 Sikh seats agreed to form a coalition with the Unionists.

The party position is thus summarised in the pamphlet of the Information Bureau, Punjab, "After the reaction of different groups of members to the Unionist Ministry's actual economic policy had been tested, the position at the end of the first 18 months of provincial Autonomy appeared to be that about 120 members in a total house of 175 had been consistent in accepting the Ministry's whip. These 120 members included about two-fifths of the total number of Hindu members and more than one-half of the Sikh members besides the bulk of the Muslim members and all the Indian Christian, Anglo-Indian and European members in the House. From this point of view the Ministry could well claim to enjoy the confidence of religious minorities in this province to a greater extent than any other provincial Ministry did.

During this period the Congress opposition was able to absorb the Akali party. This and the gain of a few seats in by-elections at the expense of the National Progressive party raised the strength of the Congress party to 35. Between the 120 Ministerialist and the Congress opposition there appeared to be about 20 members unwilling to accept the whip of "either party."

Other Provinces.—In other Provinces the situation was very different. The Congress organization was so powerful that it secured an overwhelming majority in 6 provinces and had large groups in the N.-W.F.P., Assam, and Sindh. Even in Bengal its strength was appreciable.

Constitutional Deadlock.—Provincial autonomy was heralded in India with a great constitutional crisis. Bengal, Sindh, N.-W.F.P., Assam and the Punjab began to work the new constitution from the 1st April, 1937. In the remaining six provinces, where the Congress was in majority in the Legislatures,

the Congress high command refused to form ministries unless the governors in those provinces gave a clear undertaking, not to use their special powers and an assurance of non-intervention in day-to-day administration. On the failure of the Governors to give assurances of this character, a constitutional deadlock followed. Interim ministries were established with the support of minority parties but such ministries, obviously, could not constitutionally function.

No such deadlock arose in the Punjab but the Premier was pressed in the Assembly to explain his position. The premier admitted that the governor had not given him assurances of any kind but his cabinet had confidence in its own strength and the moment they found the governor blocking their way, they would not hesitate to create a crisis. Sir Sikander did not believe in the policy of seeking deadlocks for the sake of deadlocks, or provoking deadlocks for the sake of demonstrating the weaknesses of the constitution. Nor would he force deadlocks on the Governor for the sake of embarrassing him. But if the deadlocks should arise in the course of the working of their programme, the Unionist cabinet would not shirk such deadlocks.

The governors in congress provinces did not give formal assurances, not to use their special powers, but a Viceregal declaration made it clear that the whole spirit in which provincial autonomy was granted was to give real power to popular ministers and in actual practice there would normally be no occasions for the governors to make use of safeguards against the ministries.

What really matters is the establishment of helpful conventions in the provinces which by emphasising the real spirit and not merely the letter or the form should make it possible ultimately for the popular point of view to prevail. When deadlocks actually arose in the U.P. and Bihar over the question of the release of political prisoners, the governors had to retreat, when they were faced with a crisis not in two but 8 provinces simultaneously. The convention by which the governors now, as a rule, never interfere with the decisions of popular ministries, has been not due to any formal undertaking but is due to the recognition of the popular sanction behind those decisions. No governor would be unwise enough to impose his will on a popular cabinet when he clearly sees that the only alternative to popular government is interim ministries or the suspension of the constitution itself.

The Unionist party with its dominating position in the legislature and its following in the Province, would have been able to face a deadlock as confidently as the Congress Party did.

So long as there are strong and well-organized parties, with popular sanction behind them, it is clear, any prospect for the display of special powers by the governors may be safely discounted. If the experiment of provincial autonomy fails, it would not be due to interference from the governors. Its failure would be due to the unsatisfactory nature of the central government, to which the provinces are at present inconveniently yoked.

Administration of Law and Order.—Under the reforms of 1919, Law and Order was made a reserved subject as the matter was considered too serious to be transferred to popular hands. Under provincial autonomy the department has been administered like other departments, by responsible ministers. There are still some safeguards for the so called Imperial services and the police authorities have been left with special powers, so that if the occasion demands, they may not disclose information except to such persons as are authorized by the governor. This is a serious handicap in the successful working of autonomy. One great defect of the British Administration in India has been its overwhelming bureaucratic character, a bureaucracy dominated in its upper hierarchy by alien elements, obsessed with Imperial considerations. The setting up of a democratic authority to control this bureaucratic machinery necessitated a certain amount of adjustment and reorientation. The bureaucratic administration is no doubt efficient in its own way but it is incredibly expensive and as it has no direct contact with the masses, it becomes lifeless and inhuman. A popular government introduces a human touch in the administration and brings it in greater conformity with the real needs of the people.

The administration of Law and Order in the province under autonomy, while it has maintained its old efficiency, has succeeded in establishing that direct touch between the masses and the state machinery, which is the *raison-d'être* of democracy.

For many years there has been a great complaint in the Punjab about the corruption and tyranny of officials, particularly subordinate officials. This matter attracted the attention of the Unionist cabinet and several steps have been taken to make the officials to understand their responsibilities. During the first year of provincial autonomy punishment, mostly in the form of dismissal from service and sometimes accompanied by prosecution in the law courts has been awarded to 55 government servants. The government has adopted the following other

measures for stamping out corruption from the public services.⁴

- (i) The setting up of a separate anti-corruption section in the secretariat under a special officer to investigate cases of corruption. This section is to serve as a central agency to which District officers and Departmental Heads may be able to refer cases of suspicion for investigation.
- (ii) The formulation of a rule similar to article 465-A of the Civil Service Regulations which may be applicable to all grades of Government servants and enable Government to retire officers whose honesty is doubtful.
- (iii) The question of reducing or withholding the pension of a Government servant whose reputation has been unsatisfactory, would be considered by the Government.
- (iv) The constitution periodically of *ad hoc* peripatetic boards which may tour the various districts of the province and make enquiries regarding the reputation of government servants, in order to report those whose reputation is unsatisfactory.

Similarly, the taking of *begar* (exacting compulsory labour) has been declared unlawful and officials have been warned against this practice. This measure would be specially helpful in safeguarding the civil liberties of the members of the scheduled castes.

The premier, Sir Sikander Hyat Khan, has been specially solicitous about the rights of the minorities. He, therefore, made it clear that his government would show no hesitation in dealing with people, who disturbed the peace of the province by inciting communalism. There were as many as 8 communal riots during the first 4 months of provincial autonomy in the different parts of the province, in which 7 people were killed. It became necessary to take proceedings under special power which the law gave for controlling disorder. These powers, however, were sparingly used. 18 persons were prosecuted under the Punjab Criminal Law Amendment Act during the first 18 months of provincial autonomy.

⁴ *Vide*: Information Bureau Punjab, 18 months of provincial autonomy. Page 34.

On the other hand cases of many political prisoners were sympathetically examined and release was effected in the deserving cases. After three months of assuming office, the government was able to release all the Martial Law prisoners who had been convicted in 1919 and were serving life sentences. 22 other prisoners convicted in Babar Akali disturbances were similarly released. The cases of non-political prisoners were also considered.

A serious menace to Law and Order in the province appeared in what is known as the Shahidganj case. The premier firmly opposed the proposal of a muslim member in the legislature to restore the disputed site of the demolished mosque of Shahidganj, which was in the possession of the Sikh *de jure*, and *de facto*. The disturbances that followed were dealt with severely and several thousand muslims were arrested and convicted. The premier made it clear that while he would do his utmost in helping an amicable settlement of the dispute, under no circumstances would the flouting of the decision of the high court be permitted. The muslims ultimately agreed to suspend their movement and made an appeal to the privy-council.

There is no doubt that, on the whole, Law and Order has been efficiently maintained, without undue infringement on civil liberties. It has not been possible to do away with the use of Section 124(A), but its use has not been more frequent than in the congress provinces of Madras and Bombay.

Legislative Enactments.—The legislative output of the Punjab Government has been very substantial, during the period under review. It cannot be said that they have been able to realize all what they promised in their election manifesto but a serious effort towards the same has undoubtedly been made.

The major enactments may be enumerated as follows:

- (1) Constitution of Debt Conciliation Boards.
- (2) The Punjab Alienation of Land Amendment Act.
- (3) The Debtors Protection Amendment Bill.
- (4) The Punjab Alienation of Land Second Amendment Bill.
- (5) The Punjab Restitution of Mortgaged Lands Act.
- (6) The Punjab Registration of Moneylenders Act.
- (7) The Punjab Alienation of Land Third Amendment Act.
- (8) The Punjab Agricultural Produce Marketing Bill.

Some of these measures have been a subject of hot controversy but the opposition has mainly come from the interests that were adversely affected by them. It is neither necessary nor possible in the space of this paper to go into the details of these Acts. Only their main purport can be mentioned.

To take them seriatim.—The Debt Conciliation Boards have been appointed with the object of scaling down the debts of the agriculturists. The Punjab Alienation of Land Amendment Act strengthens in various ways the working of the Land Alienation Act of 1901. A section of the people, mostly money-lenders, have been opposed to this Act as it has stood as a bulwark between them and the peasants' land but there is no doubt that it has been of the greatest benefit to the peasantry. The Punjab Restitution of Mortgaged Lands Act provides that if a mortgage was effected before June, 8, 1901, and still subsists, the mortgagor or his heir or assignee may apply for the extinction of the mortgage and the restoration of the land to him. The mortgage is to be extinguished without any compensation to the mortgagee, if the value of the benefits already enjoyed by the mortgagee has equalled or exceeded twice the amount of mortgage. In case the value of the benefits enjoyed is less than twice the original sum, the mortgagor would make the necessary compensation to the mortgagee. Critics of this measure have considered it as something savouring of socialism but it is impossible to believe that any serious injustice has been done to the people affected by this act. Persons that have been adversely affected are either capitalists or big landlords and either they must be prepared to make the necessary sacrifices in time or socialism would really become inevitable. It is calculated that the measure would enable 306,738 mortgagors to redeem 736,131 acres of land.

The Registration of Moneylenders Bill brings money-lending under government control to a certain extent. Similar Bills have been passed in some congress provinces also. The Punjab Agricultural Produce Marketing Bill is aimed to protect the growers of agricultural produce, who bring their produce for sale in the markets, from various malpractices on the part of shop-keepers and brokers. Similar Bills have been adopted in the provinces of Bombay, the U.P. and the N.W.F.P.

Lastly, we come to the Debtors Protection amendment Act. A number of Bills had been passed by the old legislative council but they were not adequate to meet the situation. Rural indebtedness in the Punjab has been calculated to amount to

something like 200 crores and annual interest there on to anything between 36 and 48 crores. The total estimated receipts from land revenue and water rates in 1936-37 amount to 1044 lakhs. Thus the burden of interest on the Punjab peasantry is between 4 and 5 times the aggregate amount of both land revenue and water rate. It is thus clear that while the government demands upon the peasant do have a contributory effect on his poverty, the main cause is indebtedness to the Sahukar.

The present measure does not abolish the debt by one stroke. As a matter of fact, the Madras Legislature has passed even a more sweeping measure. The Punjab Act puts an end to usury and makes the future exploitation of the peasant by the money-lender impossible. The government, however, must provide a scheme of cheap rural credit, without which it is impossible for the peasant to carry on and moneylending in some form would return.

Other Measures.—The Government has also been active to tackle some other pressing problems in the province. A number of committees that were appointed shortly after the formation of the ministry have since submitted their reports. The Unemployment committee presided over by the Development Minister has made helpful suggestions for decreasing unemployment and for the improvement of the agricultural and industrial conditions of the province. Similarly, the Retrenchment and Revenue committee presided over by the Finance Minister has made suggestions for decreasing the cost of administration and for tapping new sources of revenue. New sources of revenue have, in fact, to be immediately found, if the peasant is to be relieved from his present heavy burden. Some of the new taxes, like the entertainment tax, a tax on motor spirit and the like have been adopted in several provinces, including the Punjab. More taxes on luxuries have to be imposed, without which no decrease in either the land revenue or the water rate is possible. Prohibition at present has been adopted in five districts in the province and for the establishment of total prohibition, it is obvious, alternative sources of revenue have to be found out. In the U.P. an employment tax, to tax high salaried officers has been imposed. There is no reason why a similar tax should not be imposed in the Punjab also.

A noteworthy effort of the Punjab Government has been their relief to the famine-stricken districts of the Southern Punjab. In the course of two years the Govt. has spent a little

less than 3 crores in this relief. This is really creditable when the total receipts of the government for the year 1938-39 amount to only Rs. 11,41,56,000.

They have also taken some other measures in hand, like the establishment of Village Panchyats, with a view to decrease litigation. An Act to this effect has been passed by the Legislature. Steps have also been taken to provide better medical aid to the rural area and to establish a system of compulsory primary and adult education. In this connection, it would be advisable if the Punjab Government studies the Wardha scheme of primary education with a view to adopt it in their own province.

The Government has also helped the establishment and improvement of cottage and other industries in the province. The budget for 1938-39 provided Rs. 400,000 for financial assistance to industries under the Punjab State Aid to Industries Act.

The Role of the Opposition.—The opposition party in the Punjab Legislature is, like the party in power, a sort of coalition of several small groups. These groups differ amongst themselves ideologically and are not united even in their opposition to the Unionist party. Between the Unionist party and the Congress opposition, a new group of about 12 members known as National progressive, has recently been formed, whose programme or policy is by no means clear.

One common feature of the opposition parties in the provincial legislatures has been, that they have all suffered from a sense of frustration. In the congress provinces, the congress majorities have been so solid, that the opposition parties have been left with little chance of any effective opposition to the congress programme. In the Punjab, similarly, the Unionist coalition has been in such a clear majority that the efforts of the opposition to assert itself have often proved abortive. Lord Lothian, while on a visit to this country to study the working of provincial autonomy noted that political parties in India were very much obsessed with their present programme. They seemed to think that the government would for ever remain a government and the opposition, an opposition. That appears to be particularly the case in the Punjab.

Parliamentary proceedings in the Punjab Legislature have been marked by frequent 'Points of order' and 'Opposition walks out.' Often the ministerial members and the members of the opposition have settled an argument between themselves

and the speaker has helplessly insisted to assert his authority. Rulings from the chair have been frequently questioned and the speaker has been obliged to name the members. All this is perhaps excusable in the early stages of autonomy. Matters would no doubt improve and dignity in proceedings would come as the house develops its parliamentary traditions and establishes healthy conventions. The disturbances have mostly come from the back-benches. The front benches have often conducted themselves with decorum. This is particularly the case with the leader of the House, the Hon'ble Sir Sikander Hyat Khan and the leader of the congress opposition Mr. Gopichand Bhargawa. The deputy leader of the opposition, Diwan Chiman Lal is an invaluable asset to their ranks and his oratorical speeches delivered in an impeccable parliamentary style, have always been heard with rapt attention by the whole house. He has, however, sometimes marred this effect to some extent by over-acting and by over-reaching himself.

Opposition parties in India, have yet to learn the technique of opposition. The opposition party must have a carefully planned strategy and even if the party is weak numerically, it would make itself felt by skilful intervention. Opposition for the sake of opposition would not only make the party in power still more intransigent but do harm to the opposition party itself. The speeches of the opposition are really addressed to the people outside, the electorate, rather than the house itself.

Judging from this point of view, the opposition party in the Punjab has not always acted tactfully. On the occasion of the passing of the several controversial measures for instance, a great opportunity was presented to the opposition but it was not utilized advantageously. The congress party adopted an attitude of neutrality but allowed its members to express their personal opinions against the Bills. The consequence was that it earned the displeasure of the vested-interests, who were adversely affected by the Bills and who had supported the congress at the last election, as well as the mass of the peasantry, whom the Bills benefitted. It was a great opportunity to explain to the electorate the congress ideals and objectives but it was missed. The opposition to the Bills was carried on by a handful representatives of the capitalist and the moneyed classes but the congress neutrality was interpreted by the peasants as its implicit sympathy with the capitalist and moneyed interests. The majority of the electorate in the Punjab as in most of the other provinces are the peasants but the congress party in the Punjab has not yet been able to understand the peasant psychology.

Conclusion.—On the whole provincial autonomy in the Punjab has inaugurated well. The Punjab and Madras were the two provinces where the system of dyarchy had been worked with considerable success, inspite of its anomalies and serious limitations. Regarding provincial autonomy, the pride of place again goes to these two provinces. The success of the experiment in the Punjab has been due to the solidarity of the Unionist party. The party started, not with the object of wrecking the constitution but for using it for the maximum good to the province, inspite of its obvious limitations.⁵ "As to the working of Reforms," the party manifesto said, "the party regards the new constitution as most unsatisfactory, but in view of the obvious limitations involved sees no good in trying to wreck or boycott it. As such it seeks to make the best use of whatever opportunity of doing good is available under the new constitution and would simultaneously join the other constructive and progressive parties in the country for further constitutional advance."

The congress party, which captured the Legislatures and accepted offices with the object of wrecking provincial autonomy, ultimately gave up this objective as futile and substituted in its place a constructive programme for the rejuvenation of the masses. Mahatma Gandhi himself came to the conclusion that if the congress had once agreed to form ministries, it should use them for constructive purposes and not for wrecking the constitution. Pt. Nehru also expressed the opinion that the acceptance of office by the congress had been for the good of the masses.

The condition of the masses, economically and socially is so deplorable that strenuous efforts have to be made by popular ministers to improve them. Only continuous, constructive work would be able to achieve it. Destructive tactics under such circumstances would be of little avail.

There is again the pressing problem of inter-communal harmony, without which, no democratic experiment in India can hope to succeed.

From these two points of view, the working of provincial autonomy in the Punjab has really been very satisfactory. The Legislative enactments of the Unionist party have undoubtedly been in response to some of the pressing problems of the Punjab peasantry. In the budget of 1938-39, estimated at Rs. 11.37 crores, the expenditure on Beneficent Departments amounts to

⁵ *Manifesto of the Unionist Party*, p. 9.

Rs. 3.28 crores. Referring to this, the Finance Minister said in his budget speech:—

“Recently much comparative examination has been attempted of the expenditure in various provinces on nation-building departments, and the result has been that of all the provinces in India the Punjab devoted the largest percentage of its total expenditure to beneficent departments, except Madras, but even Madras has much smaller annual expenditure per head of the population. Bombays’ percentage of expenditure compares unfavourably with us, but as the population of the Presidency is comparatively smaller, and its total resources much greater than ours, Bombay is able to show a slightly higher *per capita* expenditure.”

This is all very correct but it is difficult to believe that the Government in the Punjab has done all what it could do under the circumstances. It must never be forgotten that the Punjab enjoys certain advantages in comparison with other provinces, which should enable the government in this province to achieve better results than is possible for example in a poverty-stricken province like Orissa, where the congress government has had to fight against impossible odds. The military dominance of the Punjab enables it to receive anything in the neighbourhood of Rs. 5 Crores annually from the military, which is more than what its peasants—pay as land revenue. The agricultural prosperity, the virile stock of its inhabitants, the excellent climate—these are advantages denied to other provinces. The irrigation system of the province is one of the best anywhere in the world. The British Government again has given particular attention to this province on account of its agricultural and military importance. The Unionist ministry has been able to do very useful spade work and if this is continued it would be possible to bring about an appreciable improvement in the conditions of the masses, in no remote period.

Regarding the Hindu-Muslim, Sikh relations in the province, there have been occasional lapses to communalism but the liberal and tolerant attitude of the party in power has been to a very great extent helpful in mitigating the communal menace. Undoubtedly more improvement in this aspect is needed. In this connection the amalgamation of the Muslim section of the Unionist party with the Muslim League, whatever may be its justification on grounds of expediency, is rather unfortunate.

The secular and exclusively political nature of the Unionist party has been the greatest bulwark against communalism in the province. This bulwark should not in any way be weakened.

Yet another tendency that has appeared during the working of provincial autonomy is that of provincialism. In the Punjab particularly this tendency has been rather marked. More inter-provincial collaboration is desirable and while each province is naturally anxious for its own welfare, an all-India point of view on common problems should always be kept in view.

Provincial autonomy at present has been working under serious limitations and these limitations would continue unless the problem of the Central Government is satisfactorily solved. This means nothing less than the achievement of full Dominion Status by India. Provincial finances are strictly limited and too scanty for any large planning. The establishment of a popular ministry responsible to the Central Legislature would provide the necessary conditions for the working of provincial autonomy in its true aspects.

CONSTITUTIONAL REFORM IN MYSORE

BY

PROFESSOR H. KRISHNA RAO,

Maharaja's College, Mysore.

Introduction.—The Government of His Highness the Maharaja of Mysore appointed in 1938 a Committee “for the purpose of examining, in relation both to the public administration and the public life of the State, the development and working of the Representative Assembly and the Legislative Council as well as the other representative bodies and institutions connected with them.” Being fully aware of ‘the growth of education, public spirit and political consciousness’ in the country the Government of His Highness the Maharaja appointed the Constitutional Reform Committee to suggest suitable reforms. The Committee received a message on the eve of its activities from His Highness the Maharaja to the following effect “For the past 36 years I have watched with profound satisfaction the progressive association of my people with my Government having as my single aim the prosperity and happiness of *all classes* and always the hope that Mysore may play a worthy part in the progress of India as a whole.”

His Highness the Maharaja.—The position of the ruler is not affected by the reforms. His Highness continues to be the head of the State, the administration being carried on by the Government in the name of His Highness. Like other constitutional rulers His Highness is ‘the highest representative of the Executive on all ceremonial occasions and has to give formal assent to the most important executive acts’. His Highness has ‘a right to have full information as to the grounds of all such acts and to require them to be discussed with him before his assent is given’. All legislative proposals receive His Highness’ assent before they become Acts, His Highness has the right to appoint, punish and dismiss officials of the State and the right to pardon offenders against whom capital sentence is passed by the judiciary. His Highness’ hereditary office has given stability and permanence to the Government and the experience and personal interest evinced by His Highness in the affairs of the State and the well-being of the Subjects act as a healthy check

on the ministry enabling the ministers to have the benefit of His Highness’ wise counsel in matters of State. It has also made possible the existence and functioning of representative institutions like the Legislative Council and the Representative Assembly which act as a forum of public opinion.

The Ministry.—The Committee discussed several forms of Executive carefully before it arrived at the conclusion that “the grant of full responsible government is not an immediate possibility”. The Swiss model of an irremovable executive was found to be unsuited by the Committee to a unitary State like Mysore and the introduction of some form of Dyarchy which is “based on the assumption that it is possible to divide the field of Government into mutually exclusive sections” was equally found to be objectionable and unacceptable. The introduction of the Principle of Responsible Government was next considered with all its implications and the Committee came to the conclusion that the interest of the State would be served best not by Responsible Government but by devising “an executive which will not entail too sudden a break with the existing system but will be flexible enough to allow for development within the constitutional frame-work.” The Committee recommend an Executive of a mixed type consisting of official and non-official element and observe that ‘there is no cleavage of interests between the rulers and the ruled in Mysore as in British India and there is no ground for apprehending that the ruler and the official members in the Cabinet would pull in one direction and the elected members in the other’. It also adds that by this arrangement of introducing the non-official element in the ministry ‘the legislature is able more largely to influence the nature of the advice and assistance which the Executive Council tenders to the Government’.

The reconstituted Executive consist of the Dewan and not less than four ministers of whom not less than two should be non-officials selected from among the elected members of the Representative Assembly and the Legislative Council, one from each body, if possible. The distribution of the portfolios, the Report adds, will be at the discretion of His Highness, ‘no minister being under disability to hold any portfolio on the ground of being a non-official’. The Dewan will be appointed by His Highness either from among officials or non-officials, who are ordinarily to be Mysoreans. He will be the President of the Cabinet and his term of office is ordinarily for 5 years. The Dewan need not be a member of the Legislature but may attend

its meeting and address it whenever he wishes to do so. The two non-official ministers must be members of either of the two houses of the Legislature and all the four ministers, according to the recommendations of the Committee, are ex-officio members of the Legislative Council. The official members of the Cabinet hold office during good behaviour subject to the rules of the Mysore Service Regulations and the tenure of the non-official ministers is co-extensive with the term of the Houses. The ministers are not responsible to the Legislature and are not removable on a vote of no-confidence. It is necessary to mention in this connection that Government agree with the Committee's views that the "provisions for the rejection of demands for grants or cut motions on demands, provide sufficient opportunities for bringing to the knowledge of the ruler any deficiencies in the administration and it must be left to the pleasure of the ruler to take such notice of this as he may consider suitable in the circumstances".

Legislature.—Though there are two Houses, namely the Representative Assembly and the Legislative Council, they do not correspond to the two chambers of a bicameral legislature nor are they bodies with co-ordinate powers. They supplement each other in the sense that the Assembly focuses the voice of the people and the Council engages itself in the work of Legislation. The Assembly is meant primarily for consultation and reference in all Legislative, financial and administrative matters. The Assembly was established in 1881 and was placed on a statutory basis with enlarged functions in 1923. The Legislative Council came into being in 1907 and its powers were enhanced in 1923. Both the Chambers were functioning till recently under separate Acts and both of them, according to the recommendation of the Committee, have come into integral relationship with each other.

The Representative Assembly.—The strength of the Assembly has been increased, its powers enlarged and its tenure extended from 3 to 4 years. There is an increase in its membership from 275 to 310 ordinarily, the maximum being 325. There is better representation than before for minorities and for economic and other special interests. Rural constituencies get 166 seats, Urban constituencies 45 seats, minority-communities—like the Muslims, depressed classes, Indian Christians and Europeans—get 67 seats, and special interests like, the University, Planting, Industry, Trade and Commerce, Women, Labour, Co-operation and Banking and Gold-mining, get 22

seats in the Assembly. The Government have been given the power to nominate for special purposes 10 persons to the Assembly thus making its strength 310 normally.

The Committee recommend that the Dewan and the ministers should be the President and Vice-Presidents of the Assembly respectively and consider that "a non-official President being merely an officer of the House and having no connection with the administration would not be in the same advantageous position to deal with representations as the members of the administration".

Powers and Functions of the Assembly.—The Assembly continues to be the forum of public opinion and will be consulted as before with regard to the general principles of legislation and administration. In addition to these powers, the Committee recommend that "in future the Assembly will *invariably be consulted* in regard to any legislative measure before it is introduced into the Council and that it will have the right of considering the general principles underlying any Bill or any of its provisions and of proposing amendments thereto but not to propose verbal amendments to the clauses of a bill". The opinion of the Assembly, says the Report, will ordinarily be accepted on all Legislative measures when supported by 2/3 majority and in exceptional cases, that is, in the interest of public well-being, a law may be passed against the opinion of the assembly, the Government issuing a Statement in such cases giving reasons for so doing. Legislative Bills originate in the Legislative Council and the draft bill, according to the Report may not be placed before the Assembly and it is sufficient, 'if a Statement of the general principles underlying it is placed before the House to ascertain its opinion'. The consultation of the House may be either prior to the introduction of the bill in the Council or after its introduction but it *must* be before the bill is finally passed. After a bill is passed by the Assembly it may be introduced into the Council with or without the modifications proposed by the Assembly and that when the bill is finally passed by the Council it need not be placed again before the Assembly and may be submitted to His Highness for assent together with a Statement of the opinions expressed by the Assembly thereon. In case of emergency, temporary laws may be passed by the Government which will have the force of law ordinarily for a period of 6 months. The Legislature has no jurisdiction over certain items, namely matters relating to the ruling family; the relations of H.H. the Maharaja with the Paramount power;

matters governed by treaties now in force or hereafter to be made by His Highness with the paramount power; matters as may from time to time be specially reserved by His Highness for consideration by Government and matters regarding changes in the Constitution of the two Houses.

The Assembly has the right to consider the Budget, pass resolutions on general principles and policy underlying the Budget and on any of the major heads of expenditure without reference to any particular grants or appropriations. Items like the Palace including the staff and household of His Highness; the military forces of His Highness; the pensions of Public servants; expenditure relating to the relation of His Highness with the paramount power; interest on loans; all these form non-votable items both in the Assembly and the Council. Government agree with the Committee's view that "it is not safe to allow specific money grants to be dealt with by two sets of peoples representatives in two different Houses: that no proposal for the imposition of taxation for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon these revenues" should be made except on the recommendation and responsibility of the Executive.

Legislative Council.—The strength of the Legislative Council is increased from 50 to 68 with a view 'to ensure a statutory elected majority in the Council.' There are 44 elected members. 24 are elected from general constituencies and 10 each from minority communities (like Muslims, depressed classes, Indian Christians and Europeans) and special interests (like planting, Labour, Women, mining and industries). The Committee recommend that Government may nominate 16 officials and 8 non-officials to the Council.

With a view to make the Council a more effective instrument for voicing the wishes of the people, the Committee further recommend that the Council should have an elected non-official president instead of the Dewan as at present. For the present the President will be nominated by His Highness and after the first term of the Council, the President will be elected by the House itself. The Committee recommend further that there should be a non-official Deputy President, the choice of the candidate is subject to the approval of His Highness. A panel of 4 chairmen should be selected by the President from among the members of the Council to preside over its deliberations in the absence of both the President and the Deputy President. Both the President and the Deputy are to be paid a salary to be fixed by the Council and

subject to the approval of His Highness. Their tenure will be co-terminus with that of the Council and they are removable earlier by His Highness on the submission of a resolution of no-confidence motion passed by 2/3 majority.

Powers of the Council.—In matters of finance the Council is empowered to assent or refuse to assent to a demand or to reduce the amounts specified there in either by reduction of the whole grant or by the omission or reduction of any of the items of expenditure included in the demand. The vote of the Council rejecting or reducing any demand is binding on Government ordinarily. In cases of emergency, Government is empowered "to authorise such expenditure as may in their opinion be necessary for the safety and tranquillity of the State or any part thereof or for the discharge of Government's responsibility."

Privileges of the members of the Legislature.—Members of both houses of Legislature enjoy freedom of speech, immunity from arrest under Civil process (except in respect of insolvency proceedings) during the sittings or any meetings of the House. Each member of the Legislature is allowed to send up one subject and one question for each session, no maximum limit is placed on the total number of questions sent by the members for any session. The tenure of the Legislature is increased from 3 to 4 years. Both the Council and the Assembly meet twice a year, the latter meeting for 10 days during Dasehara and for 8 days during the Birthday session.

Franchise for the Legislature.—There is no change in the rules of franchise for the Council except in regard to the lowering of the educational qualification for women voters who are now eligible to vote if they possess Secondary School Leaving Certificate. In case of a candidate to the Council, his age is to be 30 instead of 25 and the property qualification is reduced from Rs. 200 to Rs. 50 of income-tax.

With regard to the Representative Assembly there has been considerable reduction in the property and educational qualifications of voters. The property qualifications in urban areas remain unaffected as they are already low, the qualification is based on taxation, etc., and in case of rural voters is reduced. Regarding educational qualifications, the possession of the Secondary School Leaving Certificate in the case of men and of middle school examinations in the case of women are recommended. The general qualifications for voters are residence for a period of one year instead of 6 months, domicile for a period of 10

years instead of 5 years as in the past. The minimum age qualifications of a candidate to the Assembly is raised from 21 to 25 years and the minimum educational qualification in the absence of other qualifications is that of a graduate of a University.

Conclusion.—The declaration of a definite goal received careful consideration of the Committee which had before it a number of conflicting proposals. Some maintained that 'a declaration in terms of responsible government would help to quiet us to unnecessary and avoidable political agitation and set the people to work out their political salvation on a settled plan while permitting the Ruler to put forth his best efforts to assist the people to attain the goal.' Others urged that such a declaration 'would be of doubtful value and create ambitions which could not always be satisfied. There were still others who, while accepting the principle of responsible government, differed in regard to minor details. The Committee finally accepted the proposal that "the goal to be kept in view in all constitutional reforms in Mysore, should be the establishment of a system of responsible government under the authority and protection of the Sovereign, i.e., a system in which the administration is carried on by a cabinet of ministers appointed by H. H. the Maharaja and enjoying the confidence of His Highness and the support of the Legislature" due reservation being made "in regard to the powers of the Ruler for safeguarding the legitimate interests of minorities, to ensure peace, order and good government and to satisfy the obligations under the treaty with the paramount power." The Committee conclude that its proposals "embody the largest possible measure of advance on democratic lines compatible with the existing Political conditions in the State" and reiterate the point that the policy of the Government of Mysore has been to convince the people that "the interests of Government are identical with those of the people" and to allow them "to participate in the shaping of policies and measures of the Government." The spirit in which the reform is to be viewed and worked out is indicated in the Proclamation issued by the Government of His Highness the Maharaja of Mysore. His Highness graciously says that "he has every confidence that his people will utilise these larger opportunities for public service and usefulness to the state with the same sense of responsibility as in the past and in a spirit of mutual toleration and goodwill."

REVIEWS

THE BLOCKADE 1914—1919, by W. Arnold-Forster.
CAN GERMANY STAND THE STRAIN?, by L. P. Thompson. Price 3d. each.
Oxford University Press Pamphlets.

Among the latest Pamphlets that have been produced by the Oxford University Press recently, No. 17 is W. Arnold-Forster's 'the Blockade, 1914—1919,' which gives an account of the great blockade of the Central Powers during the war of 1914—1918. Mr. Arnold-Forster writes with authority, having had a unique opportunity, first as an Admiralty representative on the Contraband Committee and later on the Black List Committee and Main Licensing Committee, of seeing the whole of the complex machinery of the British blockade at work throughout the war.

The Pamphlet graphically describes how the Declaration of London of 1909 had divided commodities into three classes—absolute contraband, conditional contraband, and non-contraband, and how the principles of this Declaration were gradually broken, first by the Order in Council of 29th October, 1914, which transferred most of the materials 'essential for the making of munitions of war' from the list of conditional to that of absolute contraband, and then by the famous Reprisals Order in Council of 11th March, 1915, which claimed the right to detain—although not to confiscate—all goods of enemy destination, origin and ownership. In order to prevent enemy trade through the neutral countries, the next step that was taken was to establish a rationing system for the neutral powers, with the formation in the beginning of 1916 of the Ministry of Blockade under Lord Robert Cecil; so that by the end of 1916 the blockade of Germany's imports from overseas had become really stringent. In April 1917 the United States came into the war; and this helped to induce the neutrals to put their shipping into Allied service and reduce exports of their own produce to Germany.

All this is common knowledge, although it has been presented with quite remarkable skill and clarity in this Pamphlet. But what Mr. Arnold-Forster distinctively brings out is the fact that the blockade was not maintained without relaxation in the later stages of the war. After the Armistice, actually four million tons of food and clothing were delivered, under the relief scheme organised by Mr. Hoover of the United States, to the most hard-hit European countries, and of this huge amount Germany received by far the largest share—1,200,000 tons. "A proportion of the world's shipping was allocated for the relief scheme. Huge credits were granted by the United States; Britain advanced £12½ millions; Canada, France and Italy helped. Food sufficient for all Europe's need could not be found; but, thanks to the astonishing increase of food production in the United States and Canada, the New World was able to redress the balance in the Old to a great extent."

A companion Pamphlet in the same group, No. 19 'Can Germany stand the Strain,' attempts an examination of the effects of blockade on Germany to-day. Compared with the altogether admirable account of the effects of the great blockade of 1914—1919, however, L. P. Thompson's analysis gives the impression of being primarily propagandist. It is true that an Economic Warfare Department with a banker-politician in charge and with a large staff has started functioning much earlier in the present war than was the case during the last one. It is also true that the present blockade aims, much more definitely than was the case during the last war, at working both ways—against imports and exports, and that without exports to get exchange Germany's ability to carry on any sort of dealings with neutrals would be greatly weakened. But perhaps Mr. Thompson deliberately underestimates the capacity of 'accessible neutrals' to supply Germany's needs and under-rates the part that Russia can play as a source of supply.

The conclusion, nonetheless, is inescapable that in the corner of the world which remains open to Germany there simply do not exist some of the material essential to the conduct of war and indeed to the maintenance of civil life. "That does not mean that the task of the Allies is easy. Though Germany cannot sustain a long war, the Nazis have built up a machine which can, while it lasts, strike hard in an effort to break its stronghold. But it is a stronghold. And both the Nazis and we know it."

BOOL CHAND.

THE MUNRO SYSTEM OF BRITISH STATESMANSHIP IN INDIA, by K. N. Venkatasubba Sastri, M.A., Ph.D., (University of Mysore—Studies in Economics and Politics—No. 2). 1939.

The history of British rule in India is now passing through its second stage with problems of a political and constitutional character facing British Statesmen. In its first stage the problems were of a purely administrative character. No one seriously questioned the legitimacy and propriety of the exercise of sovereignty by the British Nation. But in the solution of these administrative problems there were at least two standpoints among the officers of the Company. One school of officers wanted to study and understand the working of indigenous methods of administration and continue them, introducing modifications here and there as might be necessitated by changes in circumstances. The other school had a sort of prejudice against Indian methods, and had not the patience to work hard and investigate the nature of the institutions that had been long in existence in the country; they were of the opinion that the British system was superior in every respect to the Indian system and that the salvation of India lay in the wholesale introduction of British Institutions into this country. The conflict between these two schools was real and even to-day it has not completely disappeared. It existed from the very beginning. Warren Hastings belonged in a sense to the first school of thought and Lord Cornwallis to the second school. And because of the confidence which Cornwallis commanded at the hands

of the Home authorities he was able to carry the day. The Permanent Settlement of Land-revenue along with the conferment of rights of property in land on Zamindars, the curtailment of the powers of the Collector, the separation of the judicial and executive authority and the Bengal Code—all these of which Cornwallis was the author bore evident marks of the practices and theories that were prevalent in England in those days.

But this system of Cornwallis had a large number of opponents. As time went on their opposition became stronger and more vigorous and they were determined on preventing the spread of the Bengal system into the other Provinces. It was their idea to build the edifice of British administration on Indian foundations and to preserve the continuity between the old and the new. Sir Thomas Munro was the greatest protagonist of this view and his opinion was based on the personal experience which he gained as settlement officer and Collector in many of the districts of the Madras Presidency. He advocated the Ryotwari system of land-settlement as distinguished from the Zamindari system and introduced it over a large part of the south. He fought for the concentration of all the authority in a district in the hands of the Collector instead of distributing it among a number of more or less independent officers, on the ground that it was more in consonance with Indian tradition and also with the stability of British rule. He pleaded for the employment of Indians not merely in the lower but also in the higher ranks of civil service subject to close supervision by Europeans; he did this not merely on grounds of economy but also of justice and fairness. He was a great admirer of the type of self-government that then prevailed in Indian villages with their panchayats; and he wanted to make use of the village headman and these Panchayats for administrative and judicial purposes. He was dead against the judicial system introduced by Cornwallis with its complicated law and still more complicated procedure, with its judges quite ignorant of the habits and traditions of the people and with the cost and delay that it inevitably caused. In these and in many other ways he not only showed his appreciation of the Indian mode of doing things but also the need for utilising Indian methods of rule if the British administration was to be a success. It was fortunate that the Court of Directors in England agreed with his point of view and issued instructions to put it into effect.

It is to illustrate the salient features of Munro's system of administration that Dr. K. N. Venkatasubba Sastri of the University of Mysore brought out the above Volume. It contains a number of representative documents and papers written by Munro himself and a number of despatches sent to India by the Court of Directors. The selection has been made with great care and discrimination and the volume will be found useful by all students of Indian History and Administration interested in the evolution of modern India. It is an indispensable supplement to A. J. Arbuthnot's invaluable selections from Minutes and other official writings of Munro published in 1886. It would have been better if Dr. Sastri had omitted the maxims and opinions of the Duke of Wellington given in Appendix C—scrappy as they are—and found place for some documents illustrative of Munro's views on the relations of the British Governments towards Indian Princes and on the Sepoy

problem to which a reference is made in the scholarly introduction to the Volume. The compilation would also have gained in value if some notes had been added to individual documents to explain their context and the circumstances under which they were composed.

Dr. Sastri is a great admirer of Munro and his system; but we are afraid that he has carried this admiration to excess. The Ryotwari system is in certain respects an improvement on the Zamindari system; but the burden which it imposed on the ryots has been pronounced by most observers to be heavy. His view that taxes are fewer and simpler in India and that laws are not only clear but excellent in their administration will not be accepted by many. To speak of the Munro system 'as the *only* system by which liberty has been introduced in India' is nothing but exaggeration. Munro had his limitations. One should contrast his views on "The Civil Service Fund" for Europeans with his views on "The Native Pension Fund," and he could not reconcile himself to the idea of a free press. But this exaggerated admiration that Dr. Sastri has for his hero does not in any way lessen the value of his scholarly work. It is a model of historical research.

M. VENKATARAMAIAH.

THE INDIAN POLITICAL SCIENCE CONFERENCE

THE FIRST ANNUAL REPORT OF THE INDIAN POLITICAL SCIENCE ASSOCIATION FOR THE YEAR 1939.

(Presented by the Secretary to the Second Session of the Conference at Lahore, January, 1940.)

I have great pleasure in presenting on behalf of the Executive Committee the first annual report of the Indian Political Science Association.

The Association was projected about the middle of 1938, but was actually formed at the Benares Hindu University on the 23rd December, 1939, when a brief provisional constitution was adopted.

In January 1939, a circular letter was issued for the purpose of enrolling members. In May another Circular letter was sent announcing the dates and the subjects to be discussed at the second Conference and inviting all those interested in the study and advancement of Political Science to join the Association and attend the Conference. Yet another circular letter was issued early in November extending the time for sending papers and appealing for the further enrolment of members. But in spite of these efforts and numerous personal letters the membership of the Association stands at 61 only. May I appeal to all those present here to help in the enrolment of more members so that by the time the next report is presented, the number may go up to at least four times the existing number?

As announced the Association was able to start the Indian Journal of Political Science during the course of the year and two issues have already appeared. The Managing Editor of the Journal will present a separate report in regard to the working of the Journal—here it is only necessary to note that the Association has contributed towards the expenses of running the Journal Rs. 8 per member out of the annual membership subscription of Rs. 10.

During the year every effort was made to keep down the expenses of the Association. The total income of the Association was Rs. 550, out of which Rs. 440 were paid to the Journal Office. The expenditure on the Association was only Rs. 49-7-9, leaving a balance of Rs. 62-4-3. As the statement of accounts will show, no expenditure was incurred on office establishment or typing and stationery. Postage and Printing were the only two items of expenditure.

The Secretary wrote to the Government of India and the various Provincial Governments requesting them to supply, free of cost, to every Indian University a copy of their annual report on the Administration of various departments, a copy of the proceedings of their Legislative Assemblies and Councils and any special reports they might issue from time to time and wherever possible a copy of each of the previous issues of such publications. Replies have been received expressing

inability to accede to the request and pointing out the concessions already allowed by a few of the Provincial Governments to the local Universities.

Representation was also made to the Government of India and the Federal Public Service Commission in regard to the inclusion of Political Science among the subjects in all the competitive examinations. The reply received is encouraging. The question of prescribing Political Science for the I.P.S. Examination is under consideration and generally the Government of India recognizes the importance of the subject. However, they feel, that it is not necessary to prescribe Political Science for the Finance Examination.

The Executive Committee was entrusted with the work of preparing a report on the teaching of Political Science in the several Indian Universities and to suggest reforms. The Secretary has received from some of the Representatives of the Universities on the Executive Committee short statements on the teaching of Political Science in their Universities and similar statements from others are awaited. When they are all received a small Sub-committee will consider them and prepare the report. I hope it will be possible to submit the report at the 3rd Conference. The Executive Committee was asked to prepare a more detailed constitution of the Association which has been done and the draft will be placed before this meeting presently.

GURMUKH N. SINGH,
Secretary.

THE SECOND INDIAN POLITICAL SCIENCE CONFERENCE, LAHORE,

BY

PRINCIPAL GURMUKH NIHAL SINGH.

I

The second Indian Political Science Conference met at Lahore on the 2nd, 3rd and 4th January, 1940. Forty-four delegates from the various Universities attended. Delegates from four Indian Universities—Allahabad, Mysore, Patna and Travancore—were not able to join.

The Conference Session was opened at 11 A.M. on the 2nd January, 1940, by His Excellency Sir Henry Craik, the Governor of the Punjab, in the Hall of the Government College with a brief and witty speech, which appears in another place in this issue. The President of the Association, Dr. P. N. Bannerjea, M.L.A. (Central), next read portions of his presidential address, which is printed in full in another part of the Journal. After a vote of thanks by Khan Bahadur Mian Afzal Husain, the Vice-Chancellor of the Punjab University and the Chairman of the Reception Committee, the opening session was concluded.

A group photograph of the Conference delegates was then taken and the delegates were entertained at lunch.

The afternoon of the 2nd January, 1940, was devoted to excursions. The delegates were taken in two commodious busses and two cars to Amritsar, stopping on the way to see the famous Moghal Terrace garden, *Shalimar Bag*, laid out by Emperor Shahjahan. At Amritsar, the delegates first visited the Golden Temple. At the gate they were received by S. B. Sardar Hukam Singh, Chairman of the Durbar Sahib Committee. A short history of the Temple was given by an Akali guide and the delegates were shown the expensive jewellery and equipment of the Temple. The delegates then went into the Temple, a few made their offerings, and all came out impressed with the devotional atmosphere prevailing within the precincts of the temple.

From the Golden Temple the delegates paid a visit to the Jallianwala Bagh, the place consecrated by the blood of martyrs who fell under gun fire directed by General Dyer on that fateful day in Indian History, the 13th April, 1919.

At 4 P.M. the delegates reached the bungalow of Mr. P. C. Bhandari, B.A. (Cantab.), Bar-at-Law, Secretary of the Amritsar Municipal Committee, who had arranged an AT HOME in a commodious pandal. The gentry of Amritsar was present and the delegates were entertained on a very generous scale. On the return journey, the delegates were shown the Amritsar Khalsa College, and they reached Lahore about 7-30 P.M.

II

The Conference began its work on the 3rd January punctually at 10 A.M. in the Hailey Hall under the presidency of Dr. P. N. Bannerjee. The morning session was devoted to papers on "Recent Trend in Political Theory." Mr. Ajit Kumar Sen of the Dacca University summarised his paper entitled "The Decadence of the Individual in Modern Political Theory" and in the discussion which followed the following persons took part:—Professor S. V. Puntambekar of Benares; Dr. E. Asirvatham of Madras; Prof. M. Venkatarangaiya of Andhra; Prof. D. N. Bannerjee of Dacca and Principal A. C. C. Harvey of Ludhiana (Punjab). Mr. Sen gave a brief reply.

Mr. N. Srinivasan from Andhra next summarised his paper on "Recent Analysis of Social Power" and Sahibzada Mr. Idris from Islamia College, Peshawar and Dr. V. S. Ram from Lucknow made brief observations on the subject to which Mr. Srinivasan replied.

The next paper that was summarised was on "Sovereignty and International Law: the Theorists' Contribution" by Principal T. K. Shahani of Samaldas College, Bhavnagar. Dr. V. S. Ram (Lucknow), Prof. H. K. Sherwani (Osmania) and Dr. E. Asirvatham (Madras) participated in the discussion.

Professor B. N. Bannerjee of the Calcutta University then gave a short summary of his paper "Democratic Theory in its application to Indian Politics," which aroused considerable discussion in which the following persons joined:—Prof. M. Venkatarangaiya (Andhra); Prof. D. N. Bannerjee (Dacca); Prof. H. K. Sherwani (Osmania); Principal Gurmukh N. Singh (Ahmedabad); Dr. B. N. Sharma (Lucknow). Professor B. N. Bannerjee gave a short reply.

There was no discussion on the next paper "The Sanction behind the Conventions in a Constitution" which was summarised by its author, Mr. V. K. N. Menon of the Lucknow University.

Prof. S. V. Puntambekar (Benares) next summarised his paper on "The Theory of the Corporative State." Professors B. N. Bannerjee (Calcutta), E. Asirvatham (Madras) and M. Venkatarangaiya (Andhra) raised a few points to which Professor Puntambekar replied.

There was considerable discussion on the paper "Iqbal's Conception of the Individual and the State" by Dr. J. N. Khosla and Maulvi Sheikh Akbar Ali (Punjab University) in which the following persons participated:—Mr. F. H. Bhatti (Punjab University); Sahibzada Md. Idris (Islamia College, Peshawar); Mr. F. C. Arora (Ram Sukh Das College, Ferozepur); Prof. H. K. Sherwani (Osmania); Mr. L. R. Sethi (Government College, Lahore); Principal A. C. C. Harvey (Government College, Ludhiana). Dr. J. N. Khosla (Punjab) who had summarised the paper replied to the points raised in the discussion.

The following papers were taken as read, as their authors were not present:—"Creative Dis-Equilibrium in Freedom, Democracy and Socialism" by Dr. Benoy Kumar Sarkar (Calcutta); "The Crowd" by Mr. Ilyas Ahmad (Allahabad); "The Decline of Liberalism" by

Professor S. K. Chatterjee (Calcutta); "The Problem of Moral Guidance in Gandhiji's Political Philosophy" by Mr. Gopinath Dhawan (Cawnpore); "The Revision of Democracy" by Professor A. Appadorai (Madras).

The Conference adjourned for lunch at 12-30 noon.

III

The afternoon session of the Conference was devoted to the discussion of papers on "International Relations and Affairs" and on "Reforms in Indian States."

Dr. V. S. Ram (Lucknow) summarised his paper on "The Far Eastern (Japanese) Munroe Doctrine" which was followed by an interesting discussion in which Professor Garde (Nagpur); Prof. Puntambekar (Benares); Mr. F. C. Arora (Ferozepur); Mr. Srinivasan (Andhra); Dr. A. Halim (Aligarh) and Principal Harvey (Ludhiana) participated. Dr. V. S. Ram replied to the points raised.

"The Problem of International Peace" was next summarised by its author Mr. Deva Raj of the Christ Church College, Cawnpore. Drs. Ram (Lucknow) and Asirvatham (Madras); Principal T. K. Shahani (Bhavnagar) and Prof. M. Venkatarangaiya (Andhra) raised a few points to which Mr. Deva Raj replied.

"Criticism of Streit's Union Now" by Professor Venkata Subba Sastri (Mysore) and "International Labour Organisation" by Dr. P. P. Pillai (Delhi) were taken as read as their authors were not present.

Next two papers on "Reforms in Indian States" were summarised by their respective authors:—"The Problem of Responsible Government in the States" by Mr. Indra Dutt Sharma (D.A.V. College, Lahore) and "Evolution of the Legislature in Hyderabad" by Professor H. K. Sherwani (Osmania). There was lively discussion in which Professor Sri Ram Sharma (D.A.V. College, Lahore), Sahibzada Md. Idris (Peshawar); Dr. B. M. Sharma (Lucknow) and Principal Gurmukh N. Singh (Ahmedabad) participated. Professor Sherwani replied to the discussion and the session concluded at 3-30 P.M.

IV

The delegates next proceeded to the Government House, where they were entertained at a tea party by H. E. the Governor. A large number of distinguished persons were present at the tea party among whom may be mentioned the Hon'ble Mr. Manohar Lal, Finance Minister, Punjab; the Hon'ble Mr. Abdul Haye, the Education Minister; Sir Shahabuddin, President, Punjab Legislative Assembly and Sir Abdul Qadir.

At 6 P.M. the delegates again met in the Hailey Hall for the Annual Business Meeting which lasted till 7-45 P.M., but, as the business could not be concluded, it was adjourned till 2 P.M. the next day.

At 8-15 P.M. the Reception Committee gave a grand dinner to the delegates at the Nedou's Hotel over which Khan Bahadur Mian Afzal Husain, the Vice-Chancellor of the Punjab University and the Chairman of the Reception Committee, presided. Among the distinguished persons who were present may be mentioned the names of the Hon'ble Mr. Manohar Lal and the Hon'ble Mr. Abdul Haye. After the toast of the King-Emperor the Vice-Chancellor proposed the toast of the Conference to which Dr. P. N. Bannerjee, the President replied. The toast of the outside delegates was proposed by the Local Secretary, Principal G. D. Sondhi in a humorous speech in which he described the leading personalities of the conference to which Prof. S. V. Puntambekar replied.

Thus ended the 2nd day's programme at about 10 p.m.

V

The Conference Session began on the third day at 10-30 A.M. Papers on the "Working of the Central and Provincial Governments of India" were taken up for discussion.

There was, however, no discussion on the first two papers which were summarised by their respective authors:—"The Control of the Central Assembly over the Executive" by Mr. P. N. Malhan, Research student, Punjab University and "The Amending Process of the Indian Constitution" by Dr. Bool Chand of Delhi University.

Professor D. N. Bannerjee (Dacca) next summarised his paper "The Nature of the Governor's Instrument of Instructions: Is it a law" Messrs A. Sen (Dacca) and F. C. Arora (Ferozepur) and Principal C. L. Anand (Law College, Lahore) raised interesting points to which Professor Bannerjee replied.

Mr. P. L. Sahgal of the Hindu Sabha College, Amritsar summarised his paper entitled "Non-Voting in India: Causes and Cures." In the discussion that followed the following persons participated:—Mr. F. Harvey (Lahore); Prof. H. K. Sherwani (Osmania); Principal A. C. Harvey (Ludhiana) and Sahibzada Md. Idris (Peshawar). Mr. P. L. Sahgal gave a brief reply.

"Some Aspects of the Minority Problem in India" was the next paper taken up for discussion. After its author Dr. B. M. Sharma (Lucknow) had given a short summary Professor H. K. Sherwani (Osmania), Sahibzada Md. Idris (Peshawar) and Prof. Muhammad Ali (Law College, Lahore) spoke but as it was feared that further discussion may disturb the purely academic atmosphere of the Conference the President requested Dr. Asirvatham (Madras) to give a short summary of his paper entitled "Law and Administration in the Madras Presidency." There was no discussion on this paper nor on the next two papers, which were summarised by Mr. P. N. Masaldan, research scholar, Lucknow University and Mr. Dip Chand Verma (Lakhaoti). They were entitled "Finances of the United Provinces under Provincial Autonomy" and "Provincial Autonomy in the Punjab" respectively.

Prof. M. Venkatarangaiya next summarised his paper on "Provincialisation of the Staff of Local Bodies." In the discussion that follow-

ed Mr. A. Sen (Dacca) and Principal A. C. C. Harvey (Ludhiana) took part. Prof. Venkatarangaiya made a brief reply.

The next paper on "Indian Civil Service and Provincial Autonomy" was summarised by Dr. N. C. Roy of the Calcutta University. Prof. Sri Ram Sharma (Lahore) and Mr. A. N. Sen (Dacca) made a few observations to which Dr. Roy replied.

The last paper summarised was "The Constitutional Validity of Communal Basis of Recruitment of Public Services in India" by Dr. J. N. Khosla (Punjab) Mr. Muhammad Ali (Lahore), Prof. D. N. Bannerjee (Dacca), Mr. F. C. Arora (Ferozepur) and Prof. Sri Ram Sharma (Lahore) took part in the discussion to which Dr. J. N. Khosla replied.

The following papers were taken as read:—"The Influence of the Non-official Members of the Indian Legislature on the Policy of the Government of India (1910—1919)" by Mr. M. S. Kamthan, D.Litt. Scholar, Allahabad University; "The United Provinces Employments Tax" by Professor M. H. Gopal, Mysore University; "Evolution and the Working of the Government in Travancore" by Mr. N. V. Rajkumar, the research scholar, Lucknow University; "Constitution Position of the Orissa States" by Dr. H. N. Sinha (Nagpur); and "The Executive Officers in Local Bodies (with special reference to Madras)" by Mr. K. Jaya Raman, research scholar, University of Madras.

The Conference rose for lunch at 1-30 P.M.

VI

After lunch the adjourned business meeting was held under the Presidency of Dr. P. N. Bannerjee. The draft constitution of the Association was considered and with slight modifications adopted.

With several votes of thanks the Conference concluded at 3 P.M.

However, the Reception Committee had arranged an excursion to the Badshahi Mosque, Maharaja Ranjit Singh's Samadh and to the Lahore fort on the way to Shahdara gardens where the delegates were entertained a tea party by the Punjab University.

Several of the delegates left Lahore by the various evening trains on the 4th January, others spent another day in Lahore. But all left Lahore with very pleasing memories to meet again at Mysore during the next Christmas holidays.

INAUGURAL ADDRESS

BY

H. E. THE GOVERNOR OF THE PUNJAB.

His Excellency Sir Henry Craik, Governor of the Punjab, in opening the session of the Political Science Conference at Lahore, on January 2, 1940, said:—

"It was, I believe, largely at the instance of the teachers of Political Science at Lahore that the project of holding an Indian Political Science Conference was first taken up. I am very glad, therefore, that you have selected Lahore as the place for your second meeting, and it is with great pleasure that I welcome you all here to-day. I hope that your stay in Lahore will be enjoyable and that your deliberations will be both pleasant and profitable.

"There is another reason why I gladly accepted your kind invitation to open this Conference and that is that your President for the current year, Dr. P. N. Banerjea, is an old acquaintance of mine, and I was for some years a colleague of his in the Central Assembly, whose benches he still adorns. Although in that body our views occasionally differed on the controversial questions of the day, I always listened with the greatest respect and attention to his contributions to the debate, and so indeed did the whole House. That is not surprising, for there were few in that House who could speak with his authority on economic topics, since he was for many years Minto Professor of that subject in the University of Calcutta and has been President of the Indian Economic Conference. I congratulate you, gentlemen, on having as your President for your first meeting in Lahore a personage of Dr. Banerjea's distinction and reputation.

"I see that the subjects set down for discussion cover a wide field. I could wish that I had time to attend some of your meetings and obtain enlightenment from you on many matters which are at present to me obscure. I should like, for instance, to ask you what parallel you can find in the past history to the position which I hold to-day of a Provincial Governor under the new constitution. The only parallel which I can find is drawn not from the field of politics but of Drama. For the Provincial Governor seems to me to resemble very closely that familiar figure of Greek tragedy, the "Deus ex Machina," the God, when

the dramatist had allowed his characters to get themselves into an inextricable tangle from which no human agency could devise an issue, appeared suddenly on the stage with a flash of lightning and a clap of thunder, and with a few peremptory commands brought order out of the chaos in which the plot had become involved. Similar, I fancy, is the role for which Provincial Governors were cast by the authors of the new constitution, though fortunately in this province I have not yet been called upon to assume it, and I sincerely hope I never shall be.

"But I must not detain you with such comparisons. Indeed, I feel some diffidence in addressing you at all in regard to matters which I cannot claim to have studied since I was at Oxford in the nineties. But I think in fairness I ought to give you some warning of the estimation in which political philosophers are held by the youth of the Punjab. At a competitive examination, held recently in this province in Political Science, the candidates were asked whether they agreed with Plato's view that human happiness depended on either kings becoming philosophers or philosophers becoming kings. You who, I presume, count yourselves as philosophers, will not, I hope, be surprised or offended when I tell you that not a single one of the candidates expressed agreement with Plato. Indeed one of them, I am told, went so far as to conclude his answer with the following words, as it were with a sigh of relief. 'Thanks to the wisdom of providence,' he wrote, 'this dangerous ideal will never be realised.' I cannot help thinking that he was right; and I believe that you too will agree with me when I remind you that those who, in modern times, have been acclaimed by various writers as the nearest approach to Plato's philosopher kings are first the present rulers of Soviet Russia and secondly, the members of my own service. I leave it to you to judge which are the worst and which have contributed most to human happiness or unhappiness. But I am sure you would not wish to be in either company.

"All this does not, however, mean that we in the Punjab undervalue Political Science or have any inclination to depreciate those like yourselves who are devoted to its study. As Sir S. Radhakrishnan said a few days ago, 'Men make history, but ideas make men and those who are responsible for the propagation of right ideas do also some service to the general community.' Though, therefore, we do not wish to see the devotees of Political Science invested with supreme political power and authority, we equally do not wish to see you withdraw from the world into a remote philosophic seclusion and devote yourselves entirely to pure theory. You will remember that Plato in his old age, when

he had seen the collapse of the Greek City State and the failure of all his plans for the regeneration of the Hellenic world, when his own favourite pupils whom he had hoped would turn out to be the philosopher kings of his dreams, proved themselves to be just ordinary political gangsters and ended by murdering each other and being murdered themselves, when he had found that 'the dictatorship of the wise and the good' (the dictatorship of persons like yourselves, gentlemen), proved in the event to be no better than the dictatorship of the Right or of the Left, he at last in utter disillusionment despaired altogether of the philosopher making any useful contribution to the world of practical affairs and surrendered himself entirely to the escapist attitude (to use a modern phrase) which even in the most active period of his life, had never been wholly absent from his thought and writings. It is revealed at its best in that moving passage in the 6th book of the Republic which perhaps I may be permitted to quote to you. 'The philosopher,' he wrote, 'knows that to all intents and purposes nothing sound is ever achieved by the politicians and that no one who tries to uphold justice will find any support on which he can rely. Considering, therefore, all this coolly and objectively, the philosopher will remain quietly at his own work, like a traveller caught in a storm, who retreats behind a wall to shelter from the driving gusts of dust and hail. Seeing the rest of world filled full with iniquity, he will be content to keep his own life here on earth unstained by wickedness and impious actions, so that he may leave this world with a fair hope of the next, at peace with himself and God.'

"In such an attitude there is more than a tinge of nobility and it must make a very strong appeal to many who to-day see their ideals dissolving amidst the madness and violence of the modern world. But it is nevertheless one to which, we trust, you, despite all disappointment and disillusionment, will never wholly surrender yourselves, and I hope I am not wrong in thinking that the very fact that in the last two years you have started these annual Political Science Conferences is itself a proof that you have not despaired of the practical world of the politician and still retain the desire to discover and propagate the right ideas for its betterment.

"Now, gentlemen, I have much pleasure in your distinguished President, Dr. Banerjea, to address you."

PRESIDENTIAL ADDRESS

BY

DR. PRAMATHANATH BANERJEA, M.A. (Cal.), D.Sc., Econ. (Lond.),
Member, Indian Legislative Assembly.

The following is the presidential address delivered at the All-India Political Science Conference held at Lahore on January 2, 1940:—

BRIDGING THE GULFS

One of the objects with which the Indian Political Science Association was started last year was to bring together students of political science and persons engaged in the active pursuit of politics. It is often said that politicians live from day to day and from hand to mouth. Although this indictment seems to be too severe, the fact remains that few politicians find time to go to the roots of political questions or to take comprehensive views of public matters requiring immediate decision. They are, generally speaking, so engrossed with the present and the near future that they are apt to lose sight of the ultimate consequences of the measures adopted by them. The result is that statesmen often find it difficult to correlate their actions with their professed principles. On the other hand, there is a tendency on the part of political thinkers to be so enamoured of theories that they often become oblivious of the existence of facts. Besides, as most of the scholars are not in active touch with public affairs, they hardly find opportunities to test their theories in the light of experience. This circumstance fosters a mentality which is not favourable to the proper appreciation of the realities of the situation at a particular moment. Thus there arises a gulf between politicians and political theorists. Our Association seeks to bridge this gulf. But the application of this principle of bridging gulfs may be extended to other spheres of thought and action. In India, the divergences are so many and so great that it may perhaps be found useful to consider to what extent this principle may be applied to the existing political situation of the country. Therefore, I take this topic as the subject of my brief discourse at this Conference.

Opinion differs in India on the value to be attached to the ideas of realism and idealism in politics. This difference is more temperamental than fundamental, and it is not impossible to reconcile the views of the advocates of the two schools of thought. Nothing of enduring value can be achieved in a country unless its people are influenced by high ideals, but it should be remembered that ideals which have no relation to the facts of the situation tend to become idols. On the other hand, while an intimate touch with facts is essential in the conduct of public affairs, too great an emphasis on realities leads to stagnation. Therefore, a combination of idealism and realism is the best means of ensuring the growth of a healthy public life in India.

The apparent antagonism between the claims of the individual and of society furnishes a ground for controversy. Individualists suggest that society exists for the individual, while socialists maintain that society is of greater importance than the individual. The difference arises from the fact that undue emphasis is laid by each side on one aspect of the problem. But if a balanced view is taken, it will be found that there is no real conflict between the two rival theories. Man is born an individual, but he is born in society. Therefore, he has two aspects, one individual and the other social, and both these aspects are interdependent. In fact, while society is the creation of individuals, individuals themselves are the products of society. Modern socialism is in a considerable degree the reaction from the extreme individualism of the first half of the nineteenth century. In India, society and individual have been reconciled through the ages, and it ought not to be a difficult task to bring about the same reconciliation at the present day.

Capitalism is a particular phase of individualism. The phenomenal growth of large-scale industry after the commencement of the Industrial Revolution led to a concentration of wealth and power in the hands of a small number of persons in every economically advanced country of the world. Thus arose a conflict between the rich few and the poor many. In order to avoid the evils of the capitalistic system, various forms of socialism were advocated, the most extreme of these forms being communism. This form of socialism was established in Russia two decades ago, but during the period of its existence it has undergone considerable modification. The system is still in the experimental stage, but the politicians and economists of all countries may learn valuable lessons from the partial success which it has already achieved. It should, however, be remembered that the circumstances in which this great experiment was and

is being tried in Russia are very different from those in India. Besides, the methods adopted for introducing and maintaining the system hardly appear to be suitable for India.

Large-scale industry is beginning to make a headway in India, although so far its progress has not been very rapid. This is, therefore, the most opportune moment when we should carefully examine the merits and defects of capitalism. Considerable amount of labour legislation has already been enacted in India in order to improve the lot of the working class. But it would be taking too optimistic a view of the situation to think that all that was needed has been done. As for the theory of socialism, it seems that Marx's economic interpretation, whatever may have been the case in other countries, has found only a limited application in the history of India. Man has not lived in this country by bread alone in the past and is not likely to live by bread alone in future. But it cannot be denied that the economic motive is one of the most important motives which influence men in India as elsewhere. It may not be possible to bring about absolute equality among individuals, but equality of opportunity should be afforded to all in the greatest measure possible. Capital is an essential factor in industry, but it ought to be available without bringing in its train the evils usually attendant on capitalism. Competition should be supplemented, and in a considerable measure replaced, by co-operative effort. Time will show whether it will be possible to bring about a compromise between capitalism and socialism by mitigating the rigours of the former and making the latter more consonant with human nature. Meanwhile, serious efforts should be made to rid the capitalistic system of its undesirable features.

A conflict between the ideas of stability and change gives rise to considerable difference of opinion. The advocates of order seem often to ignore the necessity for progress, while those who favour change often forget that order is the most essential condition of progress. An appeal to reason, however, convinces us that too much insistence on stability arrests all development, while too frequent changes open the door to chaos and confusion. Again, the question of the pace of progress gives rise to a controversy about the respective merits and demerits of evolution and revolution. If we bestow serious thought on the question, we become convinced that evolution should be regarded as the normal process and revolution can be justified only in the most extreme circumstances. The true test by which the desirability or otherwise of a resort to a revolution should be judged is whether its consequences are likely to be beneficial or disastrous.

A light-hearted talk about the creation of a revolutionary mentality in the country is fraught with the most dangerous possibilities. The ultimate aim of revolutionists is the establishment of a new order. Thus nothing is more absurd than the cry which is often heard, "Long Live Revolution!"

Revolutions in other countries mostly take a violent shape, but in India a non-violent revolution is suggested by many of the revolutionists. This is due to the influence of Mahatma Gandhi whose abhorrence of violence has created a healthy atmosphere in Indian politics. Almost all political parties have now adopted non-violence as their creed or policy. Whether or not this attitude will be permanent depends very largely on the attitude of the authorities who control India's destiny. Non-violent resistance as a means of attaining aims is consonant with India's tradition. Although this method was mostly applied in respect of non-political matters, instances are not wanting in the history of India of its application to political issues. The historian, James Mill, records that in 1815 the residents of the city of Benares adopted the policy of non-violent resistance when a house-tax was first sought to be introduced within its municipal limits.

But while politically-minded Indians have agreed to use non-violent weapons in their fight with the British Government, many of them do not see eye to eye with Mahatma Gandhi in respect of the effectiveness of these weapons for other purposes. They do not think that non-violence is likely to be of any use for defence against an invading army either from the west or from the east. They, therefore, urge that India should be fully equipped in all the branches of its fighting force,—the army, the navy, and the air force,—that the distinction between martial and non-martial races be removed, that Indians be appointed as commissioned officers in all the ranks of the defence service, and that a large volunteer force be created on a national basis. Thus a compromise is sought to be made between the rival doctrines of violence and non-violence. Nor is there any inconsistency in the view that, while violence should not be used as a weapon of offence, force is necessary for the purpose of defence so long as other countries remain wedded to the cult of force. Mahatma Gandhi's creed of non-violence in thought, word, and deed, at all times and in all circumstances, will remain an ideal to be realised when the cult of force will give place to the creed of reason in every country of the world.

The differences based on divergences of race, colour, religion, language, and culture serve as great impediments to the

progress of the country. The theory of racial superiority has been rejected by all political thinkers, and, in spite of Hitler's attempt to revive it, is not likely to be accepted again. But, in India, this policy is still in vogue as a fundamental part of her administrative policy. The colour bar, despite solemn pledges of its removal, continues to be a fruitful source of irritation and discontent. Amongst Indians themselves diversity of religions is productive of a wholly irrational and erratic attitude. If the essence of all religions really be the fatherhood of God and the brotherhood of man, religion should be a unifying factor. But, unfortunately, the reverse is the case in India at the present moment. Differences based on religion were, until recently, the causes of strife and discord in many European countries, but a better state of things has been brought into existence by the separation of politics from religion. The most recent instance of such separation is to be found in Turkey, where a phenomenal progress has been made possible within a short period of time by the adoption of such a policy. As for the observance of religious rites, the followers of every religion should be left free. If cow-sacrifice and devotional music be regarded as religious rites, surely one community can perform them without wounding the susceptibilities of the other communities. What is needed to avoid a conflict is a spirit of tolerance and accommodation, and there is no reason why this should not be forthcoming. It is worthy of note that the Congress has recently taken up the question and instructed all its town and village Committees to persuade the people to avoid all causes of conflict and to spread ideas of amity and goodwill among all classes.

A large number of languages is used in India, but this fact is not an insuperable obstacle in the way of achieving political unity. The English language has so far helped to a great extent the inter-provincial communication of thought, and there is no reason to think that its spread will be checked in future. Besides, some of the Indian languages are making such tremendous headway that any one of them may in course of time become the *lingua franca* of the country. Such development, however, should be left to follow its own natural course, and any artificial stimulus given to one language in preference to others is likely to produce more harm than good. The compulsory teaching of Hindusthani in the schools of the Madras Presidency has given rise to much dissatisfaction. It would be wise to make Hindusthani an optional language and to abandon the attempt to force it on unwilling persons. Culture, if it is real, should improve the relations between the different classes of society. But, un-

fortunately, it has formed a basis of conflict in recent years. It should be regarded as a fortunate circumstance that India is a land of many cultures, for, if proper steps are taken, a synthesis of these cultures may lead to the formation of a higher and nobler culture than what exists in any other part of the world.

Coming to purely political issues we find that differences of opinion exist in India as in other countries in regard to the functions of government, though these are of less vital importance here than elsewhere. The idea of an all-embracing, all-pervading State has never found favour in this country. On the other hand, the view that the functions of government should be restricted only to the maintenance of external security and internal order is considered to be extremely inadequate. The State will have to play a very important part in the development of the political, economic, and social life of the people, but it will be desirable for it to adopt a policy of non-intervention in regard to questions like religion, culture, and language. Such a policy is likely to promote harmony and goodwill among the different sections of the population. While the State should be the supreme organisation, the autonomy of institutions created for special purposes ought not to be interfered with.

As for the form of government, democracy has been accepted as the most desirable form by all the political parties in India, although a few persons have recently expressed doubts as to its suitability to the conditions of the country. Dictatorship, whether of the right or of the left, is wholly unacceptable to India. Some cities say that democracy is foreign to the traditions of the people. Nothing can be farther from truth than such a statement. In ancient times, republican governments existed in many parts of the country. Even after monarchy had become the prevalent form of government, democratic tradition continued to exist, especially in the sphere of local administration. This fact did not escape the attention of the more careful among the early European observers. For instance, Samuel Laing, an eminent thinker and a distinguished member of the British House of Commons, who came out to India as a Finance Member of the Government, remarked in 1862: "India is not altogether devoid of that spirit of self-government which characterises the Anglo-Saxon, for in her village communities and *panchayats* can still be found traces which remind us that the Hindu, as well as the Englishman, is descended from a common stock of Aryan ancestors."

Democracy possesses elements of strength as well as of weakness. In order to derive the largest measure of benefit

from the working of this system of government it should be our earnest endeavour to secure its good features and eschew its evil aspects. The type of democracy which we should try to establish in India ought to be one in which it may be possible to combine popular association and control with guidance by "the wisest, the most intelligent, and the best." We should also place the highest ideals before our eyes. The aim of government in India ought to be nothing less than "the greatest good of the greatest number."

Democratic government is often described as the rule of the majority. This is not quite correct. In a true democracy every variety of opinion is heard and the legitimate interests of every section of the population are safeguarded. The practice of deciding disputed questions by the device of counting heads is an arrangement adopted for the sake of convenience. It does not imply that the majority has an inherent right, apart from the reasonableness of its action, to ride roughshod over the desires of the minority. The rigour of the doctrine of majority rule is, as a matter of fact, greatly softened by a spirit of compromise in every democratic country. Indeed, as Lord Acton points out, "the most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities." Democracy is government by discussion and persuasion, and this fact is calculated to bring about harmony in the relations of the different classes of people in India.

Indian opinion is almost unanimous in respect of the desirability of establishing responsible government at the centre as well as in the provinces. The manner in which the Congress ministers have worked the limited measure of responsibility in the provincial field during the last two years and a half affords ample hope for its future success. But there is considerable difference of opinion as to the composition of the cabinet. Until a few weeks ago, six of the autonomous provinces possessed homogeneous cabinets, while in the remaining five provinces the cabinets were constructed on the coalition principle. The advantage of the homogeneous cabinet is that the formulation of policy is easy, and the programme can be carried out expeditiously and without much difficulty. But in a unified cabinet the minority parties remain unrepresented, with the result that their co-operation is not available. A composite cabinet is helpful to the growth of solidarity among the different sections of the people. It must be admitted, however, that it is difficult to form a coalition between representatives of parties which differ widely and fundamentally not only in outlook but also in respect of the goal. But

no great harm is likely to ensue if further experiments are made in forming coalition cabinets in the provinces.

This brings me to the discussion of the existing party system in India. Some of the parties are founded on political principles, while others are based on racial, communal, or class considerations. The Congress Party is the biggest and the most influential of all the parties in India. Its assertion that it seeks to represent the people of India as a whole has been described in certain quarters as a claim verging on totalitarianism. This is an unfair accusation. The Congress does not represent the interests of any class or community but represents the political aspirations of the Indian nation. In that sense it is a national, and not a sectional, institution. Surely, it does not put forward the absurd claim that it represents the views of every individual and every class in India. The Congress Nationalist Party has the same goal as the Congress Party but it differs from the latter mainly in regard to its attitude towards the Communal Award. The Socialist Party is a group within the Congress whose object is to establish democratic socialism in India. The outlook of the Hindu Mahasabha is national, although its membership is restricted to the followers of a particular religion. The Indian Christian Association has recently adopted a national attitude in respect of political questions. The other parties are frankly communal both in composition and in outlook. The net result of the activities of some of the parties has been an enormous growth of communalism in the country in recent years.

The situation in respect of parties in India is a very complex one, but it is not more complex than the party situations in most countries of continental Europe. The party system is a useful, if not an indispensable, adjunct of democracy; but its demerits are as serious as its merits are undoubted. In a country like India, where the multiple-party system prevails, the demerits tend to outweigh the merits. Narrowness, arrogance, and intolerance have already become the marked characteristics of the attitude of some of the parties in their dealings with others. Besides, the complaint is often heard that a rigid enforcement of party discipline is tending to impair individual liberty. It should be remembered that an indiscriminate or a too frequent use of the disciplinary rod often defeats its own object. Nor should it be forgotten that an excess of party spirit is destructive of the spirit of nationalism.

This brings me to the question of Indian nationalism. There are some critics who say that racial, religious, and linguistic

differences are so great in the country that the growth of Indian nationality is well-nigh impossible. This is a superficial view. Geographical distinctness, identity of economic interests, a common tradition of suffering, and a keen desire for freedom and self-rule bind together the different elements of Indian society in an indissoluble bond and constitute the bases of a fundamental unity. Differences exist, but they are not of so serious a character as to hinder permanently the growth of nationalism in the country. It is true that in recent years the differences have in some cases taken a more or less acute form, but this state of things must be regarded as a passing phase. By mutual tolerance and forbearance the divergences can be made to assume insignificant proportions. As a matter of fact, a considerable degree of national feeling already exists in the country, and the future of Indian nationalism is by no means so dark as some people assume it to be.

Nationalism is an indispensable necessity for India for enabling the country not only to gain freedom but also to retain it. But it is not an unmixed good for all countries, and in all circumstances. 'My country, right or wrong' is a doctrine which is full of mischievous implications. A crude form of patriotism encourages the desire for national aggrandisement. The history of ill-conceived nationalism is the record of disastrous struggles between country and country and between race and race. The present war in Europe is the outcome of aggressive nationalism. India should be on her guard, from the beginning of her career as a free nation, against the growth of a feeling of aggression among her people.

Aggressive nationalism, when successful, takes the form of imperialism. This is a great evil, for it has been responsible in the past for the enslavement of free nations, the exploitation of weak countries, the destruction of cultures, and the dwarfing of the human race. The services rendered by imperialist countries to the subordinate races are exceedingly small in comparison with the wrongs inflicted on them. Imperialism is one of the most important causes of war. A clash of imperialism led to the European War of 1914-18. Some of the participants in the present war, if not all of them, have been actuated by imperialistic aims. India herself has felt the full weight of imperialism; and although there have been some redeeming features in the system of British rule in India, the people of the country are not in a mood now to tolerate it any longer. A British minister said a few days ago that imperialism no longer governed the relations between England and India. If this be a correct statement, it is

to be welcomed as a happy augury for the future relations between the two countries.

The only safeguard against aggressive nationalism and imperialism is internationalism. While every individual should be proud to regard himself as a unit of his nation, he should feel equally proud to be a unit of the great human race. Internationalism is not the antithesis of nationalism; it is the extension of the nation-idea to humanity. It was a noble impulse which urged President Woodrow Wilson to take the initiative in founding the League of Nations. But this institution has failed to attain most of the objects for which it was created. On the economic side it has done good work. It has also done a considerable amount of useful work in regard to questions relating to education, sanitation, and public health. Further, it has served as a clearing-house of information on many important subjects. But on the political side, its failure has been almost complete. Among the causes of its failure may be mentioned the non-participation of the United States, the association of the League with the Versailles Treaty, and the non-provision of an international army or police force under its control. But the most important cause of the failure of the League has been the existence of weak nations side by side with strong nations wedded to an imperialist policy. The League is now practically dead, but it is to be hoped that out of its ashes will soon arise a new League of Peoples, resplendent in glory and full of life. But this can happen only when India become independent, when imperialism becomes a thing of the past, and when all nations of the world, strong and weak, become free. It will be then, and not till then, that there will be a real parliament of man and a true federation of the world.

While internationalism is an ideal in advance of nationalism, provincialism is a retrograde idea. Unfortunately, a great deal of provincial-mindedness has become evident in India since the advent of provincial autonomy. This has been due, in the main, to narrowness of outlook. It is quite natural that a big country like India should be divided into provinces for administrative convenience. But if provincial feeling is allowed to grow unchecked, it is sure to stand in the way of the healthy growth of nationalism. One phase of provincialism, however, is not unjustified. A demand has been made that the existing provinces of India be reconstituted on a linguistic basis. This is a fair and natural demand which should be complied with soon. On the same principle and as a corollary to this re-arrangement, the boundaries of the older provinces should be readjusted if it be

found that these contain inhabitants speaking languages different from their own.

The question of representation in the legislatures and the local bodies is a source of acute difference in India. The system which prevails at present is not the representation of the people but the representation of races, creeds, classes, sexes, and special interests. Separate electorates have been provided in the existing constitution for Europeans, Anglo-Indians, Indian Christians, the Sikhs, the Scheduled Castes, Landholders, European commerce, Indian Commerce and the Universities. Special representation has been thrust upon women in spite of their protests. It has been remarked that the object of this system is "the vivisection of the body politic of India." But the justification urged in its favour is the existence of differences. It is true that there are many differences in India, but no useful purpose is served by exaggerating them. In some cases, differences have been deliberately fostered. Nor has the demand for separate electorates been entirely spontaneous. The consequence of this system of separate communal representation has been an enormous growth of dissensions between race and race, between class and class, and between community and community. Separation has led to the demand for further separation, and antagonism has taken the place of harmony. This system of representation, therefore, must be regarded as an evil, and in the interests of the unity and peace of the country it should be removed at the earliest possible moment.

Recruitment to the public services is a subject which has given rise to a great deal of controversy. For a long period beginning with the establishment of British rule in this country all the superior services, both civil and military, were manned almost exclusively by recruits from Britain. The solemn pledges given by the Charter Act of 1833 and the Queen's Proclamation of 1858 were honoured more in the breach than in the observance thereof. But in recent years, a gradual, though slow, process of Indianisation has resulted in a considerable proportion of the higher offices being filled by the children of the soil. The subordinate posts have always been mostly held by Indians. The services question has two aspects, one public and the other personal. The former relates to the needs of administration and the latter refers to the opportunities of individuals for securing profit and position. It need hardly be said that the first aspect is far and away the more important, but, unfortunately, greater emphasis is often laid on the latter. The fact is well known that, while administrative policies are formulated by the ministries in

the provinces and the Executive Council at the centre, the actual carrying out of these policies devolves on the members of the various services, superior as well as inferior. Thus the success or failure of the administration depends very largely on the ability and integrity of the officers. Therefore, the qualifications which should be insisted on for recruitment to the services should be the maximum available.

Unfortunately, both at the centre and in some of the provinces, certain percentages have for some time past been fixed for recruitment from the different communities, and in the case of some of these communities only the minimum qualifications have been demanded of the candidates. This has resulted in a considerable deterioration of administrative efficiency, and it is apprehended that a continuance of this policy will be a source of greater harm in future. If the question be considered from the personal point of view, it is found that the system involves great injustice to those persons whose qualifications entitle them to employment but who are declared ineligible on the ground of their colour or creed. Besides, the non-recognition of the principle of equal opportunities for all cannot fail to create discontent. But the system is sought to be defended on the ground that, as all the communities in India are not equally advanced, special treatment is necessary in order to give encouragement to the less advanced communities. The true way of getting out of this difficulty, however, lies in affording adequate educational facilities to the less advanced communities and not in giving them unfair advantages. Further, it is argued that this is a method of securing the goodwill of the specially favoured communities. If it be thought desirable to purchase communal harmony even at the price of the loss of administrative efficiency and the sacrifice of equity and fairness, the percentage of reservation should not be high, and it should be definitely laid down that the reservation would automatically diminish year by year. Unless merit alone is accepted as the ultimate test, there will be no incentive on the part of the backward sections to make serious efforts to reach the level of the more advanced sections of the population.

Another matter connected with the public services deserves attention. While the administrative officers should be under the control and supervision of the ministers, they should not be unduly interfered with in the discharge of their responsibilities. For the successful working of self-government in India it will be necessary to create a body of efficient and conscientious officers who will perform their duties fearlessly and without the expectation of favours. But this will not become possible unless a sub-

stantial measure of freedom is secured to the various services under Government.

Coming to the question of the future constitution of India we find that differences of opinion which exist as to the goal of India's political aspirations are not of a serious kind. Complete Independence has been adopted as the ideal by the Indian National Congress, the Hindu Mahasabha, and the Muslim League, while the Liberal Federation still clings to the ideal of Dominion Status. The difference between the two ideals, however, is one more of nomenclature than of substance. According to the definition adopted at the Imperial Conference of 1926, which was ratified by the Statute of Westminster, 1931, a Dominion is equal in status to Great Britain, and is independent in every aspect of its external as well as its domestic affairs. Besides, the provision that the association of a Dominion with the other parts of the Commonwealth of Nations should be free implies that the right of secession is guaranteed to it. It may be argued that the ideal of Complete Independence carries with it greater prestige and honour than the ideal of Dominion Status, but in the modern world national prestige and glory should be considered to be of less value than peace and goodwill among nations. Lastly, if the question be looked at from the practical standpoint, it would be found that isolation may be attended with greater risk and difficulty than free association with a Commonwealth of Free Peoples.

This controversy regarding India's political goal has a history behind it. In 1906, the Indian National Congress accepted 'Self-government obtaining in the self-governing British colonies' as its goal. In 1920, the goal was changed to 'the attainment of Swaraj by peaceful and legitimate means.' In 1927, the Congress declared the goal of the Indian people to be 'Complete Independence.' In the following year, however, the Congress passed a Resolution to the effect that, if the constitution embodied in the All-Parties' Committee Report, which was based on Dominion Status, was accepted in its entirety by the British Parliament before the 31st December, 1929, it would be acceptable to the Congress. But as this condition was not complied with in the course of the year, the Congress in 1929 declared the entire scheme of the All-Parties' Committee Report to have lapsed and urged "all Congressmen to devote their exclusive attention to the attainment of Complete Independence for India."

Thus it appears that time has been the most essential factor in the evolution of India's political goal. This fact has, however, been ignored by the authorities in India as well as in

England. On the 31st October, 1929, the Governor-General stated that it was implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as therein contemplated, was the attainment of Dominion Status. The Government of India Act, 1935, was discreetly silent about the matter. But Lord Irwin's declaration has recently been reiterated by the Governor-General as well as by the Secretary of State. Politically-minded India, however, is not in a mood to accept Dominion Status as a goal to be reached in the distant future. If Dominion Status is granted immediately, it is likely to be acceptable to the country. The gulf between the goal and the immediate objective is not unbridgeable, and if the British Government is able to take the right step without delay, cordial relations of a permanent character may be established between India and Britain.

The existing system of government, with democracy in the provinces and autocracy at the centre, is an anomaly, and the sooner it disappears the better for all concerned. An All-India Federation is contemplated in the Government of India Act, 1935, but many of its provisions are unacceptable to the Indian National Congress. The strongest exception is taken by the Congress as well as by most of the other political parties to the reservation of defence and foreign relations, the enormous powers vested in the Governor-General and the Crown Representative, indirect elections, nomination of States' representatives by the Rulers, and the system of representation in British India by special electorates. The Muslim League is opposed to the Federation because it apprehends domination by the Hindu majority. The Indian Princes are not fully satisfied with the privileges which have already been granted to them and want further concessions to be made in their favour.

The objections raised by the Congress are based on sound principles, and can be easily met if the British Government can make up its mind to part with real power. For the satisfaction of the Muslim League safeguards may be provided in the new constitution of the country. If the Princes, instead of being guided by sentiment, take a reasonable and far-sighted view of the situation, they will become convinced that, by joining the Federation, they will not only safeguard their own positions but will be able to play a worthy part in the political evolution of the whole country.

The advent of the war in Europe has led to the suspension of activities connected with the inauguration of the Federation in view of the pre-occupation of the Government, but the scheme

has not been abandoned. The war has indeed created a new situation fraught with immense possibilities for good or evil according to the manner in which it may be handled. India, true to her ancient traditions, has extended her moral support to the Allies and is willing to co-operate with Britain in the prosecution of the war. But, in order that such co-operation may be effective and whole-hearted, the British Government should make a friendly gesture. The question of bargaining does not arise at all. India's desire for freedom is age-old; nor is the demand for its recognition a new one. Indeed, the present is the most opportune moment for Britain to recognise India's right. It is not clear what special difficulty there can be in applying the principles of democracy and self-determination to the case of India.

Unfortunately, the declarations of the high officers of Government in this regard, both in England and in India, have so far been most disappointing. The statement of His Excellency the Governor-General did not evince any desire on the part of the Government to meet the wishes of the people. The suggestion regarding the formation of a Consultative Committee was entirely beside the point. But the tone of His Excellency's speech was mild and conciliatory. The speeches of the Secretary of State were even less helpful towards a better understanding between Britain and India. This was rather surprising, for the Marquis of Zetland had always enjoyed the reputation of being not only an astute politician and an erudite scholar but also a fair-minded man. But the worst speech was that of Sir Samuel Hoare, some parts of which were harsh in tone and provocative in spirit. Besides, his treatment of the controversial topics was most unsatisfactory. On the question of communal differences he said: "We have shown our good faith in the matter. We showed it when we made the Communal Award." Surely it would have been better for his own and his country's reputation if Sir Samuel had cited some instances of good faith other than that of the Communal Award. If the Award had been a fair and equitable one, the situation in India to-day would have been entirely different. Sir Samuel observed further: "But in spite of the Award these divisions exist." The truth is that it is not in spite of, but because of, the Communal Award that divisions exist and have become greatly accentuated. The so-called Award gave an unfair advantage to some of the parties, which naturally encouraged them to clamour for more such advantages. On the other hand, it treated one party in a most inequitable manner, which created a feeling of intense discontent.

It should be said, however, to the credit of many British statesmen outside the Government that they showed a great deal of fairness and foresight in dealing with the situation. The names of men like Lord Samuel and Mr. Wedgwood Benn will always be remembered as earnest advocates of a policy of friendship between Britain and India. The more enlightened section of the British press also gave full support to India's demands. *The New Statesman and Nation* wrote: "India, indeed, is the crux. We are on our trial before the whole civilized world. From Washington to Moscow every impartial onlooker is asking the question that Indians have posed: Is this a war for the imperial *status quo* or for a new democratic world-order? The same question shapes itself in the mind of the German people. Not to-day, but some months or years hence, the answer it frames on our record may decide the issue of this war. If we dare give India liberty, we shall win the leadership of all free peoples. But if we meet a rebel India with coercion, will any one in Europe or America mistake us for the champions of democracy?"

The sum and substance of the declarations of the British Government is that they have special responsibilities to the minorities and the Princes and obligations to the British commercial community, and that so long as these problems are not solved, no constitutional advance will be possible in India. The problems have been created or fostered by the British Government, and now to throw the burden of solving them on the people of India is hardly fair. But the problems, though complex and difficult, are not absolutely insoluble. A solution, however, will be possible only if goodwill is available on all sides. The attitude of the majority party must be conciliatory, and the demands of the minorities should be based on reason and commonsense. It would be inconsistent with all principles of political science and all canons of equity to urge that the minorities should have a permanent veto on the majority. Nor can any minority, however important and powerful, be given the right to hold up the progress of the country on the ground of the possibility of its interests being affected. The British Government can show their sincerity by taking the initiative in the matter. If they agree to do so, let them take courage in both hands to create the proper machinery for dealing with the problem. But if they do not, they will be charged with advancing a specious plea in order to perpetuate their rule in this country.

The only satisfactory machinery for settling all differences as well as for considering the details of the future constitution of India is a Constituent Assembly. It is true that a Constituent

Assembly is generally formed after a successful revolution. But there is nothing to prevent the formation of such an Assembly in India by a friendly arrangement with Britain. This body should be constituted on the basis of proportional representation, so that all minorities and special interests may be represented on it. There should be no communal representation. If the Constituent Assembly be formed on the basis of separate electorates, the representatives will be swayed by communal considerations, and this will stand in the way of satisfactory decisions being reached on national lines. In order to allay the fears and suspicions of the minorities it may be laid down that only such decisions on communal questions as are carried by a somewhat larger majority than a bare one, say three-fifths, would be given effect to. It will be one of the main duties of the Constituent Assembly to provide safeguards in the new constitution for the minorities in the shape of fundamental rights to be guaranteed by an appeal to the Federal Court or, if necessary, to an international tribunal.

India's attitude towards Britain has never been one of uncompromising hostility. Dadabhai Naoroji pleaded for co-operation all his life. Surendranath Banerjea offered active co-operation even after repeated disappointments and in the face of a growing public opposition to his policy. Mahatma Gandhi, after pursuing for a time a policy of non-co-operation, is again ready for co-operation. The bulk of the people is still prepared to co-operate, provided that co-operation can be offered on fair and honourable terms. Will British statesmanship rise to the occasion and make it possible for India to march side by side with Britain in defence of democracy and freedom and for the good of humanity?

The urgent need of the hour in India is harmony and good will. This can be secured by an enlightened sense of citizenship and a unity of purpose. We must all think of our country first and of everything else afterwards. As for unity, let our motto be: "In things essential, unity; in things non-essential, liberty; in all things, charity." If we render not mere lip-service to this motto but make it our rule of conduct in our daily relations with all individuals, and races, and communities, India's cherished ideals will be realized at no distant date.

Synopsis of Papers Submitted*

I

RECENT TRENDS IN POLITICAL THEORY

1

RECENT ANALYSES OF SOCIAL POWER

BY

PROFESSOR N. SRINIVASAN,

Politics Department, Andhra University, Waltair.

The object of the Paper is to consider the analyses of social power by Professor Merriam and Lord Russel as illustrative of a new trend in political theory, the objective consideration of social phenomena.

Professor Merriam's work, *Political Power* (1934), is a dispassionate study of the problem. Its concern is with political power which is distinguished from other forms of power. The system of political control is seen as one of a series of controls such as the Family, the Church, and the Economic Class and as the crowning point of social control. There is no necessary conflict between these controls. Their co-operation makes social life possible. The function of political power is seen to lie in the adjustment of conflicting group and individual interests. The performance of this function is the condition of survival. The basis of power is seen not so much in physical power as in its miranda, credenda, and other spiritual forces behind it. Public spirit and sacrifice are essential elements in a power-situation. Finally, among the emerging trends of authority the influence of science can be seen. The new forms of power are not simply political; they are also economic. Their object is the avoidance of social waste that is now conspicuous. They seek to organise security, plenty and peace.

*Note: 1. Paper No. 31 was published in the Indian Journal of Political Science, January—March 1940, pp. 290—97.

2. Papers Nos. 16, 21, 22, 24, 33, and 34 are being published in this number of the Journal. Some of the other papers will be published in subsequent numbers as space permits, (Editor).

Bertrand Russel's *Power* (1938) is a passionate plea for "the taming of power." He defines power, distinguishes its several forms, traces in broad outline their parts in history, and draws the moral that power must be tamed and all undemocratic ethical systems and power-philosophies should be rejected. It is sought to establish a new law of social change with the love of power as the motive force.

The discussion of power involves the elucidation of the following problems: (i) Defining and distinguishing Power; (ii) Analysing the nature of Power and its basis; (iii) Analysing its Function; (iv) The study of the results of Power in history; (v) The relation of power to Law, Government, education and economic organisation; (vi) The justification of Power or its Ethics. The studies under consideration cannot be said to analyse these problems adequately; but between them they indicate the issues involved.

The New Trend in Political Theory illustrated by these studies is the attempt to connect social studies with the new developments in Science. The results so far have been disappointing. The disappearance of legal and metaphysical notions of sovereignty, the emergence of the concepts of social welfare and power with a greater clarity than before, and a redefinition of the content of politics may be considered the main results achieved so far.

2

SOVEREIGNTY AND INTERNATIONAL LAW: THE THEORISTS' CONTRIBUTION

BY

PROFESSOR T. K. SHAHANI,

Samaldas College, Bhavnagar.

(1) The ancient and mediæval world was fundamentally based on the rule of law: authority identified with law within the state and without, Europe being one Christendom.

(2) Disruption at the close of the middle ages: Machiavelli's 'State as power:' the rule of law, including international law, recedes.

(3) Strong absolutist states of the 16th and 17th centuries not quite divested of Law: Bodin's Sovereignty is based on law: The Thirty Years' War and Grotius developed a regular system of the Law of Nations in Peace and War: Hobbes's Sovereign

State unshackled by past accumulations of law; but there is still his concession to Internationalism in the Law of Nations.

(4) The 18th century 'enlightened despotism' showed scant regard for international morality: Rousseau's clarion call for individual freedom, popular sovereignty and the nation governed by General Will—Kant's bold vision of Lasting Peace based on a Federal Union of World's Republics.

19th century.

(5) Napoleonism worsted by Prussianism: Hegel's cult of the state as one supreme will prevails: Law and internationalism fade away: British Austinianism is in no way helpful.

(6) Treitschke—his state with a vigorous personality, all assertive: but international good faith essential for the preservation of the State of Treitschke.

(7) The time-spirit fast moving towards world-order based on law: a call for the contribution of the political theorist. Sir Henry Maine, a Krabbe and Nelson as scientific thinkers with helpful suggestions—Sir Norman Angell, the great pacifist of today—the field of International Law is not meagre even at present—Political Philosophy should help to give more if necessary, and promote the idea of a Federal Union and bless the memory of Kant.

3

CREATIVE DISEQUILIBRIUM IN FREEDOM, DEMOCRACY AND SOCIALISM

BY

DR. BENOY KUMAR SARKAR,

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of Sociology, Calcutta.*

In one of his philosophies Hegel fails to envisage an evolution after the development of the Christ-cult. Following him Marx's dialectic in the *Communist Manifesto* stops at the withering away of the state. Lenin's *State and Revolution* has not been able to improve upon this ideology. The dictatorship of the proletariat is his last word.

All the three ideologies lead but to closed systems and are necessarily fallacious. The realities of evolution in freedom, democracy and socialism, in morals, manners and sentiments, as well as in personalities, institutions and movements—are on the

contrary every moment seeking to open the questions closed. There is no last word, no finality in any revolution or in any synthesis. The moral and spiritual world is the theatre of disequilibrium following disequilibrium in endless succession. The disequilibrium is by nature creative, evolutive or constructive.

Proletarian dictatorship in Soviet Russia acquired a new character with the inauguration of the N. E. P. and the *rapprochement* with the world-powers at the Genoa Conference (1922). The developments down to the Russo-French United Front (1935), the Russo-German Pact (1939), the Russo-Finnish incident, etc., embody the new revolutions or creative disequilibria as correctives of or challenges to the Leninism No. I of 1917—1921.

The permanent possibility of endless disequilibria in world affairs is furnished by the very *Gestalt* of the human *psyche*. Individual or group personality is an eternal and ubiquitous complex of *dvandas* (conflicts). Every legal economic and political institution becomes thereby an amalgam of certain characteristics invariably modified or multiplied by their opposites. The ideologies of Young India since the Government of India Act (1935) exhibit instances of such conflict at every turn. Among the targets of the freedom movement in India at the present moment are to be found the despotocracies of birth, bullion and literacy. Creative disequilibrium is ceaselessly at work in the Indian sphere as elsewhere.

4

THE CROWD

BY

MR. ILYAS AHMAD, LECTURER IN POLITICS,
University of Allahabad.

It was the late Professor Graham Wallas who suggested the necessity of a re-statement and re-examination of the term 'Crowd' because of the confusion wrought in its meaning by the popular use of a number of words in the sense of the term (the crowd).

(1) In this Essay an attempt has been made to reach a fairly accurate definition of the word 'Crowd' by a critical examination of certain words which denote aggregates of human beings and the words so examined are mankind or humanity, society, community, nation, people, association, group, mass, multitude, throng, horde, assembly, party or batch, gang or band, committee.

congregation, procession, convocation, public, and lastly herd and flock. After this process of comparison and differentiation, the 'crowd' has been defined as 'a *chance* assemblage of people having a *personal contact* and lasting only *upto the time* their *object of attention* has some fascination for them after which it melts away according to the individual whims of its members.' Its chief feature is imitation, suggestion and sympathetic radiation and it is mostly moved by feeling or emotion. It comes into being under the law that the like attracts the like.' Hence if its *collection* has much to do with the consciousness of kind, its essence is 'time'—a factor which has hitherto been ignored by all writers of Crowd Psychology.

(2) After definition a classification on the basis of the 'time' factor has also been attempted as against other classifications of prominent writers like Le Bon, Sighele, Pask and Burgess, Conway, Tarde, and Dr. Radha Kamal Mukerji. Their viewpoints have been stated, discussed and criticised and it has been maintained that the only sound and universal classification is based on the 'time' element, *e.g.*, the crowds are (1) Momentary, (2) Temporary, (3) Occasional or Circumstantial, (4) and Cyclic or Customary, which may be Social, Ceremonial, religious or seasonal.

(3) Then certain diametrically opposite or contradictory behaviours of crowd psychology have been presented from the 'Non-co-operation' Movement which the writer has called the greatest 'Crowd Movement' this world has ever seen.

(4) In the end, only a passing remark has been made on the 'group-mind' and its criticism by the anti-intellectualism of our era and it has been suggested that if 'crowd mind,' as a separate entity apart from individual minds, is false, it is certainly a convenient working hypothesis or a good 'metaphor' for a particular collective behaviour of men.

5

THE DECADENCE OF THE "INDIVIDUAL" IN MODERN POLITICAL THEORY

BY

PROFESSOR AJIT KUMAR SEN,
Dacca University.

(1) The concept of the "individual" dwindles into insignificance as a result of non-political idea-forces.

(2) With the decadence of Christian religious tradition, there has been a like decadence in the value of the individual in modern political thought.

(3) Peculiarities in the ethical approach to problems of political theory sometimes develop individuality; sometimes cut at the *root of individuality*.

(4) The breakdown of competition and the emergence of the idea of planning have their influence on the declining value of the individual.

(5) The impact of science, scientific methods and attitude mean the negation of individuality.

(6) In so far as individuality is concerned, the effect of scientific attitude and methodology on philosophy and psychology and consequently the effect of philosophical and psychological "climate" on political theory may be considered.

(7) Modern sociology has struck at the root of the concept of the individual because of its genetic aspect. It has also generated the concept of Power which also tends to kill the individual.

(8) Whether the individual will live or die in political philosophy will depend on the solution to the question: whether the world is a world of law as science views it, or whether it is the result of arbitrary will as some religious and philosophic systems teach us. Perhaps psychology may provide an answer, or it may be an insoluble problem.

6

THE DECLINE OF LIBERALISM

BY

PROFESSOR SANTOSH KUMAR CHATTERJEE, M.A.,
Rippon College, Calcutta.

The factors that gave rise to liberalism as a creed were—the *laissez faire* philosophy, Protestantism, Mercantilism, toleration in religion and constitutional government, Rationalism in science and philosophy, the Industrial Revolution and the rise of the middle class. The social and economic revolution resulted in the general acceptance of the principles of utility on which the liberal creed was based. Liberalism was still vague and unreal.

The Socialists rejected it. Later on, liberalism sought to adopt a positive conception of the state—The pressure of trade unions, the writings of Green and Arnold, of Tocqueville in France and socialists in Germany brought about a profound modification of the liberal doctrine. In its modified form it dominated the mind of all Europe save that section which was influenced by Marxian philosophy. In the 19th century, liberalism was very successful in electoral organisation and legislation—a contrast with the Tory party. The early liberals were callous in their social outlook; the shortcomings of *laissez-faire*, collective interference in social and industrial spheres; the rise of the labour party; Liberalism gave way to practical socialism.

The social vision of such men as Owen, Shaw, Morris and Russell came within the range of practical politics. The intellectual tradition of liberalism—the Imaginary Rational Man and an Imaginary Rational Universe—is at present dead in Europe.

7

THE PROBLEM OF MORAL GUIDANCE IN GANDHIJI'S POLITICAL PHILOSOPHY

BY

MR. GOPINATH DHAWAN,
B. N. S. D. College, Cawnpore.

Gandhiji's cardinal ethical maxim is that whatever conflicts with *Satya* and *Ahimsa* should be eschewed. In applying this principle to concrete situations the votary of truth must depend on reason so far as it can go. But unaided reason has its limitations and in regard to profound judgments intuition must be his mainstay. To be guided aright by institution he must undergo purificatory ethical discipline.

Man, even though morally disciplined, cannot claim infallible guidance. All the same the votary of truth may submit to external demands of public opinion in non-vital matters only. In important matters he must depend on his own inner judgment.

The moral autonomy of the individual also implies the moral autonomy of the group. This rules out undemocratic leadership. In the case of satyagrahi fighting groups members may accept or reject the leader and his plan, but this done, they must render implicit obedience to him.

8

IQBAL'S CONCEPTION OF THE INDIVIDUAL AND THE STATE

BY

DR. J. N. KHOSLA AND MAULVI SHEIKH AKBAR ALI,
the Punjab University, Lahore.

I. Iqbal was essentially a philosopher and a poet and not a political thinker in the narrow sense of the term. But his conception of the individual and his relation with the State is important, though not always logical.

II. Iqbal as a muslim philosopher worked within the framework of Islamic culture and society. He interprets, reconstructs and even expands Islam, but does not give it a new basis.

III. His definition of the State is at variance with the one usually accepted by Political Scientists.

IV. An attempt is made in this essay to analyse Iqbal's conception of the Individual and his place in Society. The poet lays great stress on the development of personality. But the development of personality is not without purpose, for it is a means and not an end in itself. "Khudi" is to be reared and expanded for the service of God and Society. "The individual who loses himself in the community reflects both the past and the future in a mirror, so that he transcends mortality and enters into the life of Islam, which is infinite and everlasting". Iqbal thus gives a personality also to the State.

V. Are there any Fascist tendencies in Iqbal? Does his conception of the "Superman" indicate this(?) These questions are discussed in this essay.

9

THE REVISION OF DEMOCRACY

BY

A. APPADORAI, M.A., Ph.D.,
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The theory of Democracy received its classic exposition in Mill's *Representative Government* (1861). The working of

democracies since Mill's time, the rise of autocracy in a number of major European states, and the spread of new political theories such as Fascism and Communism have made a re-examination of the principles of democracy necessary.

Democracy may be described as a system of government under which the people exercise the governing power either directly or through representatives periodically elected by themselves. This is the older, and in the writer's judgment, the more fundamental conception of democracy. There is, however, an influential school of thought which considers democracy as a form of society, the chief characteristic of which is equality, not only political but also social and economic. This raises the fundamental question, what is the basis of democracy?

The basic ideal of democracy, we suggest, is liberty, not equality. This means that a state may, in Political Science, be termed a democracy if it provides institutions for the free expression and, in the last analysis, for the supremacy of the popular will on basic questions of social direction and policy. Other factors such as economic equality and fraternal feeling are desirable and make for its successful working the optimum of democracy; political liberty is the indispensable minimum. 'There is no political idea,' said Gladstone, 'which has entered less into the formation of the political system of this country than the love of equality.' A political science which, therefore, rejects the title of Britain to democracy is unlikely to be applicable to a world of realities.

What are we to think of a science of Anthropology which restricts the term 'man' to the best developed among men in character and intelligence.

It is remarkable that democracy should contain within itself the seeds of its own expansion—political power is used by the masses to secure educational and economic opportunities.

The evidences are: (a) the average level of real wages today is at least four times as high as it was at the beginning of the 19th century. (b) Public property has increased relatively to private property. (c) Property rights have now a shape and content, which make it more and more difficult to exercise undue power over the lives of other. (d) The Middle class has increased in numbers and social significance. (e) Keynes estimates that this rate of progress can be maintained.

The abolition of private capital and enterprise, as advocated by Communism, is unnecessary and mischievous; both its method

and ideal are unsound in theory as well as in practice. A modified capitalism, to combine safeguards for public interest with scope for private initiative, public supervision being proportionate to public interest, is the better ideal. The economic basis of a free society should be basic equality, the difference to be the outcome of genuine variations and to be explicable in terms of the common good. This will naturally lead to the predominance of the middle class in society which Aristotle considered the greatest bulwark of stability in the state.

10

DEMOCRATIC THEORY IN ITS APPLICATION TO INDIAN POLITICS

BY

PROFESSOR BENOYENDRA NATH BANERJEA,
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The Great War of 1914—18 brought about a re-arrangement of the map of Europe, but very soon in a world supposed to have been made 'safe for democracy' military despotism, absolute rule and autocracy began to entrench themselves, throwing the democratic system of government more and more on the defensive. The economic blizzard of the thirties of this century was another test for the democratic systems. A more direct challenge, however, has appeared in the last decade or so by the emergence of the totalitarian idea, clad in armour, with its 'youthful insolence' and novelty.

So far as India is concerned sooner rather than later, she should be led into that process and at the same time she should mould her institutions in a manner more suitable to the genius of such a system. If, however, the excrescences and anachronisms, like communal and class-representation, high-property franchise, safe-guards in favour of vested interests, etc., are admitted as principal features of our public life, a democratic system can never flourish in India. Drastic and revolutionary changes are therefore to be welcomed by all those who cherish the cause of democracy and the dignity of man, for, in India, they have long been neglected and an analytic study of the complex situation should be followed by determined action. For in the critical stage of our civilization and national development, the

slogan for all lovers of liberty should be to follow the significant message of Bergson to a recent philosophical Congress "Act as men of thought, think as men of action." Democratic thought awaits its full idealisation in life and action, in India no less than elsewhere.

11

THE CO-OPERATIVE STATE

BY

PROFESSOR H. KRISHNA RAO, M.A.,
Maharaja's College, Mysore.

Authoritarianism the dominant dogma of the age—Its genesis—Authoritarianism in Russia and the communist conception of society, present and future—the Communists' means of achieving their object—What authoritarianism has done for Russia—the Means employed for the attainment of the object objectionable.

Authoritarianism in Italy—the Fascist conception of History—Fascism opposed to Democracy—the Fascist notion of the State—What the corporative State has done for Italy—What is wrong with the Fascist method of realising its object.

National Socialism a manifestation of authoritarianism in Germany—the Nazi conception of the Volk—the Führer its incarnatoin—How authoritarianism has pervaded the entire life of the community.

Authoritarianism in democratic States—the fiction that individual interests and social interests are identical in democracy—the absence of liberalism the real cause of the anomaly—The Co-operative State the only remedy—the role of individuality in the co-operative State—a reconciliation between individual and collective interests possible only gradually (a) by recognising the worth of individuality—(b) by fostering a democratic spirit rather than its form (c) by making Governments responsible (d) by changing the present conception of property, contract and corporations (e) by making the common law and not the authority of Cæsars the final arbiter.

II

THE WORKING OF THE CENTRAL AND PROVINCIAL GOVERNMENTS OF INDIA

12

THE SANCTION BEHIND THE CONVENTIONS IN A CONSTITUTION

BY

MR. V. K. N. MENON, M.A. (Oxon),
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In his two recent works on *the Law and the Constitution* (2nd edition, 1938, and *Cabinet Government*, (1936) as well as in articles published in Journals, Mr. Ivor Jennings of the University of London, and following him Mr. E. C. S. Wade of Cambridge, (Wade and Phillips; *Constitutional Law*, 2nd edition reprinted, 1937, and Wade, Introduction to the 1939 reprint of Dicey), have criticised Dicey for the position alleged to have been taken up by him that the real sanction behind the conventions of the British constitution is the fear of a breach of the Law punishable by the Courts. It is pointed out in this paper that this is not a true representation of Dicey's point of view. The effects of public opinion or the operation of the democratic system, etc., which are emphasised by them were recognised by Dicey. He was also mainly and professedly concerned in the legal questions. And the line of advance is perhaps principally along a further analysis of these non-legal concepts than has been attempted by either Dicey or his critics. Such an analysis, it is also pointed out, will help an understanding of the sanctions behind the conventions of a constitution.

13

THE INFLUENCE OF THE NON-OFFICIAL MEMBERS OF THE INDIAN LEGISLATURE ON THE POLICY OF THE GOVERNMENT OF INDIA, (1910—1919)

BY

MR. M. S. KAMTHAN, D.Litt. Scholar,
Allahabad University.

In spite of their restricted powers, their indirect system of election on the basis of separate and communal tickets, the

retention of a standing official majority in the Central Legislature and the perpetuating of the convention requiring all official members to support and vote for the Treasury Benches, the non-official members of the Indian Legislature, under the Morley-Minto Reforms, were able to draw the attention of the Government to public needs and grievances and to influence its policy. To characterise the Morley-Minto Legislatures as mere 'debating societies' is rather improper and a scientific student of their working would hardly assert that they proved utterly futile and helpless in arousing the response of the Government to their wishes and suggestions. Of course, it is only too true that in the position in which they were placed under the Act of 1909, our members could scarcely be expected to bring about any glaring or far-reaching modifications in the policies of the Government; nor was the Government prepared for any such modifications as stated clearly by Lord Morley in his Reforms Despatch of November 27, 1908.

In this paper an attempt has been made to indicate the extent to which the Government responded to the wishes and the views of the non-official members of the Indian Legislature. The subject has been divided under the following heads:—

1. Constitutional and Administrative matters.
2. Education.
3. Public Health and Sanitation.
4. Trade and Industries.
5. Tariff Policy.
6. Currency and Exchange.
7. Social and Humanitarian Matters.
8. Local Self-Government.
9. Repressive Legislation.
10. Emigration, etc., etc.

Under each head the specific views and demands of the non-official members have been pointed out and it has been shown how far the Government tried to act upto them.

The writer regrets that the Government of India totally refused to show him any papers relevant to the subject.

14

THE CONTROL OF THE CENTRAL ASSEMBLY OVER THE EXECUTIVE

BY

MR. P. N. MALHAN,

*Research Student, the Department of Political Science,
the Punjab University.*

1. The basic assumption of the Assembly and its Constitutional position in the frame work of the Central Government—
(i) The official Version, (ii) The Indian Version.
2. The nature of its control over, (1) Legislation, (2) Finance (3) Administration—The extent to which it made its influence felt over the Executive in the above fields.
3. The tendency on the part of the Assembly to assume the position of the Indian Parliament—Its circle of influence as affected by conventions—the bearings of these extra-constitutional developments on the growth of a responsible government at the Centre.
4. The existence of certain potential factors conducive to the augmentation of the Assembly's Control—The length to which they were encouraged by the Government and practised in the legislature—the rest of the field has remained unexplored.
5. Conclusions.

15

THE AMENDING PROCESS OF THE INDIAN CONSTITUTION

BY

DR. BOOL CHAND, M.A., Ph.D.,
Hindu College, Delhi.

The paper starts by discussing the general principles of the amendment of constitutions operative in the various federations of the world, and criticises in the light of these general principles the special provisions for the amendment of the Indian federation under the Government of India Act, 1935.

It brings out that the provisions in the Government of India Act regarding the possible amendment of the Indian federal constitution are highly defective and likely to be inoperative in

actual practice, and that any hope on the part of the Indian States to bar the constitutional progress of India on the basis of these provisions is inevitably ill-founded.

The paper argues that it is quite inconceivable that any constitution should remain unchanged, in spite of any constitutional provision to bar its future amendment, when the needs of the situation so demand; and that the Indian federal constitution is likely to be amended in the future by the positive action of the Imperial Parliament as well as by the silent processes of judicial interpretation and the growth of constitutional conventions.

16

THE NATURE OF THE GOVERNOR'S INSTRUMENT
OF INSTRUCTIONS

BY

PROFESSOR D. N. BANERJEE,

(Published in this number, pp. 393—410).

17

NON-VOTING IN INDIA

CAUSES AND CURES.

BY

PROFESSOR P. L. SAHGAL,

Hindu Sabha College, Amritsar.

1. *Introduction*: The great importance of the vote in our country; non-voting a serious disease in a Democracy.

2. *The extent of non-voting examined*:—

All-India figures of voting and non-voting, Provincial polling percentages of the first election under the Government of India Act 1935; special references to the Punjab and Bengal. The indifferent electorate among women; Detailed figures; the acuteness of the problem.

3. *Causes and Cures*:—

(a) *Registration* as voters on applications; Serious neglect; remedies of the type of more publicity and greater time limit.

(b) *The Illiterate voters*. A serious problem in a country where about one half the electorate is illiterate: steps to familiarize them with the theory, use and mechanism of voting.

Special methods; The Symbols System; The Coloured Box System.

(c) *Polling hours and Polling Stations*; Inconvenient polling hours; their remedy. The need for more polling stations. The problem of the industrial worker.

(d) *Publicity*:—The need for extensive publicity to fight ballot-box shyness. Its great importance. The help of leaders, political parties, agents, the press, the cinema, the radio and teachers. Government's duty. The importance of the study and spread of the knowledge of Political Science and Civics.

(e) *Women*:—Figures examined. Causes such as illiteracy, shyness, the Purdah System, the lack of canvassing the lack of suitable communications, and the lack of female Presiding and Polling Officers and the Police mainly responsible. Remedies.

(f) *Compulsory Vote and Postal Vote*:—Examples from outside India. Dr. Barthelemy's and Mr. Powell's opinions Possibilities in India examined.

(g) *Personal Causes*:—Such as general indifference and physical difficulties; a study in Chicago examined.

4. *Conclusion*:—

More interest in elections necessary and essential. Even the cost of election high enough to attract attention and invite keenness; Ennoble the act of voting, and make strict rules regarding liquor, corruption, etc. The Government's duty.

18

SOME ASPECTS OF THE MINORITY
PROBLEM IN INDIA

BY

DR. B. M. SHARMA, M.A., B.Sc., LL.B., Ph.D., D.Litt.,

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At the present juncture in the constitutional history of India the minority problem has again been brought to the fore by interested parties. It is shown here that it is a cloak to hinder the main issue which is entirely constitutional and has little to do with religious or social minorities, not that these minorities should be neglected and their just rights and grievances ignored, but that the constitution can hardly give them what they actually need.

The so-called Communal Award, as given by the late Ramsay MacDonald, has already secured to the minorities in India most

of what they ask for. The Muslim problem is the crux of the minority problem in India. The Muslim grievances have been unduly exaggerated by individuals who are anxious to maintain their hold on the community rather than serve the true interests on the Muslim masses. Seventy percent of the Indian Muslims of British India live in the four Muslim majority provinces and thus control the administrative machinery according to their own policies and programmes. They have under them thirty million Hindus, while the remaining thirty percent Muslims (numbering twenty million) live in the Hindu majority provinces. The largest number is in the United Provinces where they form 14 per cent of the population but statutorily enjoy thirty per cent of places and offices including representation in the legislature.

It has also been shown that the cry 'Islam in danger' is false so far as the Congress administration is concerned. In the absence of any concrete instances of atrocities committed on Muslims, the conclusion is irresistible that some other motives than the mere desire to protect the just claims of minorities are at work to harm the cause of Indian nationalism at a time when considerable power in the provinces has been transferred to Indians.

It has been shown that neither the Urdu language nor Muslim culture is in any way in danger. On the other hand, Hindu writers and students are themselves contributing to Urdu literature and Muslim culture in a province like the United Provinces.

The working of provincial autonomy has clearly shown that the real problems facing us are economic and not at all religious or communal. An important illustration to prove how the interests of the masses, Hindus and Muslims, are the same is the passing of the Tenancy Legislation in the United Provinces.

Too much insistence on safeguards for the rights of the religious minorities retards the growth of nationalistic feeling and leads to the creation of a wider gulf between the different communities.

No community can play its due part in the political life of India if it pins its faith in its co-religionists beyond Indian frontiers. Love and neighbourly relations cannot be fostered by treaty rights. They grow by mutual appreciation of each other's view-point. All this applies to the different minorities in India.

The problem of the depressed classes is largely social and economic and has nothing to do with constitutional questions in

which all communities are equally interested without any communal view-point.

An appeal is, therefore, made not to exaggerate the communal differences by day-to-day propaganda, but to emphasize the points of agreement between the different communities. This can be best achieved by training the rising generation along nationalistic and patriotic lines.

19

LAWS AND ADMINISTRATION IN THE MADRAS PRESIDENCY, 1937—39

BY

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University of Madras.*

Provincial autonomy came into operation on April 1, 1937, but as the Congress party refused to form a ministry until certain safeguards were forthcoming regarding the use of the special powers of the Governor, an interim Ministry was functioning in Madras, as in other Provinces, while negotiations were taking place. These negotiations having succeeded, the Congress assumed office on July 14, 1937, with Sri C. Rajagopalachariar as the Prime Minister.

The first important law to be passed was the *Madras Prohibition Act*. It was first introduced in the district of Salem and later on extended to other districts such as Chittor, Cuddappah and North Arcot. On the whole, Prohibition has been a success bringing about a marked social and economic improvement in the areas concerned.

The next measure of far-reaching importance was the *Madras Agriculturists Relief Act*, the object of which was to help indebted agriculturists by the scaling down of their existing debts, by reducing the rate of interest on their future debts and by writing off the arrears of rent due to zamindars, jenmies and other landholders.

The *Public Health Act of 1938* provides for "the proper enforcement of suitable measures in regard to epidemics, protected water-supply, sanitation and similar matters."

The *Removal of Civil Disabilities Bill* and the *Malabar Temple Entry Bill* were placed on the statute books in 1938.

The new taxes which have been passed are the *Madras General Sales Tax*, the *Madras Sale of Motor Spirit Taxation Act*, the *Madras Electricity Duty Act*, and the *Madras Tobacco Act*.

Principal Administrative Changes—Several reforms have been introduced in jail administration. Considerable sums of money have been set aside for providing protected water-supply to villages and for the development of cottage and small-scale industries. Liberal remissions of land revenue have been made. The system of employing honorary medical officers has been extended so as to save money for the Government as well as to provide facilities for private practitioners of medicine to acquire training and experience in State hospitals. An influential committee of the two Houses, presided over by the Revenue Minister of the Province, has prepared a monumental report suggesting important tenancy reforms. Several industrial disputes and strikes were settled through the intervention of Government. Several important changes were contemplated in the field of education. The electoral rolls to the Legislative Assembly have been adopted for the purpose of elections to local bodies also.

20

THE FINANCES OF THE UNITED PROVINCES
UNDER PROVINCIAL AUTONOMY

BY

MR. PRAKASH NARAIN MASALDAN, M.A.,
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We propose to consider the actual management of the finances of the Provinces by the first popular and fully responsible Government according to the provisions of the new constitution.

The Provincial heads of taxation given in the list II of the seventh schedule to the Government of India Act 1935 contains among a few others, land Revenue, certain Excise duties, taxes on agricultural income, taxes on professions, callings and employment, stamp duties in respect of documents other than those subject to the Federal Stamp duty. The Act provides also that the net proceeds of 'certain succession duties, stamp duties, terminal taxes and tax on fares and freights' and only 'a certain percentage' of the net proceeds of taxes on non-agricultural income, to be levied and collected by the federation, shall be distributed to the units. The distribution of the whole or part of

the net proceeds from salt, excise, and export duties may be provided for by a federal enactment. Grants-in-aid to the deserving units from the Revenue of the Federation are also provided for.

The financial adjustment necessitated by the new constitution are based on the Niemeyer Award which, as the Hon'ble Premier said in his first Budget Speech, is more unjust to the U.P. than was the Meston Award. A subvention from the Central Revenue of only Rs. 25 lacs for five years has been granted for the U.P. Our share of the income-tax in the first autonomy year came only to 15% of the one half of the income-tax proceeds to be distributed to the Provinces. It has however been increasing and is expected to increase.

There has been in the Provinces' finances under autonomy a greater variation on the expenditure side than on the income side. Most of the fresh development schemes being financed are nation building schemes. There were revenue deficits in two out of the three autonomy budgets. Fresh resources of income have been found out, the most substantial one being the cess on sugar and the employment tax which has not as yet operated. The indebtedness of the Province has also increased.

21

THE UNITED PROVINCES EMPLOYMENTS TAX

BY

PROFESSOR M. H. GOPAL,
(Published in this number, pp. 411—423).

22

PROVINCIAL AUTONOMY IN THE PUNJAB
(APRIL 1937—OCT. 1939)

BY

PROFESSOR DIPCHAND VERMA,
(Published in this number, pp. 449—463).

23

THE PROBLEM OF RESPONSIBLE GOVERNMENT
IN THE STATES

BY

PROFESSOR INDRA DATT SHARMA

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The Problem:—The problem of Responsible Government in the States a difficult and delicate one: Princes not pledged to the grant of responsible government to their people; the ultimate and practical theory of government, in the states—personal rule. The movement for responsible government in the states incomprehensible to the Princes. The problem further complicated by the position of the Princes in relation to the Paramount Power. The Statements of Sir C. P. Rama Iyer and the Under Secretary of State for India examined.

The Problem summed up:—The position of the Princes legally feasible. No legal obligations to introduce responsible government. The obligations to the Paramount Power a consideration with the Princes.

The Solution:—The rise of political consciousness responsible for the political aspirations of the States peoples. The movement for responsible government in the States a logical culmination of the process of reform initiated by the Princes. The introduction of responsible government is demanded by practical political wisdom and is a necessity. The position of the Princes in relation to the Paramount Power clarified. Some suggestions as to the manner in which responsible government may be introduced in the States. Conclusion.

24

EVOLUTION OF THE LEGISLATURE IN HYDERABAD

BY

PROFESSOR H. K. SHERWANI,

(Published in this number, pp. 424—438).

25

THE EVOLUTION AND WORKING OF THE
GOVERNMENT IN TRAVANCORE

BY

MR. N. V. RAJKUMAR, B.A. (Hon.), M.A., LL.B.,

Research Student, University of Lucknow.

Travancore—its situation, area, physical features and distribution of population—An historical sketch of the State—The Ruler of Travancore is the source of all authority, judicial, administrative and legislative. Kingship in Travancore has been unique with its tradition of liberty, catholicity and adaptability—The Government of the country is conducted in the name of the Maharaja, by a Minister designated the Dewan, appointed by a "Neet" or Commission under the sign Manual.—The Dewan is assisted by a well-organised Secretariat and a public service on the British India model—The entire administration is carried on through several Departments—It was the first State to introduce a representative Legislative Council in 1888—A history of the Legislature—The Constitution of a bicameral legislature in 1932, with wide powers—Franchise—The equality of women with men in the matter of voting and election to the legislature—the organisation and working of the Judiciary—Finance, Revenue and Expenditure—Economic and Industrial policy, including Labour problems—The position of women—Local Self-government—political trends—Summary—Conclusion.

26

THE CONSTITUTIONAL POSITION OF THE
ORISSA STATES

BY

DR. H. N. SINHA, M.A., Ph.D.,

Professor, Morris College, Nagpur.

With the introduction of the reforms the proverbially placid life of the Indian States seems to have been violently disturbed. The provision of the Government of India Act, 1935, for a federation in which the states will play a significant part, has roused their people and rulers to a sense of their importance of which they were oblivious so far. It has created a feeling of pride in

the rulers and a political awakening in their subjects. The consequences have been rather alarming to the former. Further, the ideas of liberty and democracy surging around them have given new aspirations and induced unforeseen activity among the state subjects. They appear to have suddenly developed a new outlook, into which have been telescoped some of the most dangerous ideas of the times.

Can it, therefore, not be suggested that since the resources of the states are so small, because their areas and populations are so small, it is futile to expect the rulers to build up a modern machinery of administration with a full complement of the judiciary, the executive and the legislature? It may be perhaps far less difficult to change the sanads of these states and treat them as Kanika, Angul, Kurda, etc., have been treated; i.e., to bring them under the regular administration of British Orissa. That is what the Orissa States Enquiry Committee has opined.

27

THE PROVINCIALISATION OF THE STAFF OF
LOCAL BODIES

PROFESSOR M. VENKATARAMAIAH, M.A.,

Andhra University, Waltair.

It is agreed by all students of local government in India that one of the major causes of the failure of local bodies is the inadequacy and incompetence of the staff employed by them. It is argued in the paper that the Provincialisation of their staff is the most effective remedy for removing this inadequacy and incompetence. There are two forms of provincialisation—the simple and the comprehensive. In its simple form it only involves the exercise of some control over each local body by the Provincial government in matters relating to the number, the qualifications, the method of the recruitment of its staff and their salaries and discipline; but each local body is treated as a self contained unit without any connection with other local bodies. In the comprehensive form Provincialisation involves the linking up of all the local bodies in the Province into one unit so far as their staffs are concerned and the setting up of a central provincial organisation to give expression to this unity. This organisation will standardise qualifications, recruit the staff, and be responsible for their postings and transfers and for their discipline. There will thus come into existence a local civil

service quite independent of the elected local councils. It is argued in the paper that such an organisation should consist of the representatives of (a) the Provincial Government (b) the elected local bodies and (c) the employees of these bodies, and that the setting up of such an organisation is quite consistent with the principle of local autonomy. It is also incidentally pointed out that an organisation constituted on these lines is better than the one recommended by the United Provinces Local Self-government Committee which does not make provision for the representation of the employees.

28

EXECUTIVE OFFICERS IN LOCAL BODIES (WITH
SPECIAL REFERENCE TO MADRAS)

BY

MR. K. JAYA RAMAN, M.A.,

Research Scholar, University of Madras.

1. *Historical Introduction*:—Until the Reforms of 1919, Collectors and other members of the Civil Service dominated local bodies, in their capacity as presiding officers and executive heads. As a result, these local bodies had no chance to express their individuality and self-government was unreal. After 1920, elected chairmen came to discharge not only deliberative functions, but also executive duties, with the result that jobbery and competition came into free play in local administration. The findings of the Indian Statutory Commission and the present inefficiency of local bodies, all point to the need for separating the two spheres of functions, deliberative and executive, and creating a strong, non-partisan executive.

II. *Executive Officers in the Presidency Municipalities*:—The three systems at work in the city Municipalities of Madras, Bombay and Calcutta are discussed.

III. *Executive Officers for District Municipalities in Madras*:—A novel feature of recent local administration in Madras is the appointment of executive officers, styled Commissioners for smaller municipalities in these districts as well. The powers and position of these officers are discussed.

IV. *A Review of the system at work*:—The system has come in for a good deal of criticism as detracting from the

autonomy of Municipal Councils. But the system is sound in principle, though defective in recruitment and organization.

V. *Need for Executive officers in Rural Boards*:—The need for executive officers is even greater in the case of District boards and Sub-district boards having jurisdiction over wide areas. Already it has been found difficult for the elected chairman who is an amateur to cope with the increased functions. Similarly some panchayat boards in Madras are not functioning due to faction and mismanagement. The situation calls for a strong executive if democracy in rural areas is to work efficiently and with success.

IV. *Relationship between the Deliberative and Executive Organs*:—No rules or laws can make the relationship smooth and harmonious. A good deal must depend on good will and good sense on both sides. Government should appoint executive officers so as to enable them to be independent and rise above all party leanings.

VII. *Unified Control and Organisation*:—A Central Board must be organized to control and supervise local bodies. The Board must consist of the representatives of Government and of local bodies, and expert officers of the Provincial Government. It is not desirable to have a separate service for local bodies. A unified service for the whole Province is the ideal to aim at, and the executive officers must be recruited from this service.

VIII. *Better Public Relations*:—The future of local self-Government depends a great deal on the co-operation of the public, and so a systematic attempt to educate the citizen in local Government will not only make the task of the administrator easier but facilitate hearty co-operation between the administrator and the public.

29

THE INDIAN CIVIL SERVICE AND PROVINCIAL
AUTONOMY

BY

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1. The object of the paper is to examine the recent statements of Pandit Jawaharlal Nehru regarding the efficiency and

integrity of the Indian Civil Service as an instrument of government in the Indian provinces.

2. As everywhere else, the ministries in the British Indian provinces also depend for the success of their administration upon the permanent civil servants. It is mainly upon the members of the Indian Civil Service that the efficiency of the administration happens to rest. Eighty per cent of the pivotal administrative positions are reserved for them. The remaining twenty per cent are occupied by those members of the Provincial Civil Services who are given "listed" appointments. But as these latter officers hardly rise beyond the office of the District Collector, it may be said that almost all the key positions are reserved for and occupied by members of the I.C.S.

3. The government of the country was vested for long in the I.C.S. It was not merely an instrument of government but, as Herbert Fisher observed in 1915, it was the government itself. It was unable and unwilling to transform itself into an instrument once the principle of responsible government was introduced in the provinces. It could not belie its traditions. It refused to adapt itself to the political changes and to develop the spirit of "anonymity and obedience" which characterised the British Civil Service. The conditions of service of the Civilian Officers and the rules framed by the authorities for the working of the departments made it possible for the members of the I.C.S. to thwart the policies and actions of the Ministers during the period that the Montagu-Chelmsford Reforms were worked in the provinces.

4. In the new regime also the I.C.S. continues to be recruited and controlled by not only an extra-provincial but an extra-Indian authority. The rules for working the departments have also to be framed in a way which cannot but handicap the Ministers. "Anonymity and obedience" cannot grow under these conditions of service.

5. Many members of the Civil Service may even entertain the idea that under the Government of India Act the Council of Ministers is not expected to meddle in the actual administration of a province. The Brett Circular must have been the result of such an interpretation of the statute.

6. The efficiency of the Indian Civil Service was much advertised. It was found efficient in comparison with the British and American services which were very inefficient until fifty years ago.

7. After the reforms of Cornwallis and still more after the system of training at Fort William and Haileybury had been introduced, the Covenanted Civil Service found itself equal to the task of rehabilitating the mechanism of government which had gone completely out of gear as a result of the Great Anarchy of the 18th century. It found it possible also to cope with the duty of maintaining law and order and of chalking out the land revenue system.

8. At one time, no doubt, these two were the main duties of government. But although other functions are now looming large, the Indian Civil Service tries to ignore them. When they are called upon to undertake responsibilities in the new spheres, they find themselves at sea. The Civilians who occupied the office of the Development Commissioner in Bengal only marked time. Experts in many spheres have now to be imposed.

9. In fact the anonymous author of the famous book, *The Lost Dominion*, has certified to the fact that the members of the I.C.S. have only marked time since the inauguration of the reforms in 1921. This author was himself a member of the Indian Civil Service.

10. The system of training the members of the Indian Civil Service, if this body has to be maintained at all, should be changed. During the period of training more emphasis should be placed upon welfare and social service work. In this connection the suggestion of Professor Ernest Barker that some civilians might be recruited from among those who had actual training in such work may be considered. To this end, the age of recruitment should be raised to about thirty.

11. It is necessary also that the higher officers of the Secretariat must not be mere birds of passage as they are now.

30

THE CONSTITUTIONAL VALIDITY OF THE COMMUNAL BASIS OF RECRUITMENT TO PUBLIC SERVICES IN INDIA

BY

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The Central and Provincial Governments in India have in recent years made rules for the reservation of offices on a communal basis.

This paper does not deal with the political, economic, or social advisability of the communal basis of recruitment, but it questions, except in 2 or 3 services, its constitutional validity.

Clause (1) of Section 298 of the Government of India Act, 1935, lays down:

“No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of that be ineligible for office under the Crown of India.”

Clause (4) of Section 266 of the Act does not so modify the fundamental rights of the British Indian subject as to debar him from government service on account of his religion. Nor do Sections 50 and 298 of the Act give the Provincial Cabinets or the Governors the legal power to override Section 298. This view can also be inferred from the Joint Committee Report.

It is true that the terms of the Instructions issued to the Governor and the Governor General are very wide. But the Instruments are issued by the Crown by virtue of his prerogative powers, and though approved of by resolutions of the two Houses of Parliament, they cannot override the law enacted by Parliament.

The action of the Central or the Provincial government introducing a communal basis for services can therefore be challenged in the courts of law by those who suffer from it. On the other hand if these Governments wish to continue with it, they should secure parliamentary authority before doing so.

III

INTERNATIONAL RELATIONS AND AFFAIRS

31

THE FAR EASTERN (JAPANESE) MONROE DOCTRINE

BY

DR. V. S. RAM,

(Published in the *Indian Journal of Political Science*,

January—March 1940, pp. 290—297).

32

THE PROBLEM OF INTERNATIONAL PEACE

BY

PROFESSOR DEVA RAJ,

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The League of Nations failed not so much due to the defects in the Covenant as due to the fact that (i) the League formed a part of the unjust and vindictive treaty and (ii) the members not only failed to stand by the Covenant but followed a policy of intense nationalism and subordinated the League to the pursuit of their own narrow national interests, so that the League, as it stands to-day, is a "league" of a group. The League should therefore be replaced by a fresh international government. The war is the outcome of power politics and unequal and unjust economic conditions. A new world order will, therefore, involve (a) the supersession of national sovereignty and the establishment of a democratic world union; (b) the control of strategic positions, raw materials, currency, population movements, armaments, etc., by the international body; (c) The establishment of social democracy and a new economic order and (d) the liquidation of national empires. As a first step in the direction the Powers should surrender their empires in order to secure a sort of moral re-armament against the Dictators. The dependencies should either be granted self-government or be internationalised.

33

A CRITICISM OF STREIT'S UNION NOW

BY

PROFESSOR VENKATASUBBA SASTRI,

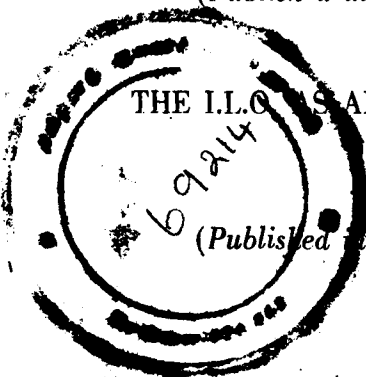
(Published in this number, pp. 439—441).

34

THE I.L.O. IS AN AGENCY OF WORLD PEACE

BY

P. P. PILLAI,

(Published in this number, pp. 442—448).

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