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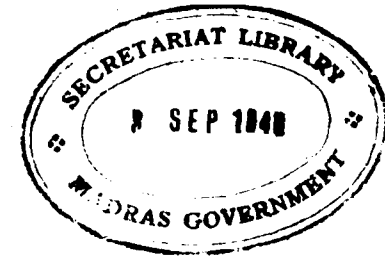
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ARISTOTLE'S NATURAL THEORY OF THE ORIGIN
OF THE STATE*

BY

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Theories of the origin of the State and Aristotle's Natural Theory.

In my *First Principles of Politics*,¹ I had already broken the traditional method of recounting the theories of the origin of the state by treating the 'Force Theory' as the 'Sociological Theory' of the origin of the state and by adding the 'Economic Theory' of the origin of the state as associated with the writings of Plato. Now I would try to present Aristotle's 'Natural Theory' of the origin of the state as *one more addition* to the accepted or traditional theories, for I had already observed,² "I have not here detailed Aristotle's view on the origin of the state because it is nearly similar, but it has the great merit of combining the economic and the psychological elements. In fact, I am inclined to regard Aristotle's view as a psychological explanation of the origin of the state and it will not be wrong to treat it separately as a psychological or natural theory of the origin of the state."

State originates in necessity or nature.

According to Aristotle, the state originated in necessity or nature³ as man singly cannot meet his wants. The satisfaction

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

¹ Published by The Indian Press, Ltd., Allahabad (1937).

² *First Principles of Politics*, pp. 49-50, Footnote.

³ "The word nature" says Jowett "was ambiguous in ancient no less than in modern times and was variously used to signify (1) the undeveloped or inchoate, (2) the final or perfect nature. The state and family are both said to exist by nature, but the state in a higher sense than the family."—*The Politics of Aristotle* (p. xviii) by B. Jowett (Oxford: The Clarendon Press, 1885). In this essay, wherever reference be made to Jowett's edition of Aristotle's *Politics*, it would mean the Clarendon Press edition only.

of wants drives him instinctively to take helpmates, first wife and servant, then fellow villagers and last of all fellow citizens. He is thus intended by nature for social life, for the state.

The Sexual impulse and the household.

What then is man's first want or necessity we may ask? It is physical or physiological, that is, "it is requisite that those should be joined together whose species cannot exist without each other, as the male and the female, for the business of propagation and this not through choice, but by that natural impulse which acts both upon plants and animals also, for the purpose of their leaving behind them others like themselves."⁴ This means that the *sexual instinct* is one of the primary causes of the foundations of the family life or the household which is thus the result of that psychological urge or physical necessity which forces upon men and women the idea of the continuance of the human race. The domestic society is, therefore, the first *natural society* because it is the result of an innate feeling of the satisfaction of the nature of man and woman.

The Economic impulse and the household.

But it was not *merely* this feeling or this instinct which unites the two. The union of man and woman in the household is also for the division of labour and for the satisfaction of their daily wants. As Aristotle himself puts it, "that society then which nature has established for daily support is the domestic,"⁵ and it has been created because of food, shelter and clothes the provision of which is among man's initial wants. This was, therefore, the *economic impulse* which created the family as the first human society.

The instinct of sociality and the household.

But were the sexual instinct and the economic impulse the only forces which impelled man and woman to create the household? Certainly not. Man by nature is a social animal. He is attracted towards his kind by the gregarious instinct or by the consciousness of kind as Giddings has put it in our times. Aristotle also himself said, "There is, then, in all persons a natural impetus to associate with each other"⁶ and "he who first

⁴ Aristotle's *Politics*, p. 2. (Everyman's Library.)

⁵ Aristotle's *Politics*, p. 3. (Everyman's Library.)

⁶ Aristotle's *Politics*, p. 4. (Everyman's Library.)

founded civil society was the cause of the greatest good."⁷ Hence man and woman were drawn together by an instinctive urge towards each other, as the nature of man and woman demanded their meeting. This was the human *instinct of sociality* which released the latent forces of the nature of both resulting in the creation of 'a moral friendship rejoicing in each other's goodness!' This shows that the family was meant not for a temporary satisfaction of animal want or for a mere provision of sustenance but for something more permanent and noble in human life. It is the love and affection of the husband and wife that first created a real moral community for a common and happy existence. And this union, with the birth of children, unfolded the very highest qualities of man's nature—the ideas of service and sacrifice for the continuity of their posterity. In this way, the family came into existence not merely for life, but good life and a common life. It was, therefore, the first seedling of the state which was its highest extension and represented the culmination of the process of man's social and natural development.

Slavery as a natural instrument of the household.

But, according to Aristotle, this is not all regarding the origin of the family. Besides the husband and the wife and the children, every family must *naturally* have a slave also. "It is from natural causes that some beings command and others obey, that each may obtain their mutual safety; for a being who is endowed with a mind capable of reflection and forethought is by nature the superior and governor, whereas he whose excellence is merely corporeal is formed to be a slave; whence it follows that the different state of master and slave is equally advantageous to both."⁸ The family, further, must have its proper instruments—animate and inanimate. 'Thus property is an instrument to living; an estate is a multitude of instruments; so a slave is an animated instrument . . . therefore, the master is only the master of the slave, but no part of him; but the slave is not only the slave of the master, but nothing else but that. This fully explains what is the nature of a slave and what are his capacities; for that being who by nature is nothing of himself, but totally another's, and is a man, is a slave by nature; and that man who is the property of another, is his mere chattel, though he continues a man, but a chattel is an instrument for use, separate from the

⁷ Aristotle's *Politics*, p. 4. (Everyman's Library.)

⁸ Aristotle's *Politics*, p. 2. (Everyman's Library.)

body." Thus, a slave is an inseparable part of the family and exists by nature in the same sense in which the family itself fulfils the intention of nature.

The household develops by nature into a village.

The household created by nature now develops also by nature for, 'the society of many families, which was first instituted for their lasting mutual advantage, is called a village, and a village is most naturally composed of the descendants of one family,¹⁰ that is, 'the children and the childrens' children thereof.' The village, in this sense, was but a larger family, for it was nothing but an aggregate of households. Just as the 'parent or elder (husband or father) was the King of the family, in the same way, when families were combined in the village, the patriarchal or Kingly form of government continued.'¹¹

Nature's process goes farther than the village.

But nature's process did not end with the rise of the village. It was still to continue to its natural or highest culmination, for, though the village satisfied more needs and was a greater moral association, it did not reach perfection. It was not self-sufficient economically as it was not adequate morally also for man's highest development.

Villages result in the creation of the State.

The villages then came to be united and the state was created. As Aristotle puts it 'And when many villages so entirely join themselves together as in every respect to form but one society,

⁹ Aristotle's *Politics*, pp. 6-7. (Everyman's Library.)

The same argument of superiority and inferiority by nature—some born to command and others to obey—has again been repeated by Aristotle in Chapter V (pp. 7-9) of his *Politics* with greater emphasis. To him, 'a ruling principle runs through the whole of nature and is discernible even in things without life, for example, in musical harmony.' He even speaks of the rule of the soul over the body, of reason over appetite, of male over female (for the good of both) and hence of master over slaves and animals. But the animals are guided by mere instincts and the slave, 'though he does not partake of reason, can apprehend reason,' that is, 'who has just reason enough to know that there is such a faculty, without being induced with the use of it. (P. 8.)

¹⁰ Aristotle's *Politics*, p. 3. (Everyman's Library.)

¹¹ Aristotle's *Politics*, by B. Jowett, p. xv.

that society is a city, and contains in itself, if I may so speak, the end and perfection of government: first founded that we may live, but continued that we may live happily.'¹² The city being thus the extension of the household and the village was also originally governed by a King. In these ways, the state came into being and was founded upon two relations—that of male and female and of master and servant—the first necessary for the continuance of the human race, the second for the preservation of the inferior class or both, the first giving us the ideas of goodness and cooperation, the second of authority and obedience.

The state is a natural production and man is naturally a political animal.

But all this was nature's own creation. In the words of Aristotle himself 'Every city must be allowed to be the work of nature, if we admit that the original society between male and female is; for to this as their end all subordinate societies tend, and the end of every thing is the nature of it. For what every being is in its most perfect state, that certainly is the nature of that being, whether it be a man, a horse, or a house: besides, whatsoever produces the final cause and the end which we desire, must be best; but a government complete in itself is that final cause and what is best. Hence it is evident that a city is a natural production, and that man is naturally a political animal, and that whosoever is naturally and not accidentally unfit for society, must be either inferior or superior to man.'¹³ In this way man gains his full stature *only* in the state—life, morality and society.

The state is self-sufficient and a culmination of human nature.

The state, thus, is a self-sufficient entity. It is natural because it is the culmination of the natural process of human development in which each step is natural and necessary. Further, it is not *made*: it *develops naturally* for men are not artificially aggregated: they are meant for social life for 'he that is incapable of society, or so complete in himself as not to want it, makes no part of a city, as a beast or a god.'¹⁴ The social instinct in man requires that man should live with man and 'he who by the help of this instinct organised the state, was the

¹² Aristotle's *Politics*, p. 3. (Everyman's Library.)

¹³ Aristotle's *Politics*, pp. 3-4. (Everyman's Library.)

¹⁴ Aristotle's *Politics*, p. 4. (Everyman's Library.)

greatest of benefactors. For man, when perfected by law and justice, is the best,—when estranged from them, the worst of animals.¹⁵ This is why Aristotle regards the state as the perfection of human nature, as the culmination of the natural process of human development, a process through which the nature of man has unfolded itself to its highest manifestation from the rude beginnings of *mere* life to the common life of all, thereby creating a moral association of the highest order.

The gift of speech and man's Social life.

But it is not merely these instincts that explain the ultimate origin of the state as based on the nature of man. There are other *natural* factors also which are equally significant and which therefore cannot be neglected, for, as Aristotle himself says 'The gift of speech also evidently proves that man is a more social animal than the bees, or any of the herding cattle: for nature, as we say, does nothing in vain, and man is the only animal who enjoys it. Voice indeed, as being the token of pleasure and pain, is imparted to others also, and thus much their nature is capable of, to perceive pleasure and pain, and to impart these sensations to others; but it is by speech that we are enabled to express what is useful for us, and what is hurtful, and of course what is just and what is unjust: for in this particular man differs from other animals, that he alone has a perception of good and evil, of just and unjust, and it is a participation of these common sentiments which forms a family and a city.'¹⁶

Man is a rational creature.

Besides the speech which man enjoys and through which he discourses with his fellows regarding 'the expedient and the just,' Aristotle further says that 'other animals have no perception of reason, but are entirely guided by appetite, and indeed they vary very little in their use from each other.'¹⁷ This shows that animals merely follow sensations; they are led by physical desires only. Man, on the other hand, though he might also at times be led by instincts, is still a rational animal, and it is this rationality which makes the moral and common life possible, which raises and enriches his personality and thus makes him a real moral agent in the common life of virtue and happiness.

¹⁵ Aristotle's *Politics* by Jowett p. xv.

¹⁶ Aristotle's *Politics*, p. 4. (Everyman's Library.)

¹⁷ Aristotle's *Politics*, p. 8. (Everyman's Library.)

State is natural than the family in a higher sense also.

Though both state and family have been proved to exist by nature, Aristotle further seems to think that the state exists by nature *in a higher sense than the family*, for, 'the notion of a city naturally precedes that of a family or an individual, for the whole must necessarily be prior to its parts, for if you take away the whole man, you cannot say a foot or a hand remains, unless by equivocation, as supposing a hand of stone to be made, but that would only be a dead one; but everything is understood to be this or that by its energetic qualities and powers, so that when these no longer remain, neither can that be said to be the same, but something of the same name. That a city, then, precedes an individual is plain, for if an individual is not in himself sufficient to compose a perfect government, he is to a city as other parts are to a whole.'¹⁸ This clearly shows that *in the order of time* the state may be and is *later* than the family or the individual, but *in the order of nature*, prior to them for the whole is always prior to the part. 'As there could be no foot or hand without the body, so there could be no family or man, in the proper sense of the words, without the state.'¹⁹ Man separated from his fellows is without doubt either a god or a beast.

Summary.

To sum up, we may now say that the Aristotelian theory of the origin of the state is not

- (a) a mere Economic theory as based on necessity or wants;
- (b) a mere Psychological theory as based on an inner urge for sociality or the gregarious instinct of mankind;
- (c) a mere Physiological theory as explaining the origin of the state in an urge for the propagation and the continuity of the human race;
- (d) a mere Physical theory as based on nature's differentiation of man from other animals by the quality of speech which makes man's union with man possible;

¹⁸ Aristotle's *Politics*, p. 4. (Everyman's Library.)

¹⁹ Aristotle's *Politics*, by Jowett, p. xv.

- (e) a mere Organic theory in which the parts are inseparable elements of the whole which is, in a certain sense, prior to the parts themselves;
- (f) a mere Historical or Evolutionary theory tracing the origin and development of the state from its earliest beginnings, through various stages, to its perfection;
- (g) a mere Ethical theory explaining the origin of the state not for *mere* life, but for moral life, good life and a common life, a life which is at once a happy life and a life of virtue. Even the husband and wife have a moral 'friendship' taking pleasure in a life of Virtue, and the village community and the state-life still further fulfil the moral necessities of an extended social life as greater moral associations; and
- (h) lastly, a mere Teleological theory of man's existence telling him the final purpose of his life and the mode and method of realising it through the agency of the state which represents the highest perfection of nature. Intellect and reason come forward as guides and lead him to his ultimate destination. In this sense, it is also a Rational or Intellectual theory of the origin and end of the state.

It is, in fine, more than each of these because each of the above views represents but the analytical standpoint of Aristotle. Synthetically considered, his theory of state origins is the Natural theory because it is the result of so many qualities or tendencies of the nature of human race. The state, therefore, is the direct product of the nature of man and exists for the final perfection of that nature itself. Once created by nature, it exists by nature to perfect the nature of man who created it. If that was its origin, surely, this is its ultimate end.

Aristotle's contribution to Political Science as learnt from the study of Natural theory.

Having discussed the Natural theory of the origin of state; we may now note some of the valuable ideas of Aristotle that we have come to learn from the study of this theory.²⁰ They are:

²⁰ Jowett also notes some of these points on p. xxvii.

1. that the state is prior to the individual;
2. that the lower is intended by nature to lead up to the higher (*i.e.*, the state is implicitly contained in the family and the village);
3. that in all men there is a social instinct, and man, therefore, is a political animal;
4. that the state was not created in a day, it is the result of a long course of evolution in human history;
5. that the final end of the state is the perfection of human character in the common life of virtue.

But there are certain points on which criticism is unavoidable.

CRITICISM

State and Society not differentiated.

In the first place, like all other Greek thinkers, Aristotle too does not differentiate between state and society. This is because the word '*Polis*' in Greek stands for both the terms.

Consent, Force and Religion ignored.

Secondly, Aristotle does not recognise various important elements which have always counted in the origin of states. One such element is 'consent' or will of the people. He ignored it probably because in the Greek view of life the individual existed for the *Polis* and not the *Polis* for the individual, that is, the state was an end in itself. Another element ignored by Aristotle is the part played by 'force' in the origin of the state. A third element may be cited in the part played by religion in the creation and maintenance of states in early societies, for it is an undoubted fact that even up to the middle ages it was the religious factor which counted most in the 'control and obedience' aspect of society. Aristotle perhaps failed to recognise it, because the Greek view of religion was naturalistic (not dogmatic) in which the gods differed only in degree from human beings.

Slavery unjustified.

Thirdly, Aristotle's justification of slavery as natural is against the idea of the development of human personality and as such beneath the dignity of civilised human existence. The slave is not an appendage of the master. To justify 'slavery,' therefore,

is to justify tyranny on flimsy grounds. Who can accept Aristotle's view that the slave being a human being has no 'reason' though he can apprehend it? This is certainly preposterous, and this shows that Aristotle was a conservative thinker and that he did not rise beyond the spirit and practice of his age.

Man and Woman Complementary.

Fourthly, Aristotle's suggestion that woman is inferior to man will be not only questioned but hated in our age for we have come to realize that, given an equal opportunity, woman can easily equal man in nearly all walks of life. She is neither inferior nor subordinate to man: she is an equal partner in the common life according to her nature and capacities. She is, therefore, both complementary and supplementary to man's activities in the social life.

First Statement of Patriarchal Theory.

Fifthly, Aristotle was no doubt the first to tell us about the Patriarchal origin of the state but he began it at the wrong end. His theory that the development of the state has been from one to many, from the individual through the family and the village to state does not square with facts. Our modern researches have shown that early life was not individualistic; men lived in groups and communities. Hence the development of society has been from many to one, from tribe through clans and families to the individual.

Possibility of Country-State and World-State ignored.

Sixthly, we do not agree with Aristotle when he maintains that the state represents the highest development of man, and that it is the culmination of the process of human achievement in social life. It is strange that having seen the Macedonian and Persian Empires he could not go beyond the idea of the City-State and think of the world-state as the final consummation of man's development in political life. But conservative as he was, he could not rise above his times and could not think even of the unity of Hellas or Greece as one state, if not of the whole world.

Relativistic Writer.

Seventhly, it has been said that Aristotle was an Analytical thinker because even in the study of the state he divided it into the family and the village as its constituent elements, but this is

not all. As Jowett has pointed out, there is 'in Aristotle's *Politics* a consciousness that the whole is prior to the parts, and that the Synthetic method must be combined with the Analytical.'²¹ This attitude of Aristotle is further significant in that he does not explain the origin of the state in any one instinct of human nature as we have already seen; he explains it as a synthesis of many other qualities of man's nature. In this respect, Aristotle does not seem to us an ancient writer: he seems to be a contemporary figure, for in our times the synthetic approach to problems of social life is the only true approach to meet the demands of our complex problems. As Dr. Beni Prasad puts it "Politics must base itself on the biological and anthropological sciences, and its psychology must be broader than the starting points of philosophers like Aristotle, Hobbes and Bentham. No longer it is possible to erect a theory of society or state on a single tendency like sociality, fear, pursuit of pleasure and avoidance of pain, or on imitation, or consciousness of kind. A simplified, self-contained human nature has broadened into a confluence of tendencies and potentialities going back to animal life at one end and touching almost superhuman heights at the other."²² Since this expression of opinion by Dr. Beni Prasad, we have further moved on to a new step in political thinking and the most recent approach to social problems has been called Relativism. To our surprise, we find Aristotle also doing the same *when he combines the synthetic method with the analytical*. This shows that we are still falling back upon that fountain-head of political wisdom whom posterity has rightly acclaimed as the father of political science.

A Historical Writer.

Lastly, besides the assertion that 'the method of Aristotle in his enquiry into the origin of the state is analytical rather than

²¹ Aristotle's *Politics*, by B. Jowett, p. xix.

²² Dr. Beni Prasad . . . *Democratic Process*—1935, p. 2.

It has been the general idea among writers that just as Hobbes based his politics on fear and Bentham on acquisition of pleasure and avoidance of pain, Aristotle also based on mere Sociality; but as I have already shown above, Aristotle did not emphasize only one tendency or urge of human nature. He treated human nature as sufficiently complex and as possessing various strands for its objective manifestation, that is, to him human nature was in every sense 'a confluence' of tendencies and potentialities going back to animal life at one end and touching almost superhuman heights at the other.'

historical, that is to say, he builds up the state out of its elements, but does not enquire what history or pre-historic movements tell about primitive man²³ there is also the contention that 'the 'accustomed' method of dividing the whole into its parts is logical rather than historical: that is to say, they are the parts into which it can be dissected, not the elements out of which it has grown Aristotle does not investigate the origins of states, but only divides a genus into species or a larger whole or form into the lesser parts or unities of which it is made up.'²⁴ Superficially considered, these remarks seem to be correct, but a close examination tells us that Aristotle never considered the state a manufacture: it was a growth, a product of gradual evolution. It was, therefore, to him *an unquestioned biological phenomenon in which the various parts were organically related and not a mere mechanism in which the component elements were artificially adjusted*. The division of the whole into its parts was not in water-tight compartments: in fact, each part imperceptibly ran into the other and every succeeding stage was a natural outcome of the previous one from which it had developed by a slow process of historical evolution. Hence Aristotle's division of state into its natural parts was no mere *arbitrary* division for the sake of convenience: he definitely marked out the most significant and natural milestones in the historic and organic development of the state. And we cannot question this historical aspect of his study when we know that he had studied more than a hundred and fifty constitutions of his time. His conclusions were based on the observation and experience of Greek conditions. Hence his historical knowledge might not have been universal in the modern sense (for it was localised), yet it was historical in every sense. This is why we maintain that he was a historical thinker and used the historical method alongside with the logical and the analytical methods.

²³ Aristotle's *Politics*, by Jowett, p. xiii.

²⁴ Aristotle's *Politics*, by Jowett, p. xix.

MINORITIES AND THE ADMINISTRATION WITH SPECIAL REFERENCE TO INDIA*

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The minority problem in India has come to loom large in current politics with the increasing activities of the Muslim League. The Pirpur Report gives a fair indication of the nature of minority grievances or suspicions. It is remarkable that most of these relate to administrative acts of commission or omission and very few indeed to the legislative. The main charges are:—

The Congress governments have used their power to effect a 'spiritual revolution,' a change in the values of life according to the Gandhian philosophy of simple life and non-violence, in which the Muslims do not believe: witness the Wardha Scheme of Education, the *Vidyamandir*, the encouragement of the spinning wheel and cow-protection. Again, Muslim religion, language and culture have positively suffered by such things as the following: the construction of temples in Muslim *Wakf* land, the desecration of Muslim tombs and graveyards and the closure of Muslim burial grounds, the refusal of permission to offer cow sacrifices on Bakr-Id and other ceremonial occasions, the grant of permission for processions with music before mosques, the discouragement of Urdu as against Hindi, by the absence of provision for teaching the language in schools and colleges, the use of public buildings for the performance of Hindu religious ceremonies, the use of offensive textbooks in schools and the direct or indirect compulsion exercised on Muslim children to wear Gandhi caps, to sing the *Vande Mataram* song and to worship Mahatma Gandhi's portrait. The Congress party flag has been hoisted on public buildings much to their annoyance. Improper pressure has been exercised on Muslim officials employed under local bodies to become members of the Congress. Muslims have been denied their due share in public services by such devices as the raising of the standard of qualification and the refusal to notify vacancies. Unjustifiable processes have been issued against

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

Muslim landholders. Muslim weavers have been denied state help, while help has been given to Hindu weavers. The Governments have not taken adequate action against the Hindus who have injured Muslims or against the Hindu Officers who have been accused of partisanship in such matters as communal riots.

The Hindu minority has, no doubt, similar grievances in Muslim governed provinces.

It needs to be stressed that these are complaints, which have not yet been submitted for investigation to an impartial tribunal. That apart, the recital of these grievances raises the question of how best minorities could be given a sense of security against unjust discrimination in administration.

The problem may be stated thus: It is the duty of the State to ensure to every citizen, without distinction of race, language or religion, the enjoyment of equal civil and political rights: the equal protection of law; the free exercise whether in public or private, of any creed, religion or belief, the practices of which are not inconsistent with public order; the exercise of agricultural, commercial or industrial callings or of the professions; admission to public employments; the use of his language in private and in public intercourse including the legislatures and the courts; the rights of property, freedom of speech, the Press, association and public meeting; the right to establish, manage and control at his own expense charitable, educational, social and religious institutions; educational facilities and in particular, the education of children through their mother-tongue; the maintenance of family law and personal status in accordance with the usage of the groups concerned; the right of free movement within the country and emigration without; the right of petition and appeal and the free exercise of the franchise.

In a country where minorities and the majority are not markedly unequal in economic and cultural development, the minority problem, so far as administration is concerned, is how to prevent the denial of these rights to minorities by an unsympathetic administration controlled by the majority; as Madison once said,¹ "In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger." There is, however, an aspect of the problem peculiar to India, viz., the relative backwardness, economic and cultural, of certain of her minorities. Here some preferential treatment in favour of minorities in some respects would seem to be necessary in order to enable them to face competition with the relatively advanced

¹ Debates, June 6 and 20 and August 13, 1787.

majority. Otherwise, a theoretically equal treatment may result in practical inequality and injustice.

Therefore the problem resolves into:—

- (A) how best to protect the minorities in the enjoyment of the civil rights (common to all) against possible invasion by an unsympathetic administration; and
- (B) what preferential treatment to minorities is called for by their relative backwardness in order to mitigate the effects of unequal competition.

A

A Declaration of Rights.

One of the means commonly adopted in Western countries for the protection of rights against executive (and legislative) encroachment is the inclusion of a declaration of fundamental rights as part of a written constitution. Opinion varies regarding the practical value of such a declaration. A distinguished scholar, for instance, says² that it is unnecessary, unscientific, misleading and either legally ineffective or harmful. The crux of this criticism seems to be that 'fundamental rights would be valueless if they were not implemented by law courts, and if they were implemented, it would lead to great confusion'; that is because many of them are hardly susceptible to legislative treatment. Phrases like the right to life, the right to property and the rights to free speech, press and association in a constitutional document mean nothing except in relation to their exceptions and limitations made necessary by the duties which rights involve; there is no such thing as absolute rights. European experience, especially in Germany, shows indeed that such declarations remain pious aspirations and hardly serve the purpose for which they are intended.

The fact is that the utility of a declaration of rights is in proportion to the precision of the language used therein and the consequent possibility of its being implemented by law courts with the least political bias so that the executive (or the legislature) cannot offend against it with impunity. It is difficult to draw up such useful declarations, but Indian political opinion seems so much in favour of it that it is worth while making an effort in that direction, particularly for the provision of educational facilities, the use of minority languages as a medium of

² Sivaswamy Iyer, *Indian Constitutional Problems*, p. 135.

instruction and the distribution of public funds for educational and charitable purposes, where discrimination to the prejudice of minorities is most likely. The post-war minority treaties give³ us some helpful guidance in this matter. For example the following provisions are to be found in them.

The government is bound to establish a minority school in any place where an application to that effect is made supported by persons legally responsible for the education of forty children of a linguistic minority.

If, however, for grave and sufficient reasons, such schools are not established, minority classes for teaching the language of minorities must be provided for.

Minority schools are assured of a share, proportionate to the number of their pupils, of the funds allocated out of the budgets for the ordinary maintenance of elementary schools.

The state must provide secondary schools for linguistic or religious minorities upon the demand made by guardians of at least three hundred children.

Language courses shall be established for teachers appointed or about to be appointed to minority schools who are not sufficiently acquainted with the minority language.

Education Committees constituted to advise the Government shall consist of a fair number of representatives from minority communities.

No restriction shall be imposed on the free use by any national of any language in private intercourse, in commerce, in religion, in the press, or in publications of any kind or at public meetings.

Adequate arrangements shall be made in the Courts so that no litigant shall suffer by his ignorance of the language used in the courts.

Differences of religion or language shall not prevent any citizen from enjoying equal civil or political rights.

Jews shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their *Sabbath*.

The state undertakes to ensure protection to the mosques, cemeteries and other Mussalman religious establishments.

The state agrees to grant to the Mussalmans in the matter of family law and personal status provisions suitable for regulating those matters in accordance with Mussalman usage.

³ e.g., with Poland.

To the same would belong the following provision suggested to safeguard a minority peculiar to India, the "untouchables":—

Whoever denies to any person except for reasons by law applicable to persons of all classes and regardless of any previous condition of untouchability, the full enjoyment of any of the accommodations, advantages, facilities, roads, paths, streets, tanks, wells and other watering places, public conveyances on land, air or water, theatres or other places of public amusements, resorts or conveniences, whether they are dedicated to or maintained or licensed for the use of the public, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to a fine.

If such provisions as these are not considered feasible in India either because, they are still not precise enough, or so precise as to be over-rigid, the only way is to include them, as Sir Samuel Hoare suggested,⁴ in the Royal Proclamation that may be issued to establish the Federation. A public declaration of either kind has this value: it calls attention to fundamentals and educates the citizen to a consciousness of his rights so that he may 'stand up' for them if necessary against executive encroachment.

An Independent Judiciary.

Even better than a declaration of rights as a safeguard of administrative fairness is the maintenance of an independent and impartial judiciary. With certain exceptions and limitations, the rule of law prevails in India: where a citizen has been unjustly dealt with by an officer of government, it is open to him to get redress in a court of law. Thus the Muslims who have been prevented from exercising their customary right of cow sacrifice on Bakr-Id days,⁵ have been unreasonably called to furnish securities in respect of papers published by them, have claims in respect of mosque land or burial grounds against Hindus or Sikhs, have for no proper cause been asked to furnish security for good behaviour, have suffered as a result of Hindu officers taking sides in communal riots or have claims to the use of government waste land for use during their festivals, etc., can appeal to a Court for protection.⁶

⁴ R.T.C., III Session, December 22, 1932.

⁵ The Pirpur report, pp. 23, 37, 40, 47, 59, 62.

⁶ It ought to be noticed that where an official may be liable, he is afforded a considerable measure of protection by Statute for acts done in good faith, and no Gazetted officer can be proceeded

Fortunately, in India the tradition of judicial impartiality is sufficiently strong to withstand the attack of the communal poison.⁷ The provisions in the constitution⁸ designed to secure the independence of the judiciary must also be deemed sufficient. Judges of the highest court in the land are independent of the Executive; a judge may be removed on the ground of misbehaviour or of the infirmity of mind or body only if the Judicial Committee of the Privy Council on reference being made to them by His Majesty report that the Judge ought on any such ground to be removed. Their salary and rights in respect of leave of absence or pension shall not also be varied to their disadvantage after their appointment. The independence of the subordinate judiciary is no less important than that of the highest judges, for as the Joint Select Committee pointed out, it is the subordinate judiciary in India who are brought most closely into contact with the people. The Act provides that appointments to the subordinate civil judicial service are to be made by government from the list of persons made by the Provincial Public Service Commission—an independent body and that the posting and promotion of, and the grant of leave to them will be in the hands of the High Court.

This judicial safeguard has one obvious limitation: it can be invoked only in respect of justifiable issues. Where the complaints of minorities relate to administrative⁹ policy and many complaints of the Muslims are of this sort—the Court of Law can give no protection. Thus when Hindi, not Urdu, is made the medium of instruction in schools, books that deal exclusively with the glories of Hindu heroes and saints are prescribed as texts, the ban on *Bande Mataram* song is lifted in Government schools, Urdu schools are not opened, or the standard of qualification for appointments is raised with a view to prevent Muslims from getting them, there is no issue which judges can take note of unless these administrative acts are against the provisions of the Constitution or of a law.

The Governor's Special Responsibility.

Another safeguard provided by the constitution is the special responsibility vested in the Governor in his individual judgment against without the sanction of the relevant Government, Eggar, Government of India, page 47, Criminal Procedure Code, section 197.

⁷ It is interesting to read a testimony by the Muslims to this effect in the Pirpur Report, p. 16.

⁸ Sections 200, 201, 221, 255 and 256 of the Government of India Act 1935.

⁹ The Pirpur Report, pp. 18, 29, 30, 51, 79.

to protect the legitimate interests of minorities. This means that the Governor is free, after consultation with his ministers, to overrule them if need be in respect of their administrative acts. The Governor has also power¹⁰ to include in the schedule of authorised expenditure a sum necessary to secure the due discharge of his special responsibility.

It is contended in some quarters that this safeguard is in practice a dead letter. A Cabinet, according to the principles of responsible government, has the confidence of the Governor; and a Governor cannot exercise his special responsibility against the Cabinet in whom he has confidence unless he is prepared (which is very unlikely) to face a recurring crisis.

There is some truth in this contention, when ministers, backed up by a substantial majority in the legislature, take up an uncompromising attitude. Two circumstances, however, have during the Congress regime in the various provinces mitigated this possible evil:—

First according to a public statement made by the Secretary of the Congress Parliamentary party,¹¹ the ministers themselves invited the Governors to intervene freely to protect the interests of the minorities. Such an invitation means that the ministers concerned will not make the Governor's resort to his special responsibility for the specific purpose of protecting minorities an occasion for a Cabinet crisis. Secondly, more than one Governor has publicly declared¹² that he did not exercise his special responsibilities because he had no need to: he felt that the minorities were treated very fairly.

One point of constitutional significance may, however, be raised. The initiative under a system of responsible government rests with the ministers. While the governor may be free to

¹⁰ The Government of India Act, section 78(2).

¹¹ The *Hindu*, December 11, 1939: Sardar Patel's statement, "Every Premier, at my instance, had invited his Governor unhesitatingly to intervene in matters affecting the rights and interests of the minorities, whenever the Governor felt that the action of the minority was not correct."

¹² Sir Harry Haig, sometime Governor of the United Provinces, (*Indian Information*, May 15, 1940, page 339) said that he was very mindful of the interests of the minorities for which the Constitution vested special powers in him. But he never had an occasion to exercise such powers at all as in dealing with the questions raising communal issues ministers normally acted with impartiality and a desire to do what was fair. Lord Erskine, in similar vein, spoke of the ministers' readiness to compromise. The *Hindu*, October 10, 1940.

protect minorities against an unjust proposal made by ministers, he does not appear equally free to help them, if the ministers do not initiate proposals with a view to raise the lot of the backward minorities. For instance, a backward community may need more schools and scholarships for their educational advancement than are provided for others; if the minister does not take the initiative can the Governor make proposals?

Composite Cabinet.

To secure justice to minorities in administration, the minorities further demand representation in the chief administrative body, *viz.*, the Cabinet. There is nothing unnatural in this demand. "In a democracy," said President Masaryk,¹³ "it is obviously the right of every party to share in the administration of the state as soon as it recognises the policy of the state and the state itself." Indeed the demand has been conceded in the direction to the Governor (in his Instrument of Instructions) to include so far as practicable members of important minority Communities in his Council of Ministers.

But a difficulty has arisen in the actual working of this direction. Parliamentary government in India works on the principle of the collective responsibility of the Cabinet. When, in accordance with this principle, a minister from the minority Communities is chosen for his loyalty to the majority party, the minorities contend that he does not enjoy their confidence. For, parties in India, tend to be communal, not political; members are elected from separate electorates. A separate electorate, it is argued, implies a composite Cabinet and the inclusion of representatives of minority communities who do not necessarily share the political views of the majority party. They argue that a parliamentary Executive of the English type cannot successfully function in India in the absence of the conditions which make it a success in England, *viz.*, an agreement on fundamentals, a spirit of accommodation and the existence of *political* parties. Therefore they suggest, that, until such conditions develop in India, the Composite Cabinet on the Swiss model may be tried with advantage.

The Swiss analogy is instructive because in some respects conditions in India resemble those in Switzerland. Switzerland has three main racial and linguistic groups (we may well call them Communities, though not in the religious sense), the

¹³ T. G. Masaryk, *The Making of a State*, pp. 387—90.

Germans, the French and the Italians, the Germans forming the majority. Care is taken by means of a Convention to have in the Executive representatives from all the groups. Switzerland knows that the treatment of minorities is one of the best tests of liberty. During the last War, the German-speaking majority allowed the two minority parties, who had only 30 per cent of the voting power between them, an actual majority of four out of seven places in the Cabinet.¹⁴

But, the Swiss analogy, we suggest, is not conclusive; for, besides the greater political experience and the more developed national sense of the Swiss, the composite cabinet in Switzerland is based on a system of joint electorates for the legislature, which fosters a sense of give and take. Unless, therefore, this also can be introduced in India, one cannot be sure that the experiment of Composite Cabinets will succeed. The experience of the working of the National Government in Britain from 1930 (the nearest analogy to what is in this country called Composite Cabinets) is not also very favourable. "That Government," says a careful observer,¹⁵ "had the lie in the soul from the beginning. It was founded in fraud and lived by fraud . . . The very idea of a National Government was thus to undermine and to destroy the effective working of parliamentary democracy in which Government was kept up to the mark by a strong opposition that could be called upon to replace it if things went wrong." Besides, coalition cabinets are admittedly weak. There is opportunity for continuous irritation and disagreement.

If reasonable men, however, behave in a reasonable way, and if a working code of principles is agreed upon before such a composite cabinet is formed, there should be no insuperable difficulty in giving the system a trial to win over minority opinion. But one essential pre-requisite for success is the introduction of joint electorates for the legislature. They stimulate the will to work together in a spirit of give and take not only among the members of the legislature but among the members of the Cabinet.

A Sub-Committee of the Cabinet, a Standing Finance Committee and Advisory Committees.

Other expedients in order to create in the minority communities a sense of confidence in the administration are: a sub-committee of the Cabinet consisting of the heads of the depart-

¹⁴ *The Political Quarterly*, January—March, 1940, p. 4.

¹⁵ A. L. Rowse, *Political Quarterly*, Vol. XI, p. 251.

ments of Education, Local Administration and Finance may be appointed to secure better supervision in just those departments of administration where complaints of minorities have been insistent. To ensure that a due proportion of the revenue is spent for essential minority educational purposes, a standing finance committee (with a due proportion of members from minorities) with advisory powers should prove useful. Above all, a system of advisory committees (including members from minority communities preferably chosen from representative associations) attached to the executive departments of government could well be tried. Such committees should be helpful in bringing about a better correspondence between the view point of the public and the Administration than what exists at the present-day. A capable minister will find that such a Committee enables him to understand the minority point of view better, and also to explain the government's point of view to the interests concerned. As Sir Arthur Salter puts it, "Modern government often involves action affecting the interests and requiring the goodwill either of large sections of the community as a whole. The action cannot be made acceptable without detailed explanation of this necessity, for which mere announcements in the press are insufficient. In such cases, the prior explanation and the assent of the committees of representative men, who, if convinced, will carry the assent of the several sections of the community who look to them as leaders, will be of the greatest possible value."

B

Communal Representation in Public Services.

So far we have considered the means of protecting the minorities in the enjoyment of the civil rights, common to all, against possible invasion by an unsympathetic administration. It remains to consider the preferential treatment¹⁶ to minorities called for by their relative backwardness in order to mitigate the effects of unequal competition. Such treatment is called for mainly in respect of recruitment to public services.

The phrase "preferential treatment" needs explanation. The principle of equal treatment to *individuals* would require recruitment on the basis of merit, *viz.*, open competition and maximum efficiency. Where the communities are unequally represented in

¹⁶ The phrase was used by Mr. R. A. Graham, Finance Member to the Government of Madras. See *Proceedings of the Madras Legislative Council*, Vol. 22, p. 616.

the public services and are unequal in their educational development, this may result in inequality to *communities*. Hence the preferential treatment consists in the reservation of a percentage of seats in the services to the various communities, the prescription of lower qualifications in respect of education and age for candidates of the backward communities, and the choice of such candidates provided they satisfy the *minimum* qualifications in preference to those advanced communities with better qualifications. Such discrimination in favour of minorities is not followed in European Constitutions. The clause usually inserted in these Constitutions is to the effect that differences of race, language or religion shall not prejudice any (*e.g.*, Polish) national in admission to public employments. The Indian Central and Provincial governments have gone further and rightly admitted the necessity for special treatment:—

Thus the Government of India have laid down¹⁷ that twenty-five per cent of all vacancies to be filled by direct recruitment of Indians will be reserved for Muslims and eight and one-third per cent for other minority communities. Should Muslims and other minorities fail to secure less than their prescribed percentages in open competition, these percentages will be secured to them by means of nomination.

In Madras, the communal rule¹⁸ (dating from August 15, 1922) has been in operation for a much longer time, than under the Central Government. It also goes into further details. Under it appointments to the public services are made from the main communities in a certain order¹⁹ (*viz.*, communal rotation) or from members of the particular community which is least represented in the service, class, or category at the time the

¹⁷ Rules made in pursuance of their resolution of July 4, 1934; see Note A for details.

¹⁸ General rule, 7, The Madras Services Manual, Vol. II, pp. 68—70.

¹⁹ One Non-Brahman (Hindu) One member of the Scheduled classes.
 One Muhammadan
 One Non-Brahman (Hindu) One Non-Brahman (Hindu).
 One Anglo-Indian or One Muhammadan.
 Christian or Non-Asiatic One Non-Brahman (Hindu).
 One Brahman One Anglo-Indian or Chris-
 One Non-Brahman (Hindu) tian or non-Asiatic.
 One Brahmin.

appointments are made²⁰ (*viz.*, communal proportion). Under the former method, if a qualified and suitable candidate belonging to any community is not available for appointment in the turn allotted to that community, a candidate belonging to the community next in the order of rotation should be appointed; but the former community will have a preferential claim for consideration when any subsequent appointment is to be made until a suitable and qualified candidate belonging to that community has been appointed against that claim. Under the communal proportion method the community which is least represented at the time of appointment should get the appointment. But if a member of that community is not available, a candidate from the community which is next in the order of disadvantage should be appointed. When an appointment has to be made the next time, the former community will still be least represented and the appointment should go to a member of that community. The lost turns of a particular community do not therefore lapse under either method.

The principle of communal representation in the services hardly needs any defence at the present time. Its *raison d'être* is the unequal cultural development of the communities in the state. It is based on the view that the efficiency of the public services is a function not merely of the qualifications of the entrants thereto but of the social harmony in the body politic, served by them. And such harmony can be secured only by the fair representation of the various communities in the services through reservation and the like. The principle, however, works under certain healthy safeguards, which it will be unwise to depart from:—

- (i) To secure fair efficiency, a minimum qualification is imposed.
- (ii) Communal considerations should not affect promotion. Where a senior finds a junior promoted over him merely because he belonged to another community, there will be discontent within the service. It would involve going a long way on the

²⁰ Non-Brahmin Hindus—Five out of twelve.

Brahmins—Two out of twelve.

Muhammedans—two out of twelve.

Anglo-Indians, Christians and Non-Asiatics—two out of twelve.

Scheduled classes—One out of twelve.

road of dividing the service by communities and “a body which is divided against itself cannot have that loyalty and *esprit-de-corps* which are so vital in public service.”

- (iii) Communalism in compartments is undesirable, *i.e.*, the principle of communal representation should not be applied to sub-communities or to grades having a small number of appointments. Thus the Madras communal rule recognises the Non-Brahmin Hindu and the Brahmin as separate communities for purposes of recruitment; to recognise further sub-divisions among them would be to increase sectionalism. Similarly, it is one thing to apply the rule to an entire department such as the Agricultural service, but to apply it to the sub-sections within that department, *e.g.*, Agricultural Supervisors, Mechanics, Draftsmen and Fieldmen would not only be difficult but undesirable. The smaller the number of personnel to whom the rule applies, the greater the occasion to round off fractions up or down and such rounding off results in injustice to one community or another.

NOTE A.—*Rules made by the Government of India in respect of communal representation in the Public Services:*

- (i) 25 per cent of all vacancies to be filled by direct recruitment of Indians will be reserved for Muslims, 8 and one-third per cent for other minority communities.
- (ii) When recruitment is made by open competition, if Muslims or other minority communities obtain less than these percentages, these percentages will be secured to them by means of nomination. If, however, Muslims obtain more than their reserved percentage in open competition, no reduction will be made in the percentage reserved for other minorities, while if the other minorities obtain more than their reserved percentage in open competition, no reduction will be made in the percentage reserved for Muslims.
- (iii) If members of the other minority communities obtain less than their reserved percentage in open

competition, and if duly qualified candidates are not available for nomination, the residue of 8 and one-third percent will be available for Muslims.

- (iv) The percentage of 8 and one-third reserved for the other minorities will not be distributed among them in any fixed proportion.
- (v) In all cases a minimum standard of qualification will be imposed, and the reservations are subject to this condition.
- (vi) In order to secure fair representation for the Depressed class, duly qualified members of this class may be nominated to the public service even though recruitment to this service is being made by competition. Members of this class, if appointed by nomination, will not count against the percentages reserved in accordance with clause (i) above.

THE REFORMED CONSTITUTION OF THE HYDERABAD STATE*

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(1)

In his learned paper on "The Evolution of the Legislature in Hyderabad" read at the last session of the Indian Political Science Conference,¹ Professor H. K. Sherwani of the Osmania University put forward the view that the reforms introduced into the State in 1939 formed "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," that they obviated the short-comings of the graft of a purely European democracy to Indian conditions, that they constituted a great step forward in the matter of representation, composition and powers of the Legislative Assembly" and that in certain respects they could even serve as a pointer to British India.³ The implications of this view are that the reforms are democratic in their nature, that there is a type of democracy specifically European in character and therefore unsuited to Indian conditions, that the type devised for Hyderabad possesses certain novel features to which there is no parallel in the democracies of the West and that this is the type of democracy that deserves to be extended to the rest of India. As it appears that the term 'democracy' has been used by the learned professor in a rather loose sense, it is proposed to examine his view and, incidentally, to describe the real nature of the reforms.

It may be noted at the outset that according to him there are three remarkable features which give a uniqueness to the reforms under consideration. The first is the division of the state into a series of economic rather than geographical consti-

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

¹ *The Indian Journal of Political Science*, Vol. I, No. 4, p. 424 ff.

² *Ibid.*, p. 431-2.

³ *Ibid.*, p. 438.

which our constitution rests, and has to be preserved.”¹⁰ So long as this principle is taken as the basic foundation of the constitution it is not possible to raise any democratic super-structure—European or non-European—on it. The view that the hereditary ruler of the state is a more direct, natural and permanent representative of the people than those specifically elected by them is in entire conflict with the elementary notions of democracy. It is more in consonance with the theory of Divine Right upheld by the European monarchs of the seventeenth and the eighteenth centuries, with the theory of virtual representation and the whig trusteeship put forward by Edmund Burke, and with the metaphysical theory of Hegel that the state is a self-conscious ethical substance of which the monarch is the external symbol.

Democracy is government by consultation, conference and discussion and it works only where there is freedom for the organisation of political associations and parties and for criticising the actions of government on the platform and in the press. As one eminent writer¹¹ has put it, “The emergence of constitutional government, and in particular the crystallization of the systems of popular representation as we know them, are inextricably inter-woven with the growth of the modern press. Without it constitutional government is unimaginable.” The truth of all this is recognised by the Reforms Committee which described¹² the Press and the Platform as “safety valves of public life, the closure of which often develops the Canker of discontent in the body politic.” But the recommendations which it has made for guaranteeing freedom in these matters are of a halting and inconclusive character. The Executive Council has also not gone very much beyond these recommendations. Conveners of public meetings have still to give previous intimation to the competent authority which is empowered to prohibit them. A new press regulation more or less on the same lines as the legislation in British India and suitably adapted to local conditions has been promised.¹³

One should also hesitate to speak of the reforms as democratic when one finds the representation of specific economic and industrial interests (the one unique feature of the new

¹⁰ R.C.R., p. 7-8.

¹¹ C. J. Friedrich: *Constitutional Government and Politics*, p. 424.

¹² R.C.R., p. 23.

¹³ *Arzdasht*, p. 11.

constitution) advocated and defended by the Reforms Committee¹⁴ on the ground that, “this is the trend of the modern progressive thought on which rests the theory of the corporative state.” Economically Hyderabad is not highly advanced. There has not as yet been any effort of a voluntary and spontaneous character on the part of the different economic groups—peasants, agricultural workers, industrial labour etc., to organise themselves into associations to safeguard their interests through collective action. In such a situation the introduction of the principles of corporative state will certainly result in economic organisations being started under governmental auspices and completely bureaucratized.¹⁵ This is of the essence of corporativism as it has manifested itself in Italy, the land of its birth. It is the economic basis of the Fascist State. And any one with the least acquaintance with Fascism can easily understand how wide a gulf separates it from democracy. One really has to ask oneself whether in the reformed constitution of Hyderabad one does not find the germs of the Fascist State.

(3)

The assumption made by many students of politics in India—and Professor Sherwani is typical of them—that there is a type of democracy specially European in character and therefore unsuited to Indian conditions is an entirely mistaken one. The mistake is the outcome of the failure to distinguish between democracy as an ideal and democracy as a group of institutions which are the instruments for achieving the ideal.¹⁶ As an ideal democracy stands for responsible government and for an equal right of all men and women in a community to a share in the benefits of civilised life. It is opposed to the view that the rulers have an inherent or a Divine right to rule, that in what they do or fail to do they are only responsible to their conscience or to God and not to their people. It is also opposed to the view that the blessings of a civilized life like security from external and internal violence, adequate wealth and leisure, health and education should be the monopoly of only a few privileged classes

¹⁴ R.C.R., p. 54.

¹⁵ C. J. Friedrich, *Op. cit.*, p. 463.

G. D. H. Cole: *Some relations between Political and Economic theory*.

¹⁶ C. Delisle Burns: *Democracy* (Home University Library), p. 41—43.

and that the rest should only toil for the advantage and the happiness of these classes. It declares that it is not enough that rulers have good intentions but that they should by their work produce results in terms of the welfare of each and every individual irrespective of his race, language or religion. There is nothing specially European about democracy as an ideal. It is of universal validity and deserves to be realised as effectively in one country as in another. If the reformed constitution of Hyderabad is to be considered democratic, it should be only with reference to this ideal. Judged by this test it has no claim to be so considered. It has not recognised the principle of responsible government and it has not conceived the need for a new social order based on the abolition of the privileged classes like the Nobles, the *Jagirdars* and the *Maashdars*.

No elaborate argument is required to show that there is no uniform or standardized type of political institutions in all the democratic countries of the West deserving to be labelled as European. There is a large variety in the machinery of democratic government. In respect of systems of representation, the Status and powers of the second chambers, the relation of the executive and the legislature, the place of the judiciary, the organisation of the civil service, the degree of decentralisation and local self-government and the extent to which representative advisory and consultative bodies are used—in these and in various other matters which go to determine the real nature of the political and administrative machinery employed in a state no two democratic countries are exactly similar, and there is nothing therefore which should be styled as European democracy. Moreover the forms of democratic government have been undergoing change from time to time in accordance with the changing needs and circumstances of each state. The position of the Cabinet in England to-day or of the President in the United States is quite different from what it was a quarter of century ago. The Civil Service also occupies a quite different position. The relations between central and local authorities have also undergone a great transformation in all democracies. The fact is that there is no rigidity in democratic machinery. Like life itself it is experimental in its outlook and character. Whatever success it has so far achieved or it might achieve in future is due to its flexibility and adjustability. It is not wedded to unicameralism or bicameralism; it does not ignore the utility of functional representation for certain purposes. It is therefore unscientific to speak of a standardised form of European democracy and of the shortcomings of its graft to Indian conditions.

It is in the light of these considerations that one has to form an estimate of the significance of what Professor Sherwani calls the remarkable achievements of the Hyderabad reforms—their unicameralism and the economic basis of representation. Bicameralism is not now regarded as an essential part of democratic machinery in the sense in which it was advocated in the eighteenth and the nineteenth centuries. There has been a complete change from the view as represented by the *Federalist*¹⁷ to that as represented by Professor Laski,¹⁸ an ardent advocate of unicameralism. In the majority of democratic states second chambers have gradually been losing their power and influence—the only important exception being the senate of the United States. Moreover, those who still support the institution of a second chamber do so on the ground that the large power usually vested in the lower house should be checked by an upper house. This ground is not applicable to Hyderabad. In the first place the unicameral legislature does not possess any real authority which requires to be checked by a second chamber. In the second place it is so constituted that the elements and interests which serve as a check against the rashness of a lower house in the democratic states are effectively and more than adequately represented on it. The holders of *Samsthans*, the *Jagirdars*, the *Maashdars*, the agents of the *Ilaquas*, and the large numbers of nominated officials and non-officials together with the members of the Executive Council constitute a formidable block to check the power of the elected element so much so that there is very little left for a second chamber to accomplish. Under these circumstances the unicameralism of the constitution is of no significance.

One is forced to draw a similar conclusion regarding the claim that by constituting the legislature on the basis of economic rather than territorial interests Hyderabad has made history. In the first place, the Assembly is not constituted wholly on that basis. It is not known exactly what economic interests are represented by the four holders of *Samsthans* and *Jagirdars*, the two *Maashdars*, the two graduates and the six members representing the District Boards, the District municipalities and the Hyderabad Municipal Corporation. Thus out of the forty-two elected members fourteen may be said to represent no economic interest—if by an economic interest one is to understand a group of producers of economic goods. In the second place, there is a large nominated element which does not represent any economic

¹⁷ *The Federalist*: Essays LXII and LXIII.

¹⁸ Laski, H. J.: *Grammar of Politics*.

interests as such. And it follows from these two features that it is not likely that legislation undertaken by the Assembly, the resolutions discussed in it and the other kinds of business transacted by it will be based on a consideration of the interests of the main economic groups in the State. In the third place, there is no support for the view that in introducing an element of functional representation Hyderabad has done something that is novel or unprecedented. The Executive Council has taken a saner view of the matter and expressed itself as follows¹⁹: "Outside India, the experiment is not new; in India itself, the constitutions of British India and of some states provide partly and in the case of certain interests for a similar basis." In the legislatures in British India as they evolved during the last fifty years, provision has always been made for the representation of interests like chambers of commerce, Landholders, Planters, etc.,²⁰ and Hyderabad has only enlarged on this precedent. In all the democratic states of Europe, councils and chambers constituted on a functional and economic basis have in recent times formed an integral part of their governmental machinery.²¹ The German Economic Council under the Weimar Republic, the French Economic Council, the British Economic Advisory Council, and similar councils in Czechoslovakia and other states of Europe demonstrate quite clearly that the need for functional representation has been realised. And when one keeps in mind that much of the legislation to-day is undertaken not by parliaments but by administrative departments and that bodies representative of the concerned interests are invariably attached to these departments—there are ninety-seven such permanent advisory committees in England to-day²²—one should hesitate a great deal before ascribing any novelty to the system inaugurated in Hyderabad. After a survey of the part played by Interest Groups in the modern State Professor C. J. Friedrich has rightly come to the conclusion that wherever we turn, functional representative devices are forging ahead as decisive elements in any representative scheme under modern industrial conditions.²³

¹⁹ *Arzdasht*: page 7.

²⁰ Montagu-Chelmsford Report on Indian Constitutional Reforms, p. 49-50.

²¹ H. Finer: *Theory and Practice of Modern Government*, p. 888 ff.

²² John A. Perkins: *American Political Science Review*, February, 1940, p. 85-96.

²³ *Op. cit.*, p. 472.

Professor Sherwani has not made clear any where what those conditions and circumstances peculiar to Hyderabad are which necessitate a departure from what he calls European democracy and the setting up of a democratic legislature on a functional basis. It is true that the Reforms Committee went into this subject in accordance with the first portion of the terms of reference. But it has not succeeded in establishing any kind of connection between its analysis of "The conditions in and the requirements and circumstances of the State" in Part I of its report and the functional representation which it recommended in the second Part. The only features characteristic of Hyderabad to-day²⁴—according to the Report—are the comparative illiteracy of the people in spite of the increasing expenditure on education; a general awakening throughout the Dominions manifesting itself in the convening of conferences, the formation of societies and journalistic activities; an awakening among women; an increase of expenditure on the construction of roads, railways, bus service, telephone, radio and electricity; and the impact of the outside world on the people of the State. These are features which are characteristic of almost every part of India and no inference can be drawn from them as to what type of popular participation in the government of the State is desirable under these circumstances. One or two other points also deserve consideration in this connection. It is one thing to have councils and parliaments organised on a functional basis if they are mainly to be advisory and consultative; it is quite a different thing to have legislative bodies with final authority to make laws constructed on the same pattern.²⁵ Pure functional representation for legislative purposes is found to-day in U.S.S.R. and Italy. These legislatures are able to function in spite of the diversity of interests of the different economic groups represented on them primarily because the power of ultimate decision is not in their hands but in those of the dictatorial parties—the communists and the fascists—which control and co-ordinate all activities in the State. But for this kind of party dictatorship functional representation would have created such a large amount of friction making community-living wholly impossible. Similarly, in Hyderabad a functionally organised legislature will not create disturbance so long as it continues to be an advisory body—as is the case with it at

²⁴ R. C. R.: p. 9-17.

²⁵ This distinction is admirably brought out by Professor E. Pendelton Herring in "*The American Political Science Review*", 1930, p. 439-450.

present—the real authority being wielded by the hereditary Head of the State and his executive Council. But the moment it is contemplated to transfer real powers to it and introduce democracy into the state, a breakdown will have to be faced. The Common interest whose furtherance alone is the object of the State cannot be promoted by a body constructed to represent the diversity of interests in Society. As Professor Finer puts it²⁶ the real difficulty in the management of the State which integrates thousands of different personal, local and syndical interests is not soluble by disintegration and the consequent encouragement of guild conceit and selfishness, but by integration first, and then devolution, legislative and administrative, and always consultation of the associations and localities.

(4)

Unicameralism and functional representation are not the essential features of the scheme of reforms in Hyderabad. Its basic characteristic is the attempt made in it to solve what is generally known as the communal problem; and it solves it by giving equality of representation to the Muslims and the Hindus not merely on the Legislative Assembly but also on all other deliberative bodies like the District Boards, the Municipal Committees and the Village Panchayats. The Muslims form about eleven per cent and the Hindus about eighty-six per cent of the population in the State. In spite of this the number of Hindu representatives are to be exactly the same as that of the Muslim representatives. There are districts, towns and villages where the Muslim population is not even seven or eight per cent, but even there they are to share equal representation with the Hindus on local bodies. And when account is taken of the need to set apart a few seats at least to Christians and Zoroastrians there is the possibility of the Hindus who constitute a large majority of the population becoming a minority on the legislature. There is no precedent for the grant of such a heavy weightage to a minority community as has been given to the Muslims in Hyderabad. There is also another anomaly. While Muslims are treated as a homogeneous community in spite of the existence of acute differences between the Sunnis and the Shias—differences which were recognised²⁷ in some of the previous proposals for constitutional reform—the distinction between caste Hindus, Harijans,

²⁶ *Op. cit.*, p. 908.

²⁷ R.C.R. chart on p. 37.

Depressed classes and Lingayats is raised to the status of a political principle and this distinction is bound to reduce still further the influence of the Hindus on the legislature. A still further anomaly is that the principle of equality between the two communities is not extended to the Executive Council and the Civil Services where the Muslims enjoy an extraordinarily preponderant share. The Firman of the Nizam²⁸ issued in connection with the reformed constitution refers to Hyderabad as a Muslim State, and the Scheme of representation it provides for results in the perpetuation of the ascendancy of the Muslim inhabitants who form a sort of privileged community in the State. This is the Central feature of the new constitution.

In support of this position the only argument that has been put forward is: "The importance of the Muslim community in the State, by virtue of its historical position and its Status in the body politic is so obvious (?) that it cannot be reduced to the Status of a minority in the Assembly."²⁹ This only means to say that because the community has for so long been in enjoyment of a privileged position it should continue to do so for all time. Here is a claim which is not based on justice or fairness.

Long ago, Hamilton, that master of political wisdom with his deep insight into realities of government, expressed himself thus in respect of the claim for equality made by the individual states of the American confederation even though they differed from each other in point of population:³⁰ "Every idea of proportion and every rule of fair representation conspires to condemn a principle, which gives to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New York; and to Delaware an equal voice in the national deliberations with Pennsylvania, or Virginia, or North Carolina. Its operation contradicts the fundamental maxim of republican government, which requires that the sense of the majority should prevail. Sophists may reply, that sovereigns are equal, and that a majority of the votes of the states will be a majority of confederated America. But this kind of logical legerdemain will never counteract the plain suggestions of justice and common sense. It may happen that his majority of States is a small minority of the people of America, and two-thirds of the people of America could not long be persuaded, upon the credit of artificial distinctions and syllogistic subtleties, to submit their interests to the

²⁸ *Firman*, p. 4.

²⁹ *Arzdasht*, p. 4.

³⁰ *The Federalist*; *Op. cit.*; Essay XXII.

management and disposal of one third." It is this false doctrine of group equality that lay at the basis of the theory of concurrent majority put forward by Calhoun³¹ with its advocacy of nullification and secession, and drove the American States to a civil war among themselves. And it is also the doctrine which was responsible for that equal representation of the English Upper Canada and the French Lower Canada on the Canadian Legislature before 1867 which led to the ultimate breakdown of constitutional government in that country.³² One should not commit the mistake of thinking that the problem as to how different religious and linguistic groups inhabiting the same state should be enabled to learn the habits of peaceful living is peculiar to India and that other countries have not been faced by a similar situation or that we are capable of suggesting novel solutions for it. Both as a warning and as a guide, the history of other countries has great lessons to teach us in this connection.

In our habit of talking in terms of groups and communities we are apt to forget that what we have to be really interested in is the welfare and happiness of individual men and women. There are no interests of communities apart from those of the members constituting them. Viewed in this perspective, Communal equality and weightage imply undue advantages to certain individuals and undue suffering to others. An individual is denied opportunities of serving the State as a legislator, an administrator or as a civil servant or as a member of the fighting forces not because he is not qualified for it but because of his following a particular faith. Persons with greater skill and capacity are relegated to inferior positions because of the community to which they belong, thus creating in the minds of a large number a sense of frustration and disappointment leading to violent popular outbreaks and revolutions.³³ Similarly, the goods which can only be provided through the instrumentality of the State are distributed among individuals not according to their needs but to the accident of their membership in this or that community. The hunger of a Muslim or his ignorance is considered to deserve relief more than that of a Hindu or a Christian. It is this fact that weightage in the exercise of power leads to weightage in the enjoyment of the benefits arising from state action that constitutes the injustice of all systems of communal representation like that of Hyderabad.

³¹ J. Mark Jacobson: *The Development of American Political Thought*, p. 437 ff.

³² R. G. Trotter: *Canadian Federation*, Chapter V.

³³ Pitirim Sorokin: *The Sociology of Revolution*,

The injustice is not very much mitigated by the provision that representatives should be elected in joint and not separate electorates as is the case in British India. The reality of representation depends on the freedom of the electorate to choose the candidate considered best fitted in its opinion; and such freedom is absent when the voters are called on to elect only Hindus or Muslims. Much also of the virtue of functional representation which has been considered as the cardinal feature of the reformed constitution is lost when each interest has to distribute its choice equally between Muslims and Hindus. A candidate who can better represent the interests will have to be ignored if his choice results in the election of more Hindus or more Muslims than what is permitted in the constitution. This restriction of choice leads to another anomaly. In no case is it open to an economic interest like Commerce, Industries, Banking, etc., to elect a Christian or a Zoroastrian or any one else who is not a Hindu or Muslim even though he happens to occupy the leading position in the particular economic groups. One is reminded in this connection of the observation made by an eminent scholar that the wisest way of abolishing a parliament is to let it stand, but to fill it with your own trusted nominees.³⁴

(5)

No real change or reform in the Constitution of a State is possible unless a new constituent power comes into existence. By a constituent power is meant that body or group of people within the State who possess the effective power to make a constitution for it and operate it against all opposition. It is upon the character and the views of that body that the nature of the Constitution depends. History shows that it is only when owing to changes in the economic or the social structure of a people, new groups emerge with sufficient strength to bring pressure to bear on existing governments, dictate to them and thus become the constituent power in the State, new constitutions come into effect reflecting the views of the emerging groups. Every constitution embodies the principles according to which political power is organised and used in a given state; and a reform of the constitution means a change in these principles. It therefore involves a new alignment of power in the community. No change which does not involve a fresh arrangement or distribution of power deserves to be called a constitutional change. This is the reason why charters and reforms voluntarily granted by rulers and

³⁴ H. Finer: *Mussolini's Italy*, p. 256.

governments do not really result in constitutional changes. No one will voluntarily agree to a reduction in one's authority. The case is different when owing to the emergence of a new politically conscious group governments are compelled to grant new constitutions. It is in this way that dynastic states of Europe became transformed into middle class democracies; and it is the rise of the proletariat that is transforming the latter into mass democracies.

This explains why the Hyderabad reforms have not brought about any changes of a constitutional character. Power is now located in the same persons in whom it was located before the introduction of reforms. No new Constituent power has as yet arisen in the State. While the Nizam has the formal constituent power in his hands, the real constituent power is the British Crown. It alone has the authority to determine what should be the character of the constitutions governing the Indian States. It is one of the incidents of Paramountcy. It sets a limit to the kind of reforms that the Head of an Indian State might introduce. This is the conclusion—and no other conclusion is possible—arrived at by the Mysore Committee³⁵ on Constitutional Reform (1939). There is no ground for thinking that the position of Hyderabad in relation to the paramount power is in this respect different from that of Mysore or any other Indian State. All doubts in this regard were set at rest by the letter of Lord Reading as Viceroy³⁶ to the Nizam in 1926. The constituent power—therefore in respect of Indian States now rests with the British Crown. It does not favour the introduction of a real democratic government into British India and it will not look with favour at such a step being taken in Hyderabad. The conclusion to be drawn from this is that any real constitutional development in the Indian States is intimately connected with the progress of events in British India. Nothing is more unrealistic than the attempt to frame constitutions for individual States irrespective of what is happening in the rest of the country. The fortunes of democracy in Hyderabad are closely bound with its fortunes in British India; and one has to wait for the rise of a new Constituent power different from the British Crown if there is to be a reformed Constitution any where in the country.

³⁵ Report, p. 70—74.

³⁶ Report of the Indian States (Butler) Committee; Appendix II.

THE COMPACT THEORY OF THE CANADIAN CONSTITUTION

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The theory that the Constitution of the Dominion of Canada is the result of a compact and should be changed only with the unanimous consent of all the parties to that compact cannot be said to be new. It is in a sense as old as the Confederation Debates of 1865. But although it was emphasised in these debates by some of the fathers, it is significant that it was neither accepted as valid by all at the time nor was it acted up to in practice for decades. It is only during the last fifteen years that the theory has enlisted influential and growing support in the country. To-day in fact it has acquired a force which cannot be dismissed with scant courtesy. It has to be reckoned with.

In discussing the circumstances which have stimulated the revival of the compact theory during the last one decade and a half, it is necessary to point out that while the authors of the British North America Act assigned plenary jurisdiction over subjects of local significance to the provinces, they did not provide any ground for these units to pretend that they were by any standard sovereign entities. On the contrary, it is important to remember that by assigning to the Dominion legislature the residuary jurisdiction,¹ by empowering the Dominion Government to turn down provincial legislation² and by vesting in the Dominion Government the right of appointing and dismissing the Lieutenant-Governors,³ the British North America Act gave the provinces only a subordinate status. It is not on this account very surprising that for years the Dominion Government treated the provinces in the same way as a government might treat only the local bodies. But this tendency in Dominion-Provincial relations was first checked and then obliterated by a number of decisions by the Judicial Committee of the British Privy Council, which conferred upon the provinces a widening jurisdiction and an increasing importance.

¹ Section 91.

² Section 90.

³ Sections 58 and 59.

This is not the occasion when an analysis of the different judicial decisions affecting the relations between the Provinces and the Dominion may be attempted. But it may be pointed out here that it was in the Parsons case (decided in 1881) that the separatist attitude of the British Privy Council became first noticeable. Thereafter under the inspiration and leadership of such imperial "statesmen" as Lord Watson and Lord Haldane the Judicial Committee consistently interpreted the British North America Act so as to widen provincial jurisdiction and augment provincial status. As a result of such interpretation of the Canadian constitution for a few decades, its character became insensibly but basically altered. So far-reaching in fact has been the effect of the decisions of the Privy Council that the Hon'ble C. H. Cahan, a former Minister of Justice of Canada, was constrained to observe in the Dominion House of Commons in 1938 that these decisions "have so far frustrated the intentions of the founders of the Canadian confederacy as to obliterate the residual power of the parliament of the dominion 'to make laws for the peace, order and good government of Canada,' except in the extreme case of civil strife or insurrection arising in Canada, or in the case of Canada being involved in war with a foreign state."⁴

Now as the powers of the provinces were widened and their status largely augmented, it was but inevitable that they would gradually develop the pretensions of sovereign entities. But if they were to pass even as quasi-sovereign bodies, it was certainly essential for them to emphasise that the British North America Act was the result of a treaty, arrived at by sovereign bodies and unalterable except by mutual agreement and unanimous consent. In other words the interests of the new status of the provinces demanded that the Canadian constitution should be treated as the work of a compact. Without such a character being given to the British North America Act the provinces could not demand a voice in the amendment and alteration of the Constitution and without securing such a voice they could not maintain the balance of power between themselves and the Dominion Government, as it has been created, not by the B.N.A. Act but by the Judicial Committee of the British Privy Council. So the separatist interpretation of the B.N.A. Act by this imperial body made inevitable the revival of the compact theory.

While the Privy Council decisions prepared the ground and created the atmosphere for the revival of the compact theory, the

immediate cause for such a revival was supplied by the new status which was conferred upon the Dominions by the Imperial Conference of 1926. When the Dominions were declared to be of equal and coordinate status with Great Britain in the British Commonwealth, it was pointed out by a large and influential section of Canada that it would be consistent with its new political status if it acquired the right of amending and altering its own constitution in its own way. It was rather derogatory to its equal and independent status in the Commonwealth that the British North America Act embodying the Constitution of Canada could be changed formally by the British Parliament alone. As, however, the demand went forth on behalf of the Dominion to acquire the right of amending or repealing the B.N.A. Act, the champions of provincial interests became alarmed. They emphasised the theory of compact and pointed out that the B.N.A. Act was the result of a treaty which could not be modified except with the unanimous consent of all the parties to the treaty. On this ground, they observed, it was out of the question that the power of amending the British North America Act should be transferred from the Parliament at Westminster to the Parliament at Ottawa.

In the preceding paragraphs have been emphasised the factors and causes responsible for the revival of the theory of compact. We may now proceed to examine and discuss the authenticity of the theory. As hinted at in the introductory paragraph of this paper, no less a person than Sir John Macdonald started this theory in a speech in 1865. Sir John was one of the few Canadian statesmen who helped at the birth of the Canadian Dominion and nursed it in the infant stage of its career. When the Quebec Resolutions were placed before the House of Assembly of Canada in 1865, he made it clear that these Resolutions were either to be accepted *in toto* or rejected outright. It was not open to the Assembly to adopt them in a modified and amended form. The scheme of union embodied in the Resolutions "was in the nature of a treaty settled between the different colonies, each clause of which had been fully discussed, and which had been agreed to by a system of mutual compromise." An opinion similar as this was also expressed by George E. Cartier. He observed that the scheme of union as settled at Quebec "is the same as any other treaty entered into under the British system." But while during the Confederation Debates of 1865 opinions characterising the Quebec scheme as the result of a compact were so authoritatively expressed, it should be borne in mind that such opinions did not go unchallenged even

⁴ House of Commons Debates, Vol. LXXIV—No. 52, p. 2338.

on that occasion. When for instance the great liberal statesman, George Brown, was expatiating on the contractual basis of the scheme, he was interrupted by L. H. Holton who pointed out that the Government of Canada had no right to enter into a compact with the Maritime Provinces regarding the terms of the union. Brown replied that they had full and express powers in this regard. Holton then asked if the Parliament of Great Britain had conferred upon them this power. Brown replied thereupon that the treaty-making power was vested not in the Parliament but in the Crown, and the Crown had authorised them to enter into this compact.

It is now to be seen to what extent George Brown was right when he said that the Crown had authorised the Government of Canada to enter into this compact with the Maritime Provinces. It should of course be pointed out here that even if Brown was absolutely right in regard to the legal powers of the Government to make a contract at Quebec, this would not automatically prove that the British North America Act, 1867 was the result of a compact or a treaty. This Act, as we shall have occasion to see almost immediately, was not exactly based upon the Quebec Resolutions as it has been thought to be. It was only convenience and not the demand of any contract or treaty which made the Quebec Resolutions the basis of discussion at London and it was only accidental that many of the provisions of the Quebec Resolutions (though only *many* and not *all*) were accommodated in the B.N.A. Act.

As for the authority to enter into a compact with one another which was supposed to have been conferred upon the provinces by Her Majesty's Government and to which George Brown had referred with so much conviction and gusto, it was to be found only in a communication which was addressed by the Secretary of State for Colonies (Duke of Newcastle) to the Lieutenant-Governor of Nova Scotia (Earl of Mulgrave) on the 6th of July, 1862. It was on the basis of the authority conveyed by this letter that the Conferences held both at Charlottetown and at Quebec were called. So we should proceed to discuss the nature of authority which the letter conferred upon the governments of the different provinces. "I should have no objection," wrote the Secretary of State, "to any consultation on the subject amongst the leading members of the Governments concerned; but whatever the result of such consultation might be, the most satisfactory mode of testing the opinion of the people of British North America would probably be by means of resolution or address proposed in the Legislature of each Province by its own Govern-

ment." So if the Crown authorised the North American Colonies to do anything in regard to union, it was only to consult one another. It did not authorise them to enter into any treaty or compact with one another regarding the basis of a political union. In view of this fact it cannot be said in any way that the Resolutions which were arrived at in the Conference at Quebec were of the nature of a treaty to be accepted or rejected *in toto*. They were only the first fruits of a consultation among the delegates of the different provincial governments which participated in the Conference. Nothing more.

It has been hinted already in a previous paragraph that even if the Resolutions framed at Quebec were of the nature of a compact, it would not follow that the British North America Act passed in 1867 by the British Parliament embodied a treaty among the provinces. That it did not actually so follow, can be shown best by introducing here a short history of the framing of the Dominion Constitution of Canada. In 1864 British North America was divided into a number of provinces of which Canada (consisting of both Ontario and Quebec) was one and the Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island constituted another bloc. For some time the idea of a union was in the air. The three Maritime Provinces were finding isolated life disadvantageous and regarded a political union necessary for more than one reason. The province of Canada was also suffering from chronic political deadlock and the idea gained ground that its entry into some wider political union was the only way out.

At first the Maritime Provinces thought of a union only among themselves and it was with the object of consulting about the possibilities of such a union that a Conference was called to meet at Charlottetown under the authority of the letter of the Secretary of State for Colonies, which has been already referred to. This Conference met there on the 1st of September, 1864 and was attended not only by the delegates of the Governments of the three Maritime Provinces but also by those appointed by the Government of Canada, which thought that this was an opportunity for a talk about a wider political union, which should not be missed. The Canadian Government asked permission for its delegates to be present in this Conference and participate in its deliberations. The permission was granted and preliminary talks about a union of all the British North American Provinces were held. Thereafter on the 23rd September, 1864 the Governor-General of Canada invited the delegates of the other British colonies in North America to meet the Ministers of Canada at a

Conference to be held at Quebec on and from the 10th of October of the same year. The object of this Conference was "to consider the question of a Union of these Colonies, and to digest a scheme for the practical realization of the idea." It should be repeated that the Governor-General also called this Conference under the authority of the Secretary of State's letter of 1862.

From the 10th to the 28th of October, 1864 the Conference laboured at the hammering of a scheme of union at Quebec. By the latter date its work was finished and seventy-two Resolutions embodying the scheme were adopted. One stage of the work was thus concluded. The next stage was the approach to be made to the legislatures of the different colonies so that they might approve of the scheme of union as contained in the Quebec Resolutions and adopt an address to the Crown for framing a bill on the basis of these Resolutions. It should be remembered in this connection that the Secretary of State's letter under the authority of which the Quebec Conference had been called, made the approach to and approval of the legislatures an essential and even a compulsory step. The actual words of the Duke of Newcastle may bear repetition. "I should see no objection to any consultation on the subject amongst the leading members of the Governments concerned;" he observed, "but whatever the result of such consultation might be, the most satisfactory mode of testing the opinion of the people of British North America would probably be by means of resolution or address, proposed in the Legislature of each Province by its own Government."

Five Provinces including Newfoundland had participated in the Conference at Quebec. But of the legislatures of these five colonies, it was only the Canadian legislature which acted up to the condition laid down by the Secretary of State. The Canadian Government moved an address to Her Majesty in both the House of Assembly and the Legislative Council to the effect that she might cause a measure to be submitted to the Imperial Parliament on the basis of the Resolutions adopted at Quebec. The Legislative Council adopted this address on the 20th of February, 1865 and the Assembly adopted it on the 11th of following March. Circumstances in the other colonies proved unfavourable to the adoption of a similar address by their legislatures. So the Quebec Resolutions could not have the sanction of the colonial legislatures except in one isolated case and could not on that account be the formal basis of an enactment by the Parliament at Westminster.

When the method advocated by the Duke of Newcastle in his

letter of 1862 practically fell through, it became necessary to devise another procedure by means of which Her Majesty's Government might be properly advised as to the provisions of a bill which might be introduced in the British Parliament for uniting the different North American colonies. So far as Prince Edward Island and Newfoundland were concerned, they preferred to remain out of the picture. They were unwilling to join any union. In New Brunswick and Nova Scotia also there was stalemate for a year during which no step could be taken in the direction of a political union. Towards the middle of 1866, however, the situation in these provinces improved and it was at this time that a new method of advising the Imperial Government regarding the project of a union was adopted. On the 10th April, 1866 a Resolution was carried in both the houses of the legislature of Nova Scotia, authorising the Lieutenant-Governor to appoint delegates who would, in conjunction with the delegates of other provinces, arrange with the Imperial Government a scheme of union. More than two months later on the 26th of June, 1866, a similar Resolution was also adopted by the newly elected House of Assembly of New Brunswick. The delegates of the two provinces were duly appointed and they proceeded to London in July of the same year. It was not, however, till the end of November that the delegates from Canada arrived in that city, and it was only on the 4th of the following month that the delegates of the three provinces could for the first time lay their heads together.

They met in a conference from the 4th to the 24th of December, 1866 under the chairmanship of Sir John Macdonald, the Attorney-General and a delegate of the province of Canada. Their object was to frame a bill for the establishment of a union of British North American provinces. It should be remembered that these delegates in framing this bill had not been commissioned by their Governments to make the Quebec Resolutions the basis of their discussion and decision. The terms of their appointment left them free to start their discussion on any basis. It was convenience only which prompted them to begin their work on the basis of the Quebec Resolutions. The Quebec Conference had done substantial spade-work and it would have been unwise to ignore it. So the London Conference proceeded to chalk out their proposals in the light of the Quebec Resolutions. But as the drafts were altered, deviations from these Resolutions became increasingly noticeable. On the 24th December the Conference was ready with a report which was submitted to the Colonial Secretary two days later.

The task of the delegates was not finished and their occupation was not gone with the submission of their proposals to the Secretary of State. They had now to meet under the chairmanship of the Secretary of State himself to discuss the bill framed by the Government draftsman on the basis of their proposals. In course of the discussions which now took place, changes were introduced in the bill and in order to accommodate these changes new drafts had to be made. It was only the seventh draft which was finally adopted and introduced in Parliament. So as the London Resolutions, adopted by the delegates of Canada, Nova Scotia and New Brunswick under the chairmanship of Sir John Macdonald, differed largely from the Quebec Resolutions, similarly, the provisions of the Bill which with little alteration became the B.N.A. Act differed to a great extent from the London Resolutions. It need not be emphasised, therefore, that the fathers had travelled far from the Quebec Resolutions in fixing the Dominion Constitution of Canada.

From the short history given above it should be clear that the British North America Act, 1867 should not only not be identified with the Quebec Resolutions but it should not also be regarded as directly derived from these Resolutions. In the first place we should remember that the delegates sent to London in 1866 were commissioned to act not on the basis of, but irrespective of, the decisions made at Quebec. And it should be repeated that only out of convenience and not out of legal or for the matter of that any formal compulsion these Resolutions were made the basis of discussion. So from this standpoint the B.N.A. Act could not be said to be the result of a treaty, even if the Quebec Resolutions were a treaty. Secondly, the Quebec Resolutions were diluted into London Resolutions and the latter were diluted into the B.N.A. Act and in course of such double dilution so many changes were introduced that it will be only far-fetched to regard the B.N.A. Act as having the same character as the Quebec Resolutions.

Next we are to see if the methods adopted in amending the B.N.A. Act would suggest that it was the result of a treaty and should be taken as embodying a compact. It should be known that while the British North America Act provides for the amendment of the provincial constitutions (except in regard to the office of the Lieutenant-Governor) by the provinces themselves, it does not provide for the Dominion constitution being amended by the Dominion itself. In the absence of such a provision the B.N.A. Act as a statute of the British Parliament can be formally amended by this body alone. It was, however, recognised from the

beginning that the Parliament at Westminster would exercise this formal right only according to the desires and demands of the Dominion. The question now was as to how these desires and demands were to be made known to the Westminster Parliament. If it could be shown that on all the occasions that the B.N.A. Act was amended it was so done on the joint demands of the different provinces, then certainly it would be established that the B.N.A. Act was really the result of a treaty. But the precedents appear to be completely otherwise.

In 1871 the British North America Act was amended by the Westminster Parliament, the object in view being the settlement of doubts as to the competence of the Canadian Parliament to establish new provinces out of the western territories. This amendment was undertaken by the British Parliament at the instance of the Dominion Government alone. Not only the provinces were not consulted and their consent obtained but the Canadian Parliament also was not called upon to move an address to the Crown to this effect. This procedure was objected to by this Parliament and a resolution was adopted by the Canadian House of Commons to the effect that no change in the provisions of the B.N.A. Act "should be sought by the Executive Government without the previous assent of the Parliament of this Dominion." Another resolution which had been moved in the House and which provided that no alteration in the principles of representation in the House of Commons without the consent of the several provinces should be undertaken was turned down without a debate.

Four years later in 1875 the B.N.A. Act was again amended in order that doubts as to the powers of the Parliament under section 18 might be settled. This amendment was also undertaken by the Westminster Parliament at the request of the Canadian Government. There was again opposition in the House of Commons to the procedure which the Government had followed. But the latter defended itself on the ground that as the principle underlying the amendment had already been approved of by the Parliament, the Executive Government did not think further necessary to refer the matter to this body. Then we have to refer to the amendment adopted in 1886. It empowered the Canadian Parliament to provide for representation of *territories* in the Senate and the House of Commons. Now if the B.N.A. Act was a compact, such a compact was certainly being modified by this modification in the representation in Parliament. But the provinces did not demand to be consulted on this occasion. Nor was their advice sought and their consent obtained. The British

Parliament amended the B.N.A. Act in accordance with an address adopted by the Canadian Senate and House of Commons.

Four other amendments may be referred to. Of these the amendment adopted in 1907 may be reserved for a detailed consideration. As for the other three adopted in 1915, 1916 and 1930, the procedure followed was that the British Parliament passed the Amendment Acts in accordance with joint addresses from the Canadian Senate and House of Commons. The amendment of 1915 was intended to increase the number of Senators and alter the main senatorial divisions. This was a subject in which the provinces were certainly interested and a suggestion was actually made that the provinces should be consulted. But this suggestion was ignored and the provinces had no opportunity of expressing any views.

Now let us consider the amendment of 1907. This was of some significance in view of its repercussions upon the theory of compact. The procedure adopted in this case might lend some support to the protagonists of this theory. It is on this ground that we have reserved it for some detailed examination. Section 118 of the B.N.A. Act provided for the grant of a subsidy to the provinces by the Dominion Government "in full settlement of all future demands." But the subsidy provided for in the Constitution Act did not prove equal to the needs of the provinces. It had to be increased in individual cases by Dominion statutes. But still the question of subsidy was not satisfactorily solved, and in 1887, 1902 and 1907 were held inter-provincial conferences in which some resolutions were adopted on this subject. Meanwhile the Dominion Government became anxious to make a final arrangement in respect of the subsidies to the provinces. It thought that if section 118 of the B.N.A. Act was amended on this basis it would not be open to the provinces to make further demands. Accordingly on the basis of the resolutions passed at the conferences which have been referred to already the Senate and the House of Commons adopted an address to the Crown and in accordance with that address the British Parliament proceeded to amend the B.N.A. Act.

At this moment the Premier of the province of British Columbia protested against the subsidy arrangement which was the subject of the proposed constitutional amendment and which had been found to be inadequate so far as British Columbia was concerned. One of the arguments he advanced against the adoption of the amendment was that it would violate the terms of agreement entered upon by the contracting provinces in 1867. Section 118 was certainly in his opinion the result of an agree-

ment among the provinces but now this section was being amended on the address of the two houses of the Dominion legislature alone. The protest entered by the Premier of British Columbia proved however to be unavailing. It was pointed out on behalf of the Colonial Secretary that he appreciated the force of the argument that the B.N.A. Act was the result of an agreement. But the present amendment had the support not merely of the Dominion Government but also of all the provinces except British Columbia. It would not be in the interests of Canada that for the sake of the opposition of one province an amendment desired by the rest of the country should be withheld.⁵

Simply because the address made by the two houses of the Canadian Parliament for the amendment of section 118 of the B.N.A. Act was based upon the resolutions adopted in the provincial conferences, it has been regarded by some as establishing a precedent for the consultation and connivance of the provinces in regard to all amendments. They also point to the fact that the British Colonial office appreciated the force of the argument advanced by the Premier of British Columbia that the B.N.A. Act was the result of an agreement and could be amended also by such agreement. But they ignore the fact that in spite of the opposition of British Columbia the amendment of 1907 was adopted. If the B.N.A. Act was really a treaty, it could be amended only by the unanimous assent of all the parties. But in this instance the opposition of British Columbia proved unavailing. In fact it was only accidental that the address of the two houses of the Parliament was based upon the resolutions of the provincial conferences. It might not have been so as well.

The protagonists of the compact theory found indeed no support in the character of the Quebec Conference and in the relations between the Resolutions which this Conference adopted and the B.N.A. Act which was passed more than two years later. Nor indeed did they find any support for their standpoint in the precedents which had accumulated since 1871 in respect of amending the B.N.A. Act. But they were undeterred by this lack of support. In the twenties and the thirties of this century they proclaimed their view-point without uncertainty and hesitation. They ignored inconvenient facts and declared the British North America Act to be the result of an agreement among the provinces. As for the procedure adopted so far in amending this Act, they

⁵ The facts relating to the amendments are taken from Dr. O. D. Skelton's (Under Secretary of State for External Affairs) evidence before the House of Commons Committee on British North America Act, 1935, pp. 25-46.

evaded it skilfully and ingeniously. They pointed out that the amendments introduced during the last six decades had touched only the non-essentials. They had no relation to those sections of the Act which maintained the balance of power between the provinces and the Dominion. It was unthinkable, they would argue, that an amendment vitally affecting the powers of the provinces should be adopted only on a joint address of the two houses of the Dominion Parliament.

Early in 1925 there was a debate in the Canadian House of Commons on the subject of the amendment of the British North America Act. It should be remembered that although the new status of the Dominions was proclaimed one year later in 1926, the demand for it had existed for some time past. In view of this it was not unnatural that the Canadians would not be contented that their Constitution could be amended only by the British Parliament. They thought it right to discuss if it could be amended by any suitable method in Canada itself. The Hon'ble Mr. Lapointe, the Minister of Justice, however, pointed out that "we cannot ask for power to alter, without the consent of the provinces, the Constitution which is their own Constitution as well as it is ours." He emphasised in course of an elaborate speech that the Canadian federation should be considered as a treaty which could be changed and modified only with the consent of all the parties. He referred to the fact that the provinces could amend their own constitutional mechanism except in respect of the office of the Lieutenant-Governor. "Not so," he observed, "in the case of any of the provisions concerning the federal parliament; and there were reasons for that. If confederation was a pact, an agreement, is it possible for one of the parties of the agreement, or rather for the body which resulted from the agreement, to amend, to alter the conditions of that pact without consulting and without securing the consent of the parties to the original agreement?" The observations of the Minister of Justice were given an enthusiastic and emphatic support by the leader of the opposition, Mr. Arthur Meighen. "Undoubtedly," he said, "the pact of confederation is a contract and there are rights involved therein not represented by the Parliament of Canada."⁶

As the B.N.A. Act was a treaty in the opinion of the Minister of Justice and as the means of its amendment should on this account be devised by the Dominion Government and the provinces together, it was thought expedient to call a Dominion-Provincial

⁶ Relevant portions of the Debate are inserted in O' Connor's Report to the Senate (Annex. 4).

Conference. It met in 1927. The means of amending the Constitution was of course not the only subject considered by this Conference. But it discussed it threadbare. The result was, however, disappointing. So many conflicting opinions were expressed that the Conference ended without suggesting a remedy for the existing deficiency. Two more years passed by. Then in 1929 the Imperial Conference Committee which was constituted to work out details for implementing the declaration of 1926 made certain recommendations. One of these was to the effect that the Dominion Parliaments should be empowered to repeal a British Act so far as it was a part of the law of the Dominions. The publication of this recommendation created a stir in those Canadian circles which had become imbued with the theory of compact. If the Parliament at Ottawa secured the right of repealing all British Acts operating in Canada, it would certainly have the right of amending or repealing the British North America Act as well. That would mean the death-knell of the compact theory. So its champions immediately became active. On the eve of the Imperial Conference of 1930 which was to consider the recommendations of the Committee of 1929 referred to above, Hon. Howard Ferguson, Premier of Ontario, submitted a memorandum to the Dominion Prime Minister in which he enunciated very clearly the compact theory of the Canadian Constitution. This theory, he pointed out, "has its sanction in the fact that the Quebec Resolutions, of which the Act is a transcript, were in the nature of a treaty between the provinces which originated the Dominion." We have already discussed the character of the Quebec Resolutions and their relations with the B.N.A. Act. But in spite of all arguments and facts to the contrary, Mr. Ferguson and people of his way of thinking would maintain their own view about this matter. Mr. Ferguson, in his letter to the Dominion Prime Minister covering the memorandum, warned him that "To pursue the course indicated by the report of 1929 will not only greatly disturb the present harmonious operation of our Constitution, but I fear, may seriously disrupt the whole structure of our Confederation." ". . . I earnestly urge upon you, representing the Dominion, and through you upon the Imperial Conference, that this whole matter be left in abeyance until it can be dealt with in a proper manner, and to the satisfaction of the parties to the original compact."⁷

The Prime Minister of Canada accordingly placed before the Imperial Conference the difficulties of his position. While the

⁷ *Ibid.*

report of 1929 had been accepted by the Canadian House of Commons, it had been objected to by some of the provinces. In view of this statement of the Canadian Prime Minister, the Conference decided that the provinces should be consulted and their opinion secured before the Imperial Statute embodying the recommendations of 1929 was passed and made applicable to the Canadian Dominion. Actually in April, 1931, was held at Ottawa a Conference of Federal and Provincial Governments. In the light of the conclusions of this Conference a joint address was made to the Crown by the two houses of the Parliament at Ottawa in June, 1931 and on the basis of this address Section 7 was incorporated in the Statute of Westminster, passed subsequently by the British Parliament. This Section excluded the British North America Act and the amendments thereto from the operation of the Statute.

So the champions of the compact theory have succeeded in having their own way. It is true that most of the intellectuals of the Dominion regard the contract theory as invalid and false. Dr. Kennedy, the distinguished Professor of Law in the University of Toronto, observed before the Special Committee on British North America Act, constituted by the House of Commons in 1935, "I think we have got to get away from the idea that the B.N.A. Act is "contract" or "treaty." I do not want to go into that, but it is true neither in history nor in law."⁸ Dr. N. McL. Rogers of Queens University is another distinguished professor who regards the compact theory as only "the deferred result of a sin of omission on the part of the fathers of confederation."⁹ Dr. Maurice Ollivier is a French-Canadian and Joint Law Clerk, House of Commons. He is also definite that "Our Constitution is not a contract."¹⁰ Equally outspoken is the opposition to the theory of compact of William O'Connor, Parliamentary Counsel to the Senate.¹¹

Despite these opinions, the protagonists of the contract theory have virtually won their case. This is illustrated not only by the fact that in 1931 the British North America Act had to be excluded from the operation of the Statute of Westminster because of their opposition but also by the fact that the opponents

of the compact theory also now recognise it that without the unanimous approval and consent of all the provinces the pivotal sections of the B.N.A. Act cannot be amended or repealed. Even Dr. Ollivier was constrained to point out in his scheme of amendment which he placed before the House of Commons Committee on the B.N.A. Act that amendments in respect of some of the sections might be adopted without reference to the provinces, amendments in respect of some other sections might be adopted with the consent of the majority of the provinces while amendments in respect of sections 5, 6, 7, 93, 133 should require the assent of all the provinces. So however false in history and law the theory of contract may be, it has become a factor to be reckoned with in the government of Canada.

⁸ Report, p. 69.

⁹ See his illuminating paper on *The Compact Theory of Confederation* in Proceedings of Canadian Political Science Association, 1931.

¹⁰ His evidence before H. C. Committee.

¹¹ His Note on the Compact Theory (*op. cit.*).

The matters that come up for discussion and decision (other than disputes) before this meeting have been of the following varieties—organization of some religious function for the village as a whole, e.g., the recital of a *Puran Katha* usually the *Bhagwat* or the *Ramayan*; repairs to the village well; making provision for some village orphan or widow; or concerting measures to withstand an onslaught from the direction of the Zamindar or the police. The varieties of disputes that come up before this body for settlement are very many, e.g., determination of compensation when one person's crops have been damaged by someone else's stray cattle; division of family property on the occasion of partition; disputes regarding house boundaries; determination of the sequence in which the fields of the various persons will be irrigated from the village well or the tank and so on. Sex offences and others involving moral turpitude do not come before this body. They go to the caste *panchayats*. There is no other sanction behind the decisions of the *panchayat* than the fear of the displeasure of fellow-villagers. The stoppage of *Hukka-pani* (smoking pipe) and outcasting are penalties awarded by caste or *Biradari panchayats* but not by these general village *panchayats*. Yet in this village, the writer knows of no decision of the village *panchayat* which was disregarded or challenged.

Self-taxation is one of the powers wielded by the village *panchayat*. This taxation is of several kinds—cash, in kind, or in labour. The assessment is usually based on the number of ploughs that a man has, i.e., on the size of his agricultural holding. Thus on one occasion when arrangements for a *Katha* recital were made, the tax imposed per plough was one rupee plus provisions for two meals for the *pandit*. On another occasion for repairing a well each plough-holder was asked to pay one rupee (to meet the wages of the mason, brickmakers, etc.), a certain quantity of fuel to bake the bricks, and to contribute one day's labour. Non-agriculturists are usually exempt from such taxes except that of labour.

The activities of the village organization are by no means confined to the religious or social sphere only. They extend also to the economic and the administrative spheres. On the economic side, we find the village agriculturists cooperating with each other to supply the agricultural labour necessary for the raising of the crops. For irrigation of fields, gathering of crops and other things requiring a large number of labourers, all the village people work by turns for each of them, thus obviating the necessity of engaging paid labour. This institution by which

A works for B on the condition that the latter should also work for the former for the same time period is popularly known as *Aunwara* (अनवारा) and it is of vital importance to the village economy. Another instance of such cooperation for economic purposes is to be found in connection with the purchase and use of sugar-cane press. This is usually purchased on the hire-purchase system, the instalments being paid out of the contributions levied on the agriculturists on the plough basis. The press is used by each agriculturist once a week or less often, and the cutting of the cane from the field, its cleaning and pressing, and the manufacture of *gur* from the juice—all these represent a joint enterprise of the entire village agricultural body, all working in turns for the benefit of each. The whole village is supplied with sugar-cane juice for drinking purposes and the green cane leaves for cattle fodder each day during the pressing season on a reciprocity basis. The winter nights of the pressing season are the most lively and picturesque time that the villagers have. The *Atawa* (the central fire in the press field), the masonic gathering of the young and old round it, the songs, stories, chat, and jokes which its warm influence calls forth, give to the village *Kolhar* (pressing field) the character of a most entertaining club. Finally the village body keeps also a number of village servants paid in kind at the two harvest seasons. These include the barber, the washerman, the carpenter, the blacksmith, the potter, the priest, and the watchman of the fields (*Bisarwar*). The village *chaukidar* also at one time was a servant of the village community, but during the later period of Mughal rule he passed into the service of the Zamindars, and finally during the latter half of the 19th century into that of the Government.

Such village organization exists in practically all the villages of Eastern U.P., though its existence can be fully known only to those who have actually resided in the countryside and participated in its life. There can be no doubt that at one time this organization was far more vital and comprehensive than it is today and existed generally throughout Northern India. We see some parts of it disintegrating even before our own eyes. We have referred to the severance of connection between the *chaukidar* and the village. The advent of sugar mills has dealt a death-blow to the picturesque institution of *Kolhar* in the Trans-Ghaghara districts, and with it is disappearing also the intimate cooperation that cane-pressing called forth. The general apathy of the Government of the country towards the village institutions, its lack of knowledge concerning them, and its misguided attempts at reforms totally out of keeping with the use and wont of the

ESSENTIALS OF A WORLD FEDERATION: A CRITICAL EXAMINATION*

BY

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Introductory.—The post-War period began with a new phase in International Relations. The Treaty of Versailles which, truly speaking, marked merely the cessation of hostilities and not the beginning of real peace, though it left smouldering embers of international bitterness and jealousy, was followed by the establishment of the League of Nations, which was looked upon as an incipient federation whose members had agreed to the Covenant “in order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations.” The object was noble and laudable, and, to a certain extent, efforts were made to create conditions likely to promote international amity and goodwill among nations. The repeated attempts to evolve a formula acceptable to the powerful States for progressive disarmament met with little success. The League experiment, as a political weapon for securing international peace, failed not so much for its inherent defects but because the real will on the part of the States which determined the peace of the world, was wanting. Nationalism was pushed to the extreme and this offset all the initial honest efforts for the improvement of international relations and creation of the spirit of internationalism.

Some of the important causes of the failure of these most gigantic efforts for the security of world peace were: the *de jure* and *de facto* recognition of imperialism and colonial possessions whether in the form of dependencies or mandated territories; the too great insistence on the fact that European peace was synonymous with world peace; recognition of the fact that the strength and importance of a nation in international relations was to be judged by the might of her arms and the extent of her sway over weaker peoples; acceptance of the idea that Asia and Africa

were the regions where European imperialism had a duty to keep itself firmly established; renunciation, in actual practice, of President Wilson's doctrine of Self-Determination. These causes led to the division of Europe into two hostile groups, *viz.*, the totalitarian States and the so-called Democracies. The former, urged by the teachings of extreme nationalism tried to become imperialists, while the latter, already in possession of vast dependencies, while paying lip-loyalty to the principles of democracy and international justice, vehemently stood for the maintenance of *status quo* and were unwilling to extend the principles of democracy to peoples under their sway. Asia and Africa provided the fields for imperialistic adventurers, the tussle being between those who held and those who wanted to hold. Regional understandings or bilateral treaties, outside the framework of the League of Nations, were made, which showed, if further proofs were necessary, that international security hung by a thread. The Kellogg Pact was an admission of this hard fact. It culminated in M. Briand's Pact for European Federal Union, and the famous Memorandum of May 17, 1930, frankly admitted that “the lack of cohesion in the grouping of material and moral forces of Europe does in fact constitute the most serious obstacle to the development of all political or judicial institutions on which the foundations of any universal organization of peace tend to be based.” This too great emphasis on European peace being synonymous with the real world security let the cat out of the bag. The Memorandum further stated: “It is on the plane of absolute sovereignty and of entire political independence that the understanding between European nations must be brought about.” All this raised reasonable doubts in the minds of nations and peoples in Asia and Africa of the real intent and purpose of European statesmen in emphasising the need of collective security which appeared to be an ideal of the European imperialists to continue to reap the material advantages accruing to them from the subjection of Asiatic and African peoples. International morality to European statesmen meant a certain set of agreements and formulas which bound European nations to allow each other definite spheres of influence in other continents without any respect for the rights and interests of the subject nations. There was, it must be understood, no moral basis for continuing the vast numbers of weaker and subject nations under European domination. So long as there was no actual conflict in Europe, the European statesmen believed, there was peace and security in the world. Such beliefs sacrificed Manchuria to Japan and Abyssinia to Italy; the war was kept out of Europe

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and that was to them a great success. The late Mr. Neville Chamberlain's policy of appeasement was only a frank admission of the real purpose of the policy of at least France and England. As long as war was out of Europe all was well, as if Asiatics and Africans were mere chattels existing for securing the continuance of the material prosperity of European nations.

But world forces created mainly by the diametrically opposite tendencies prevailing in the European totalitarian States on the one hand, and the European democracies on the other, gave Japan a plausible excuse for creating a New Order in Asia, under her own hegemony. China, India, Abyssinia and European colonies in Africa were mere pawns in the international European game. If the Treaty of Versailles had been followed by genuine efforts to liberate subject nations by the application of the principles of self-determination and the right of every people to govern itself, the world would have been spared the agony of passing through the present tragic war in which the best in humanity is being sacrificed at the altar of imperialism, though in the name of democracy and world security.

The great peril to mankind, civilization and culture, that is involved in a world war, opened the eyes of thinkers in Europe. And when the totalitarian States armed themselves to the teeth, under a new theory of the State, and formed the Rome-Berlin-Tokio triangle, some Englishmen improved upon the idea of the Briand Project and formulated a scheme of a world federation. C. K. Streit published his famous book *Union Now* of which Wickham Steed spoke as marking a new epoch in international political thought. Friends of world peace formed themselves into an organization FEDERAL UNION in London, and a plethora of literature on the subject of a world federation has now arrested our attention and focussed our thought on solving the baffling question of international understanding by some kind of federation formed on the ruins of national sovereignties.

Reasons for a World Federation.—The reasons advanced in favour of a world federation may be clearly understood from the fundamentals of a world order as discussed by W. B. Curry, an important member of the Federal Union group. He insists on a single international policy by the abolition of foreign offices for he believes that "To rid the world of diplomats would be one of the most useful services that could possibly be performed for mankind." Secondly, he wishes the pooling of all the armed forces of nations, which can be accomplished only by a world federation. Thirdly, the economic relations can be best governed and adjusted by an organ of the world community. Fourthly,

operations of international finance need to be controlled in order that the theory of trusteeship for civilization as advanced by victorious nations in defence of their desire to control raw materials, must be brought under world control. Fifthly the problem of colonies, mandates and other dependencies, he says, requires that "Something must be done about colonies, since the present situation is altogether unworkable and untenable." Sixthly, international communications whose problem leads to friction should be solved by a world authority. Seventhly, the currency war which has led to competitive depreciation of national currencies and thus aggravated the economic crisis which has spread like an infection, can be stopped only by abolishing national currencies and this can be done only by a world government. Eighthly, the movements of population, under cover of finding a living space under the sun, can be controlled to the satisfaction of all nations if the whole world is looked upon as a single unit which is possible only in a world federation. Ninthly, and lastly, a single world opinion as opposed to conflicting national opinions which are the cause of international conflicts, needs to be created in order to ensure world peace.

With the same end in view, namely, international amity and world peace, H. G. Wells in *The Open Conspiracy* states that "Any sort of unification of human affairs will not serve the ends we seek, we aim at a particular sort of unification; a world Cæsar is hardly better from the progressive viewpoint than world chaos; the unity we seek must mean the liberation of human thought, experiment and creative effort. A successful conspiracy merely to seize governments and wield and retain world power would be at best only the empty frame of success, it might be the exact reverse of success. Release from the threat of war and the waste of international economic conflicts is a poor release if it demands as its price the loss of all other liberties." Therefore he suggests, elsewhere, the recognition by all nations of 'The Rights of Man' which, he thinks, will achieve the objective in view. In answer to his query whether it would be so, Mahatma Gandhi insists that it is not so much the realization by each individual or group of his or its rights as of his or its duties that is essential to promote and guarantee peace in the world, for the latter believes that duties precede rights because it is the performance of duties which creates a claim to rights. The Wilsons (in their book *Federation and World Order*) have subjected the conception of a World Federal Union to considerably impartial criticism and have drawn conclusions and made suggestions which need a careful thought.

Why the World Federal Union Now?—Why is it that the idea of a Federal Union of nations has arrested the attention of some eminent persons now? It is because they are awakened to the realization of the utter futility of national sovereignty. It is because they have, at least in theory, and at any rate in their hearts, admitted that no nation can legitimately claim to guide the destinies of weaker or less advanced nations. It is because they have realized the fundamental unity of mankind and the futility of the division of humanity on grounds of colour, race, creed or geography. It is because they have calculated that the victors in wars suffer no less than the vanquished. It is because they admit the insufficiency of the present regional pacts and the League machinery to smoothen the relations between World Powers so as to ensure peace in the world.

Fundamental Principles of Federalism.—Let us first understand some of the fundamental principles of federalism which alone lead to a federal tie. In the first place, a federation is possible only among geographically contiguous states which have developed a high sense of good neighbourly relations, or which have their day-to-day problems so intimately connected that they can no longer afford to remain as separate sovereign states. The failure of the efforts to establish a federation of the British Commonwealth of Nations was very largely due to the non-compactness of the various units. In the second place, a federal union is practicable only between democratic states, states not merely democratically governed at home like England, pre-Petain France, Holland or U.S.A., but also democratically minded abroad. Democracy rules out the subjection of less advanced and weaker nations by more powerful nations on grounds of trusteeship, because democracy is a recognition of the right of every individual or group to live his or its own life unhampered by others. Democracy is not meant for home-consumption alone, but also for foreign dispensation. And federalism is but an extended application of the true spirit of democracy to larger States wherein the particularist tendencies exist in due proportions alongside of the community of interests. In the third place, federalism presumes the equality of status of the member-states in the exercise of powers and representation in one of the branches of the common legislature, of all units large or small. In the fourth place, federalism requires an ideal, expressed through the preamble to the federal pact, which is nothing but the establishment of peaceful relations among the units with a strong sense of compromise and mutual sacrifice on all vital problems of common concern. In the fifth place, federalism involves the

principle of impartial justice as between the units. In the sixth place, federalism is the outcome of an intense desire on the part of the federating states, through a compact, to establish a union by the renunciation of a part of their sovereignty, in favour of a common government or superior body.

Do the conditions for a World Federation exist?—Before discussing the practicability or even the desirability of a world federal union, we have to ask ourselves the question: Do conditions necessary for the establishment of such a union exist? Are the first-class Powers, expected to give the lead, democratically minded in reality? England, France, America, Holland, Belgium, etc., have or had before the outbreak of the present world conflict, democratic governments at home. But did that mean the democratic outlook, an acknowledgment of similar right of other nations and peoples all over the world, which is so vital to the formation of a Federal Union that is being suggested? The answer to this question may be seen in their vast colonial possessions and dependencies. England, for example, had in her dependencies (excluding the self-governing dominions), and therefore under her sway, nine times as many persons as live in England, i.e., nine ruled for every ruler. Similarly, the Netherlands have in her dependencies eight times as many people as her population at home. Almost all the other democracies whose federal union Streit proposes, have subject peoples in their dependencies, who are denied the right to live their own life. The most colossal dependency is India with at present 400 million under subjection for about 150 years. An acute study of the major wars of the last fifty years shows that the lust for extension of domination over weaker peoples, on the part of one party, and equally stiff resistance on the part of another party to lose control over dependencies, have been the causes of bloodshed, and yet all in the name of fighting for justice and humanity. Unless, therefore, the system of dependencies is abolished and all peoples freed, there can be no stable federal union in the world.

The second requisite is the equality of status of all States, both in spirit and in action. No doubt, the inequalities in area and population of the different States shall remain, but what is necessary is the enjoyment of equality of powers. The League of Nations tried it, but England and France dominated the League machinery and politics so much that even other European States, to speak nothing of non-European members, ceased to exercise any appreciable influence in its counsels. The oft-made combinations between smaller States proved, if proof were necessary, that physical might, huge armaments and inexhaustible material

resources were the only criteria to adjudge the greatness or influence of a nation in the working of that world organization which was formed to establish the rule of morality, justice and civilization. How could then international morality be founded on such basis? The failure of the League as a political weapon to restore peace among nations was due not so much to any inherent defects in its Covenant as to the non-working of the spirit of the ideal with which it was started. Circumstances have not changed since then to create any new psychology of the nations, or to give morality the place it deserves as against materialism. Nor is it imaginable that England, for example, would agree to have only two representatives in the Upper House of the Union Legislature out of a total of 42, or 47 out of 277 in the lower chamber, as has been suggested by the promoters of the Federal Union headed by Streit. Thirdly, though the ideal for which the Federal Union is proposed, is noble, the spirit of compromise and mutual sacrifice that is needed to work the ideal is absent at present, and it will never exist so long as human nature itself is not changed. The Great Powers that count now in international affairs would have to surrender their dominating position. Would England, for example, agree to put Gibraltar, Malta, Aden and Singapore under a world government? British history and diplomacy so far demonstrate the utter futility of such expectation. The cause of India is so prominently before the eyes of the world. The theory of trusteeship is construed in such a clever manner as to thwart in spirit the object expressed in the letter. Fourthly, the sense of justice so far prevailing in the fourteen so-called democracies, is such that under a federal union there would be clashes every day, if not every hour. Whence can impartiality be imported into the proposed Union if it is not existing in the units at present? Fifthly, the voluntariness necessary to part with power and a portion of sovereignty on the part of the major States in order to establish a world federal government, is wholly lacking and will be lacking as long as the greatness of a nation is assessed in terms of the extent of its colonial possessions, the strength of its fighting forces, armies, navy, air fleet. The Christian ideal which was on the lips of every belligerent nation in the Great War (1914—18), was mercilessly butchered by it in deeds. Could it then be possible that a different thing would happen now? What is there to warrant such a change? All that is professed in the name of civilization, morality, religion, and righteousness is sacrificed in deeds, and crimes are perpetrated in the present war, which can never be justified on any moral grounds. To hope then that the

fourteen democracies would consent to liquidate their armed forces when the war is over, and place them at the disposal of a world government, or that they would hand over the charge of strategic points they hold in different parts of the world to an international board, or that they would sincerely work for the grant of rights of self-government to their dependencies, as suggested by Streit or Curry is only a day-dream never to be realised in the present world governed as it is by human beings and not angels.

World Peace and World Federation.—The promoters of the World Federal Movement have suggested the formation of a Federal Union of fourteen so-called democracies in the first instance as a preliminary to include all the States of the world later, in order to put a stop to bloody wars and international bickerings. The restriction of membership as now suggested would compel the non-participating states to form an alliance amongst themselves to arrest the might of the Union which they would look upon as their enemy. Who can guarantee that this would not happen? And if it be argued that the democratic union would be strong enough to defeat the opponents, it does not mean the outlawry of war or the continuance of amity and goodwill in the world. Moreover, history of the world has conclusively shown that at different times countries have produced conquerors and political adventurers who have won over the public to their side and launched upon new schemes of conquest, of political experiments. Wherein lies the guarantee that the Federal Union will make it impossible for future to see the repetition of the past? And how would, for example, a war between ideologies like Fascism, Communism, Liberalism and democracy be avoided even inside the Union States? And how could the Union remove the root causes of wars, like the lust for empire-building, desire to control raw materials and the use of communications on land and sea?

Granting that a Federal Union were initiated with a limited membership, it will attempt to divide those outside its pale into conflicting groups so that its own power might not be challenged. That would again mean the maintenance of Foreign Offices, Diplomatic Corps, and the whole paraphernalia of Propagandists. And the non-Federalist nations too might combine together and fight the Union in order, for example, to defeat the democracies and wrest from them their dependencies. Again, inside the Federal Union itself, there would be many occasions for clash, on account of the differences of race, language, culture, economic interests. The future would then be full of perils of bigger wars

of the Sonderbund or those of the type of the American Civil War. In Australia, the dissatisfaction of Western Australia and its efforts to get out of the federation is also a pointer in that direction.

Impossibility of a World Federal Ideal.—If the Rights of Man are to form an important part of the constitution of a world federation to guarantee to the peoples under it enjoyment of all that is necessary for a happy and contented life, why is not such an experiment tried now between the existing Member-States of the League? The answer is that sacred announcements of such rights does not by itself secure their observance.

The language problem would be a most stupendous difficulty in the realisation of the federal ideal. In Switzerland three languages, in Canada and the Union of South Africa two each, are official languages. Even if the most important, not all, languages of the units are recognised as official languages, it would result in too great inconveniences in the transaction of federal business. The location and working of the Federal Union Legislature, the constitution of the Executive (with our experience of election to the Council of the League of Nations) and the constitution and working of the Federal Judiciary would be problems that would defy a lasting solution. Even in the existing federal States with limited territories all in contiguity with each other, legalism and litigation are so frequent that we can easily perceive what would happen if States situated in different parts of the globe consent, even though by a miracle, to unite federally. Then again, what about the raising, equipping and distribution of the armed forces of the Union? Would it be the easy job it is represented to be? America is proposed as one of the most important States for the Union. Would she come in with or without the Monroe Doctrine? And England? Will she renounce her claim to the internal problem theory of the distant parts of the Empire? And would the rule of the Union be acceptable to the dependencies that are already seething with discontent against the rule of their existing masters? All those are problems which defy solution. To me, at any rate, it appears that the ideal of a World Federal Union as solving the problem of world peace will remain a myth like so many other myths which have an ideal to admire, making impossible demands on human nature.

What is the alternative? If a Federal Union of the world powers is not practicable, does it imply that the world will always remain in fear of wars and international bickerings? Something needs be done to improve the existing state of affairs and thus

offer a chance to humanity to reassert itself in a better way. All dependencies must be freed at the close of the present world war, or at any rate at the close of another and more tragic war which should occur if our international problems are not settled, now. The principle of self-determination must be applied, and either the existing League be re-organised to include all States, for discussing in a spirit of mutual goodwill vital problems of nations, for it should be replaced by another international institution with similar objects. And we must remember that human nature being what it is, wars cannot be wholly eradicated. They can, no doubt, be made less tragic, more limited in extent and locality and less frequent. This alone is the only realisable hope of the nations that go to wars for the adjustment of inequalities and the redress of grievances.

**DEVELOPMENTS IN LAW, CONSTITUTION
AND ADMINISTRATION: PERIODICAL SURVEYS**

WORKING OF PROVINCIAL AUTONOMY IN BENGAL

BY

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Bengal is one of those provinces where the Act of 1935 has been in uninterrupted operation. The Congress declined to form the Ministry, as without a coalition, by themselves the Congress could not command a majority and such a coalition government had not been permitted by the High Command. The Coalition Ministry that was formed, after some negotiations between the groups, consisted of leaders of the Muslim League, the Praja Party, Hindu Nationalists, and Independents. They had arrived at an agreed programme and though the personnel has undergone slight changes the character of the Ministry remains essentially the same.

The chief points of the programme related to (1) the replacement of the Permanent Settlement and the land laws by "a more equitable system and laws suitable to the needs and requirements of the people"; (2) freeing the cultivators from the burden of indebtedness; (3) introduction of free compulsory primary education without taxation of the poor; (4) control of the price of jute; (5) repeal of repressive laws and release of political prisoners; (6) amendment of the Calcutta Municipal Act and the Calcutta University Act; and (7) the establishment of a Board of Secondary Education.

LAND REVENUE REFORM

That the land system in Bengal would come in for scrutiny under any popular government had long been foreseen. The Joint Select Committee on the Government of India Bill of 1919 had observed that such matters should "not be transferred to ministers until the electorate included a satisfactory representation of rural interests, those of the tenantry as well as of the landlords." The present legislatures have a larger claim to such a character than in the past. The case of the permanently settled

areas received special attention during the constitutional discussions leading to the Act of 1935, and is mentioned in the Act (sec. 299) and the Instrument of Instructions.

The Bengal Government, therefore, referred the whole matter to a Land Revenue Commission, with Sir Francis Flond, a retired Canadian Civil Servant as Chairman at the end of 1938. The Report of the Commission has not yet been acted upon but it has made far-reaching recommendations. The majority conclude that the settlement is "no longer suitable to the conditions of the present time," and urge its replacement "by one which will bring the actual cultivators into the position of tenants holding directly under Government by acquiring the interest of *all* classes of rent receivers." The rate of compensation proposed is 10 times the *net* profit of the proprietors and tenure-holders; payable in bonds redeemable after 60 years. Mining royalties and all fishery rights are also to be acquired. As a transitional measure an agricultural income-tax has also been recommended.

The financial and administrative implications of the recommendations have been examined by a Special Officer, who is reported to have found the main recommendation worthy of only tentative experimentation on a voluntary basis.

The Ministry have, in the meantime, passed a series of laws relating to the tenancy system. The Bengal Tenancy Amendment Act of 1938 abolished the system of transfer-fees and right of pre-emption given to the landlord by the previous amendment of 1928. It further suspended any enhancement of rent for 10 years; realisation of *abwabs* (extras) have been made illegal; the rate of interest on arrear rents has been brought down to 6½% from 12½%; under-raiyats have been given additional rights, etc. Executive measures have also been taken with regard to mitigation of the harshness in *khas mahal* and Court of Wards estates and also in areas under special tenancy systems.

CREDIT CONTROL

Debt Legislation by the autonomy government has been the cause of adverse comment in view of their economic repercussions. The Moneylenders' Act of 1933 and the Bengal Agricultural Debtors' Act of 1935 have both undergone radical changes. A special department of Rural Indebtedness has been set up. About 4000 Debt Settlement Boards are in operation and the Co-operative Central Bank and Land-Mortgage Banks have over 100 Special Boards to scale down their dues. The Boards are reported to have made awards regarding claims amounting to about

13 crores of rupees, which are said to have been reduced by about 55 per cent, on mainly a voluntary basis. The law of *damdupat* has been applied and the interest fixed at a maximum of 8 per cent on secured and at 10 per cent on unsecured loans, by the recent change in the Moneylenders' Act (1940). The Co-operative Credit Societies cover only 6% of the rural population and are in a difficult position. The heroic measures at liquidating indebtedness on the other hand, though justifiable as emergency "shock" measures, are likely to have various after-effects, unless accompanied by a proper policy of improving the paying capacity and intention of the people.¹

AGRICULTURAL POLICY

The problems facing the producers of jute and jute manufacturers also engaged the attention of the Ministry. In the beginning of their career the Ministry disowned any intention of compulsory restriction, fixation of minimum price and regulation of the jute industry. But the march of events has not left them any other alternative but to take steps in all these directions. Unfortunately, the hesitancy and lop-sided manner of attack has yielded as yet poor results. The publication of the Report of the Jute Enquiry Committee in 1939 focussed attention to these problems. There is a Central Jute Committee, engaged principally in research work, in operation. A Special Jute Restriction Officer is in charge of the field-work and propaganda relating to restriction. The three provincial governments interested in jute also met to confer without, however, reaching any agreement as to joint action on the Bengal line. An expert—Professor Todd—was recently brought from England to recommend upon methods of regularising the future market in jute. The Jute Mills Association also have agreed to a policy of purchases in consonance with the Government's plan as to prices. The Minister for Agriculture recently announced that he intended,

¹ The latest report issued by the Publicity Department "*Third Year of Provincial Autonomy in Bengal*," is constrained to observe the development of a no-rent mentality. "The passing of the Bengal Tenancy Amendment Act of 1938; . . . the working of the Debt Settlement Boards which in some cases prevented landlords from realising arrears of rent through civil courts, . . . the appointment of the Land Revenue Commission and various other committees; . . . all these strengthened them in their mistaken idea that sooner or later rents would be reduced and all arrears of rent remitted." The Flood Report is also constrained to note in measured terms the dangers of the rural credit position,

in due course, to set up an organization of jute-growers on a cooperative basis so that the cultivators might control the marketing of the entire produce. A sample survey of jute lands with a view to registration of such lands, for enforcing restriction percentages, was carried on recently and necessary powers have been secured by a Jute Regulation Act (1940), licences under which are being granted to over 5 million jute-growers.

A committee also reported in 1939 on Rice and Paddy. Bengal is by far the most important paddy-growing province in India both in regard to acreage and to yield and hence the importance of the problem. Regarding price-control the committee concluded that the policy of a minimum price for a food-crop is neither socially adequate nor appropriate policy.

The Government have also taken steps to raise the standard of teaching in the Agricultural Schools, there being no college run by Government for this purpose. There has also been a slight augmentation of the agricultural staff, demonstration centres. Some attention has been paid to agricultural marketing, especially of eggs, mangoes, oranges, etc. An Agricultural Produce Markets Bill is also on the anvil, which provides among other things, for the establishment of regulated markets.

EDUCATIONAL MEASURES

The Ministry's educational policy has come in for a great deal of criticism. They were obliged to announce after a short experience of office that free primary education was not practicable and they have since then been enforcing the provisions of the Bengal Primary Education Act of 1930 for the establishment of District School Boards with power to raise the cess to be collected $\frac{3}{10}$ from the landlords and $\frac{1}{10}$ from the cultivators. This decentralisation of education, apart from the inevitable conflict in policy and programme, is leading to difficulties in regard to the location and religious complexion of teachers and the Boards. There is also a great dearth of trained teachers, not to speak of lady-teachers.

Secondary Education is now controlled, except in the small area under the jurisdiction of the Dacca Board of Secondary Education, by the University of Calcutta and the Education Department of the Government of Bengal. Intermediate college teaching is not within the purview of "secondary education," as it is understood in the official language of the province. The Ministry's first effort to set up an All-Bengal Board, under Government aegis, proved abortive due to the legal difficulty

created by the fact that the Calcutta University catered to the needs of more than one province and hence came under central jurisdiction. This defect was removed by an amendment of the 1935 Act by Parliament in 1939. The new *Secondary Education Bill* provides for a Board of 50 members, constituted largely on a communal distribution of seats. There will be 11 ex-officio and 14 nominated members. The Executive Council, Publications Committee, the Girls' Secondary Education Committee, etc., will have a larger dosage of these reactionary principles. The Bill has been opposed by Hindu public opinion, as it has led to the apprehension of a reduction in the number of schools and rigid control over an educational edifice built up largely by Hindu effort and munificence.

The Ministry's excursions in the field of higher education has also been criticised as having led to the sponsoring of a Purdah College, the extension of the Islamia College, the making of the Dacca University's grant a statutory one, leaving the Calcutta University to the mercies of ministerial whims from year to year.

RURAL WELFARE

The administration of the Cooperative Department came in for a great deal of criticism for acts of omission and commission. This was the more marked due to the Ministry's effort to have a separate *Cooperative Act* for the province. The Bill, after protracted stages of deliberation, has now been passed by the Legislature. It vests the Registrar with large powers of suspension, control and punishment, as a way out of the situation created partly by the "overdues" legacy of the depression and largely by the past policy of unwarranted expansion by the Department.

Rural welfare is the charge of a Director of Rural Reconstruction, who interested himself in organising a campaign against water-hyacinths, unfortunately at the wrong time of the year, and also in organising rural units on a voluntary basis, without any financial assistance from Government worth the name. The Public Health Department and the Publicity Department have also been carrying their activities on parallel lines, leading to some administrative confusion. It is significant that the work of adult education, sometime carried on through the staff of the Registration Department, is under the Education Department's control with a meagre grant.

Bengal's irrigation problems are of a class apart. Steps to fight the menace of recurrent floods were reviewed at a conference of Bengal, Bihar and U.P. Governments and the Railway administration held at Lucknow in 1939. Arising out of their recommendations a *Hydraulic Research Laboratory* is on the way to establishment. Western Bengal occasionally suffers from scarcity of water and certain projects have been undertaken for irrigating high arable lands. The problem of the dead and dying rivers particularly of Central Bengal is receiving attention and a contour survey is being made.

INDUSTRIAL DEVELOPMENT

In the sphere of industrial development the Ministry's new ventures include the Industrial Museum at Calcutta, the peripatetic scheme of training in certain cottage crafts, and the appointment of an *Industrial Survey Committee*, originally presided over by Dr. John Matthai and now by Professor P. N. Ghosh. This last committee and the Bengal Board of Economic Enquiry (set up by the pre-autonomy administration) constitute the 'brain trust' of the Government. An electrification scheme for the whole of Bengal is also under consideration on the basis of a Report by Mr. Redclift, Chief Electric Inspector, Bengal. Such a scheme with a monopoly either by the Government or by an agency under state control may augur great developments relating to the technique, location and production-costs of industries in the province. The war is also likely to give a fillip to industrial activity, though criticisms were voiced in the legislature that the Government have not taken energetic steps to take advantage of the situation.

Bengal has now a Labour Department in charge of a Labour Commissioner and the Ministry's policy is to encourage "sound" Trade Unionism. These steps have been opposed by a large and vocal section of labour groups in the province but has been supported by the Indian Jute Mills Association and other employers of labour. Apart from the administration of the Central Acts relating to labour, the Government has passed an Act which regulates working hours, leave, salaries, etc., of shop assistants.

POLITICAL PRISONERS

The "terrorist menace" in Bengal was well under control and as a result of public agitation Government appointed an Advisory Committee in 1939 to expedite the release of "political" prisoners. The Congress Party later withdrew from the

Committee as they could not make the Committee agree to a policy of immediate and unconditional release. Of 249 cases placed it is reported that about a third remained in jail. The Ministry claim to have thrown open to Bengalees, recruitment in the provincial police-force, and some important changes in jail administration are expected to emerge out of the labours of a Jail Industries Committee.

Prohibition of alcoholic beverages was successfully introduced in the district of Nabhali in 1938, but was ridiculed on the score that the consumption in the district had been in the past of the poorest.

PROVINCIAL FINANCE

A brief survey of the financial background of the period leads to disconcerting conclusions. In spite of criticisms and complaints by the Government and successive Finance Ministers, Bengal's budget has risen from a 10 crore level to over 15 crores. The powers of additional taxation are being used later than many provinces, as gradually the Niemeyer windfalls have been eaten up by expanding provisions and even the cash balance is on the point of falling below the Reserve Bank's requirements. Except at the beginning, deficits are again the order of the day in Bengal. There is justification in the claim for Bengal receiving a larger share of the revenues collected from the province and credited to the Central Exchequer. But, the question which is being asked is as to the way the extra money which the province got has been disbursed. A look at the mounting bill in salaries (Rs. 175 per month), travelling and other allowances of the largest number of legislators in India, and also of the Ministers, though the number of Parliamentary Secretaries, lately appointed, is only 3. Another source of exhaustion must be traced to the numerous appointments in rural areas over such partial and quick short-cuts to rural betterment like the Debt Boards, restriction officers, etc. It is the failure to rouse and enlist civic enthusiasm in these matters which must account for the costliness of the administration, compared to the benefits accrued to the masses.

The latest budget, for instance, estimates a deficit of over $1\frac{1}{2}$ crores, which may be covered up in part when the Sales Tax Bill is passed. The Finance Minister pointed out that the Agricultural Department is "starved," the Irrigation Department's poverty is "nothing short of a scandal" and that a "tremendous leeway" had to be made up. On the top of this there is the war, which has affected Bengal's share of the jute-export duty, entail-

ing at the same time larger watch and expenditure over the jute-situation, some expenditure on the A.R.P. organisation, etc. If one accepts his thesis also that putting into abeyance all schemes of development due to the war, "is not possible in the case of Bengal where the administration is just beginning to recover from the effects of years of starvation," the financial situation appears as not only puzzling but paradoxical. If the case for a cheaper, planned, and un-"charged" administration, freed from legal trammels is urgent in India, nowhere is it possibly more so than in Bengal.

CHARACTER OF THE LEGISLATURE

Certain notable features of the Bengal Legislature with special reference to its democratic character may be noted. Though Bengal has the largest number of members on the Legislature, the allocation of seats between the communities, in particular, under the Communal Award and the Yervada Pact has been a source of irritation.² What is most jarring in principle is the whittling down of the proportional number of seats allotted to the Hindus who are a minority, and the plumping of the seats given to others, including special interests which annex 20% of the total seats.³

Bengal's Assembly again consists of 203 members who were returned after a contest. With the largest number of voters on the rolls, Bengal could show the smallest turn-out (40.5%) in these contests. The same is true of the 19 out of 30 contested directly elected seats on the Council where only 46.6% of the voters exercised their franchise.⁴ At the first election 46 out of 78 seats (General) were captured by the Congress, besides the 2 women's (General) seats and all the 5 Factory and Colliery Labour seats. As against previous prophecies, none of the University, Trade Union Labour or Landholders' seats went to the Congress. On the other hand, the Muslim League captured all the Moslem urban seats, but 34 rural seats out of 101, and the 2 women's seats. The Praja Party, led at the time by the present

² *Vide*, the Marquess of Zetland's note to the Joint Committee on Indian Constitutional Reforms, p. 338—341, Vol. I, Part II.

³ When cross-examined by Sir N. N. Sircar, the Secretary of State could not justify the allocation of seats either on the grounds of total population, adult population, special considerations of stake (justifying the European weightage. (Q. 7467 to 7,469 to Sir Samuel Hoare).

⁴ *Return showing the results of Elections in India, 1937.*

Chief Minister, annexed 37 seats with several others going to their adherents. The Hindu Sabha had originally only 2 members on the Assembly and the Hindu Nationalists 2. Since then, however, the emergence of a coalition government, the rift in the Praja Party, and in the Congress ranks under the control of the A.I.C.C. and the Bose brothers respectively have changed party alignments.

BENGAL'S SECOND CHAMBER

The "demand" for a Second Chamber was voiced before the Simon Commission by the Bengal Government "as likely to prevent antagonism arising between Governor and Legislature as a result of frequent resort to the veto." It should, however, be noted that the Bengal Council and Government had been bereft of a progressive opposition. With the withdrawal of the Congress from the legislature, and thus at the subsequent constitutional discussions also, the so-called demand could be trotted about. It is also worthy of note that Bengal's nominees to the R.T.C. (first session) had not only agreed to, but may be said to have sponsored the demand for a Second Chamber, apparently for safeguarding landholding interests.

The Council created by the Act of 1935 can hardly be said to conform to the requirements of the original objectives. It is a body elected on a communal basis, and the provision of indirect election of 27 of its members also is intended to reproduce the party and communal proportions in the Lower House. It has, however, been claimed by the President of the Council, that "the record of legislative activities of the Second Chamber in this province . . . judged from the standpoint alike of quantity and quality, would do credit to any legislature." Every year the number of sittings has steadily increased, about 4500 questions have been asked and over 450 resolutions were given notice of and balloted for. Some of the Government Bills were also initiated in the Upper House. The Lower House generally accepted the amendments of the Upper and no need for a joint sitting for resolving differences on a legislative measure arose.⁵

The Council sits in the same building as the Assembly and naturally difficulties regarding time arise. It is suggested that if a Second Chamber exists, it would be economical to have separate accommodation, so that by working to an optimum, the expenditure incurred on travelling and daily allowances could be reduced.

⁵ Triennial Report on the working of the Bengal Legislative Council, 1937—1940.

Yet, one cannot but feel that the Second Chamber in Bengal, has hardly justified itself. It has been more or less a replica of the Lower and it has not been able to compel attention, and but for the recent elevation of a Minister by the Lower House by indirect election, the House had no leader! The 9-year membership has been its attraction to some, while the system of indirect election has been attended by the evils associated with it. The Bengal Legislative Council is neither an expert body, nor is it representative of special interests seeking safeguards, nor has it acted as a brake on the sympathies or antipathies of the Lower House in effect. The reasons which thus have been adduced for special treatment being accorded to it in the shape of separate buildings, etc., may also be used to further the case for its abolition. And the end of the stipulated 10-year period might well witness in Bengal the demand for the abolition of the Council.

THE SERVICES

The cooperation of the services has been received in an unstinted measure. Yet, complaints were loud as to transfers, supersession and appointments to suit personal and party ends. The Provincial Public Service Commission had also been complaining of the non-compliance with their recommendations in certain cases. Such changes are, of course, of the very fabric of representative government, when worked in untried climes.

Amongst retrenchment measures were the revision of scales of pay, of maximum pension, of cadres and of special pays and allowances. As about a crore of the salaries bill was "charged," and as salaries below 100 were untouched, only about 2/5ths of the remainder were affected, but can come into effect only gradually in relation to incumbents appointed after April 1, 1937.

The former importance of and halo round the local officers has been steadily diminishing. The local member of the legislature is often a rival and sometimes an unofficial boss; and Minister's intervention on local issues is not an uncommon event. But, it would be a mistake to think that official control and interference is being reduced. To take an instance, the District Boards are finding in the District School Boards bossed by officials, local 'national welfare units,' jute-restriction officers, etc., newer and newer entrants in their jurisdiction demanding accommodation. In the local bodies, the system of nomination is unaffected, official censorship continues and the Calcutta Corporation is faced with encroachments upon its autonomy by amendment after amendment. The only ray of hope appears through the Chowkidary

Enquiry Committee set up to suggest reforms in the existing system of village police controlled by the Thana officer but paid from Union Board funds and practically eating up the whole of their resources. This may be a prelude to making rural self-government capable of being useful and popular.

Should the introduction of autonomy lead directly to the filtration of the same process in local affairs, through local bodies? Is it not to be expected that an extension and reform of the franchise in the lower strata of administration be experimented upon under autonomy? Should we not have self-government practised and developed at the bottom to make the base stronger? Bengal's reply to these issues yet seems hesitant and even negative. And overshadowing all is the growing distrust and bitterness due to communal suspicions—a reaction to the sudden enthronement of a community so long in the background for diverse reasons.

WESTERN INDIA STATES—KATHIAWAR: ADMINISTRATION REVIEW

BY

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Saurashtra (modern Kathiawar) has an interesting historical background. From the very remote past to the advent of the British Power in Western India in the early part of the nineteenth century *Saurashtra* had been at once the scene of warring activities of restless ambitious princes and the centre of the best of cultural and religious influences associated with Hinduism and Jainism. In the Middle Ages the Rajput chiefs of the province had frequent successful encounters with the paramount power; and Delhi and Ahmedabad,—Muslims and Marathas,—had always to come to terms with them. Kathiawar is a peninsula. It has an extensive indented coastline on the Arabian Sea. The British East India Company quickly realised its importance for purposes of commerce which could easily be hampered by innumerable nests of piracy. The result was the settlement of Colonel Walker in the early part of the nineteenth century which gave to this province the present political and administrative arrangement comprising of 17 "Salute" States, 107 "non-salute" jurisdictional states and 19 Thana circles. For purposes of organised relations with British Government, there has been instituted a British Agency at Rajkot Civil Station (land leased from the Ruler of Rajkot) with its three sub-divisions—the Eastern Kathiawar Agency, the Western Kathiawar Agency and the Sabar Kantha Agency. While the 17 "Salute" States (the Rulers being entitled to a salute of guns ranging from 15 in the case of Junagadh the premier State down to 9 in the case of Limbdi and Palitana) enjoy plenary powers and have a fully self-contained machinery of administration, most of the "non-salute" states and Thana circles leave quite a large number of State functions in the hands of the British Agencies—East, West or Sabar Kantha in which they may be located. The present review is confined to the administration of the "Salute" states of Kathiawar among which Junagadh, Nawanagar, Bhavnagar, Porbandar, Dhrangadra and Gondal come within 'first' class and therefore, figure, prominently for illustrating the salient points in the Indian State rule in Kathiawar.

Financially all the Indian States in Kathiawar seem to be fairly well-off. They are, more or less, run on the principle of the proper husbandry of a private estate. The ruler must cut the coat according to his cloth; and beyond the traditional imposts of the land-revenue, customs and excise dues, and licence and stamp fees, no ruler, as a rule ventures to move with a view to tap new sources of income, except through railways and other transport facilities. Direct taxation like income-tax is not known in these parts: and professional taxes would generally be looked at with resentment. Despite the fact that the ruler alone, assisted by his Dewan, is solely responsible for the budget (there being as yet no legislative assembly in any state in Kathiawar and, therefore, no constitutional participation of the People's representatives in the control or proper spending of the Finances of the State, or in finding money by way of taxation in case of deficit), the People are nowhere absolutely without means—direct or indirect—to make their Voice heard, if their pockets are touched beyond the traditional imposts they have ancestrally borne. Neither profiteering nor rack-renting has much room to thrive in these parts. Paternalism, in the absence of constitutionalism, is the only tie that makes for stability and fair prosperity for the *Raja* and the *Praja*. Occasional departures from this traditional link forthwith bring their tale of woe and at once illustrate the alertness of the people who, however reluctantly, do, after all, take up the challenge that the extravagance of the Prince throws upon them. Witness the troubles in Rajkot and Limbdi in very recent times!

The following tables give the main points in the finance of some of the leading States in Kathiawar:—

TABLE A

Name of the State	Area in sq miles	Population 1931 census	Income	Expenditure	Year
Bhavnagar ...	2,961	5,00,274 86.6 % Hindus 8.5 % Muslims	1,14,60,162	1,04,71,911	1938—39
Junagadh ...	3,337	5,45,152 80% Hindus 20% Muslims	1,01,16,689	88,48,697	1937—38
Nawanagar (Jamnagar) ...	3,791	4,02,192	1,08,52,913	70,80,270	1938—39
Porbandar ...	642	1,15,741	25,87,002	32,46,369	1936—37
Gondal ...	1,024	2,05,846	50,00,000	Not shown in the latest report available	
Morvi ...	822	1,13,023	29,02,885 9,43,486 Rly. net income	30,80,462	1936—37
Rajkot ...	282	75,540	13,62,871	13,54,425	1938—39
Wankaner ...	417	44,280	7,67,000	5,93,685	1937—38
Palitana...	300	62,150	8,45,779	9,79,233	1937—38
Wadhwan ...	242	42,602	10,21,231 including recovery of advances 4,63,831	7,68,432	1938-39 including advances (loans) 1,79,843

TABLE B

Main heads of Revenue	Bhavnagar 1938-39	Junagadh 1937-38	Nawanagar 1938-39	Porbandar 1936-37
A. Land Revenue	18,46,761	26,00,030	32,25,210	8,74,539
B. Customs ...	23,32,467	27,81,708	42,59,641 Customs including tobacco and Abkari 45 Lacs	10,93,408
C. Railways (net)	9,44,969	6,95,375	3,73,385 (65,612) Total— 4,38,897	24,910
D. Bank Profit ...	24,03,232 7,25,756 Interest of port Reserve Fund)	75,114 Rayasat Abkari 6,99,828	...	1,37,879
E. Forest ...	...	1,62,363	1,72,872	...
*F. Jortalabi (Tribute)	...	Jortalabi 85,507	...	...

* Junagad is the only state that receives tribute from other states in Kathiawar.

TABLE C

Main heads of Expenditure	Bhavnagar 1938-39	Junagadh 1937-38	Nawanagar 1938-39	Porbandar 1936-37
A- Tribute ...	1,75,211	1,15,464	...	73,369
B. Darbar Civil List ...	4,63,780	10,60,407	...	4,14,749
C. Administration & Protection ...	23,72,660	33,94,341	6,70,674 (Protection & General Administration)	6,74,724
D. Public Works of Utility and welfare functions (including Educational & Medical Deptt.)	32,34,044	22,39,978	*11,94,322	12,52,569
E. Bhayats and Rewards ...	6,84,679	11,80,042 Rayasat	...	2,01,203
F. State Hospitality & Pensions	2,17,444	3,54,975	...	...

* Nawanagar state report of 1938-39 gives total expenditure as Rs. 70,80,270, details except under items mentioned above are not given in the report.

Land revenue is the mainstay of most of the states. As the cultivator is the first prop of the state, care is taken to put it on a fairly solid foundation. Majority of states have now given full occupancy rights to the cultivators; and they have, after a careful survey and classification of land, adopted the cash assessment (here called *Vighoti*) at an average of nearly Rs. 3 per acre of land, though the ancient metayea system (called *agbatai*) still lingers in many of the smaller states. *Taqavi* advances for improvement of land, particularly for well irrigation, are frequently given; and as cultivation is absolutely dependent on rainfall, part-remission of land revenue in years

of drought is not an uncommon phenomenon. Improvement in cattle-breeding and replenishment of fodder-supply engage almost uniformly the best attention of all Kathiawar princes; and the old chronic disease of rural indebtedness is being strenuously combated by most of the states. Here Bhavnagar has led the way. The benign ruler Maharaja Sir Krishnakumarsinhji ably advised by his Minister the late-lamented Sir Prabhashanker D. Pattani paid off from the State treasury all the reasonable claims the money-lenders had against the cultivators, finally computed at Rs. 20,59,478. The old scores were wiped out; the millstone was removed from the neck of the cultivator and he is now a free and active member of the Village Reorganisation Society—a completely self-governing unit instituted by Bhavnagar Darbar for every village that asks for it; and all functions of Government including the collection of State land revenue are entrusted to the *Gramya Panchayat* of the self-governing village. This movement has made considerable headway in the course of the last three or four years; and already 153 villages out of the total number of 458 villages are fully self-governing units in the state.

The major states have their own railways which have proved to be a valuable source of income as may be easily seen from the table B given above at the end of the second paragraph.

Bhavnagar and Junagadh have their own State Banks which have worked very successfully. They attract deposits from within and without the states and finance trade and industry on a fairly large scale. Public confidence in the reliability of these State Banks is illustrated by the fact that Bhavnagar, for instance, issues redeemable State Bonds from time to time at the market rate of interest; and the Bonds are sold in the bazar at a premium and have never been presented to the Bank for cash payment. The average daily turnover of the Bhavnagar State Bank is Rs. 9,06,991 and the total investments of the Bank in Government Securities were Rs. 7,39,62,671 in 1938-39.

To the profits accruing from the Railways and State Banks may be added, in the case of maritime states like Nawanagar, Bhavnagar, Porbandar, Morvi and Junagadh, their share of customs revenue. Ports like Bhavnagar enjoy by treaty the rights of British India Ports, entitled to appropriate all the sea customs charged according to the British India tariff, irrespective of the destination of goods. Of late a controversy has arisen on this point between the State and the Paramount Power with the result that both the trade and customs revenue of Bhavnagar have been very adversely affected.

Protection of life and property is well assured. All the states have well-organised police departments. Each of the major states spends 2 to 3 lakhs of rupees per year on the police. They also maintain troops of lancers and infantry costing each of them four to five lakhs of rupees per year. Kathiawar states are jealous of their reputation in the matter of Law and Justice which are mostly modelled on the British India system. In Bhavnagar and Junagadh the judiciary and the executive are two distinct and separate bodies. Administrative justice is, as a rule, not known to most of the states.

While progress in education and medical relief compares favourably with that made by our neighbours under the Provincial Government of Bombay, conditions of road transport and urban and rural sanitation need much improvement. The princes of Kathiawar still play the rôle of the eighteenth century enlightened despots of Europe. Some of them like the rulers of Gondal, Bhavnagar, Morvi, Porbandar and Palitana are the 'fathers' as well as the "first servants" of their *Praja*. Nevertheless they need the cooperation of a very alert public opinion in the matter of 'welfare' functions. People must pay and people have a right to direct how money should be spent. This is yet to be!

CONSTITUTIONAL REFORMS IN INDIAN STATES*

A COMPARATIVE STUDY

BY

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I

The introduction of responsible government in the Provinces on April 1, 1937, and the acceptance of ministries by the Congress in six provinces, a few months after, was the signal for a political storm in the Indian States. The storm was both violent and wide-spread. It covered the country from one corner to the other—from Travancore in the extreme south to Dhami in the Himalayas in the North; from Rajkot in the extreme West to the tiny principalities in Orissa, such as Dhenkanal and Ranpur; and from Mysore in the South and Hyderabad in the Deccan to Jaipur in Rajputana and Benares in the U.P. The results of this political upheaval have been both serious and important—open firing in at least two States; a gruesome murder in one of them; suppression of popular organisations in many States; Satyagraha in several of them culminating in the Rajkot fast of the Mahatma and the internment of Seth Jamnalal Bajaj in the Jaipur State; and last but not the least, the announcement of constitutional reforms in several States, big and small.

Since the beginning of 1938 a number of Indian States have announced political and constitutional reforms—such as Aundh, Banswara, Baroda, Benares, Cochin, Gwalior, Hyderabad, Mysore, Nagod, Pallahara, Rajkot, Sangli, Sitamau, Sohawal, Seraikella, etc. These reforms range from mere modernisation of the administrative machinery and the introduction or extension of the representative principle in local and central government to the introduction of Dyarchy and, in one instance, of almost full responsible government.

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December 1940.

II

So far as the reform of the administrative machinery is concerned, there does not appear to be any real difference of opinion between the Princes and their ministers on the one hand and the Paramount Power and the spokesmen of the people, like Mahatma Gandhi, on the other. His Excellency the Viceroy pointedly drew the attention of the Princes recently to the urgent need of adopting modern and higher standards of administration and counselled the rulers of small States to co-operate together and provide for the heavy expenditure of modernising administration by organising certain services in common and sharing the expenses. The Chancellor of the Chamber of Princes and the Conferences of the Princes and States' ministers held during the last two years have also been emphasising the need for administrative reforms in the States. Opening the conference of Princes and States' ministers at the Taj Mahal Hotel in Bombay on June 10th, 1939, H. H. the Jam Sahib announced:—

- “ In this connection, though the question of reforms within individual States rests primarily with the Rulers and Governments of the States concerned, the Rulers in their meeting yesterday have unanimously desired to recommend to the individual States the desirability of testing their administrations, where needed, with the following basic tests:—
- (a) Special efforts should be made to have (i) clear and codified laws ensuring a reign of law for the States; (ii) a judiciary popularly manned by qualified law-graduates.
 - (b) That, unless already done, there should be a clear demarcation between the personal expenditure of the Ruler and the State expenditure, and the former should be fixed on a reasonable basis as resolved by the Chamber of Princes.
 - (c) That a five or ten years' programme on a clear-cut plan should be prepared for beneficent activities in the States, such as education, medical relief, agriculture, health, road development, etc.
 - (d) That the States' governments should keep in close touch with the latest ameliorative legislation in British India and the Indian States which may be suitable to their local conditions, such as famine relief, and give it prompt consideration.

- (e) That the advisability may be considered of issuing a Standing Order within our States to the effect that any bonafide complaint supported on personal knowledge by a certain prescribed number of disinterested local State subjects of good repute resident in the area concerned alleging corruption or undue harassment against any State official shall be duly inquired into."

And about a month later, Mahatma Gandhi printed an appeal to the Princes in the *Harijan* and suggested that every State, big or small, should give to the subjects:—

- "(1) full civil liberty so long as it is not used to promote violence directly or indirectly; this includes freedom of the Press and liberty to receive newspapers which do not promote violence;
- (2) freedom to all people of the States to form associations and to educate public opinion in favour of establishing responsible government in their own States;
- (3) freedom for the Indians outside the particular State to enter it without let or hindrance so long as their activities are not directed towards the destruction of the States in question;
- (4) limitation of the Privy Purse so as not to exceed one-tenth of the income where it ranges from 10 to 15 lakhs per year;
- (5) judiciary to be independent and permanent and free of all interference....."

Making allowance for the varying angles of approach of the Chancellor of the Chamber of Princes and of the Tribune of the Indian people and of the fact that the two represent widely different interests, there does not appear to be any real difference of opinion among them in regard to the establishment of a high standard of administration in the States. What is necessary is the translation of the principles laid down by the Chancellor of the Chamber of Princes into practice so that a responsible leader in British India cannot describe any of the Indian States in future as "sinks of reaction and incompetence and unrestrained autocratic power, sometimes exercised by vicious and degraded individuals," as was done by Pt. Jawahar Lal Nehru in his

Presidential Address before the Indian States' Peoples' Conference at Ludhiana in February 1939.

III

Coming to the subject of Constitutional Reforms, it is the object of this paper to analyse the nature and extent of the reforms announced in Indian States during the last three years and to assess their value. It is not intended to describe each reform scheme separately but an attempt will be made to make a comparative study bringing out at the same time special features of each scheme, if any.

IV

Except in the case of Aundh, nowhere is it contemplated to change the position, powers and prerogatives of the Ruler. Even in Cochin, which is the first Indian State to introduce Dyarchy, the announcement clearly states—"though the administration of these departments will be normally carried on in accordance with the advice of the Minister, it is necessary that the Maharaja's prerogative should be preserved unimpaired." The Rajkot Scheme, which goes further in the direction of Dyarchy than the Cochin plan, also lays down already that the rights, privileges and powers conferred upon the people are "subject to the absolute vetoing powers of the Ruler and his discretion." The general position may be stated in the words of the Government of Baroda Act, 1940:—

"Notwithstanding anything contained in this or any other Act, all powers, legislative, executive and judicial, in relation to the State and its government are hereby declared to be and to have always been inherent in and possessed and retained by His Highness and nothing contained in this or any other Act shall affect or be deemed to have affected the right and prerogative of His Highness to make laws, by virtue of his inherent authority."

Thus no attempt has been made to transform the Ruler into a constitutional head like the King in England. On the other hand, in at least one State, a peculiar theory has been advanced, which if accepted or persisted in, would make it impossible for ever to establish in any State any form of democratic

government. It may be stated in the words of the Hyderabad Reforms Committee:—

“The head of the State represents the people directly in his own person, and his connection with them, therefore, is more natural and abiding than that of any passing elected representatives. He is both the Supreme head of the State and embodiment of the “peoples’ Sovereignty.” Hence it is that, in such polity, the Head of the State not merely retains the power to confirm or veto any piece of legislation, but also enjoys a special prerogative to make or unmake his executive or change the machinery of government through which he meets the growing needs of his people. Such a sovereignty forms the basis on which our constitution rests, and has to be preserved.”

If that is so, we must bid good-bye for ever to “Sovereignty of the Parliament” consisting of the elected representatives of the people. But, it is difficult to believe, that in a State where 85 per cent of the population professes a different faith than that of the Ruler and where only recently there was such a strong movement against the policy of the government, involving mass imprisonments, that such a claim as made by the Hyderabad Reforms Committee, can be supported by even the majority of the people.

V

In striking contrast to this theory of the sovereignty of the Prince is the announcement of the Raja of Aundh—“the first servant and conscience-bearer of the people”—entrusting the administration of the State into the hands of an executive responsible to the State Legislature, reserving to himself only “the relations with the Paramount Power and other States,” and providing for a couple of safeguards for the transition period. During the first two years the ministers will be of the choice of the Raja and not removable by the Legislature and for the first five years the Ruler will have the power to nominate not more than five members to the Legislature. The Privy Purse has been fixed at Rs. 36,000 for the first five years.

VI

The State of Aundh has also the distinction of being the first Indian State to guarantee through the Constitution a comprehensive

system of fundamental rights to its people—although both the Gwalior and Hyderabad announcements also make reference to the granting of certain fundamental rights and civil liberties. The other Reform Schemes judged from the summaries published, appear to be silent on this point.

The Aundh State Constitution Act guarantees to every citizen “subject to the principle of non-violence and public morality..... freedom of person, freedom of speech, liberty of the Press, freedom of assembly and discussion, freedom of worship, freedom from all political disabilities arising from birth, sex, caste, religion and colour or material standing, universal, free, compulsory basic education and the right to work at a minimum living wage.”

These guarantees, if carried out, will undoubtedly make Aundh a model, not only for the other Indian States, but also for British India.

The Gwalior Proclamation of June 14, 1939, states:—

“Our subjects are entitled to the fundamental rights of good citizens and shall possess the various civic liberties, which shall include:—

- (i) Liberty of speech and liberty of the Press;
- (ii) Liberty of conscience.....and
- (iii) Liberty of association,

subject to the limitation and duties laid down by law for the maintenance of peace and order.”

The last clause is significant and unless interpreted liberally may circumscribe the sphere of the liberties announced considerably.

The Hyderabad announcement is still more qualified and indefinite. Civil liberties are promised within “legitimate bounds” and for ensuring religious freedom it is proposed to establish a Religious Affairs Committee consisting of both officials and non-officials on which “there shall always be equal representation of the two major communities” to advise the government.

One can only join with His Exalted Highness in the hope expressed that the proposed changes will make it possible for “a responsible press and a responsible public platform” to come into existence and that the creation of the Religious Affairs Committee will put an end to the religious grievances of the Hindu majority in the State.

VII

The power of appointing ministers and executive Councilors is retained by the Reforms in the hands of the Ruler in each State—only in very few States certain limitations have been imposed on the exercise of this power.

The Aundh Constitution goes farthest in the direction of imposing restrictions and makes it incumbent on the Raja—after the transition period of two years is over—to appoint only those ministers who possess the confidence of the State Legislature and whose tenure is subject to the rota of the Legislature.

The Rajkot Scheme comes next, but remains at a respectable distance. It contemplates the appointment of two of the State ministers from among the elected members of the Sabha, who shall be in charge of the Departments of Education, Medical relief and Local Self-Government, and who shall be removed “on a vote of no-confidence by a three-quarters majority of the Sabha or when it appears to the Ruler expedient to remove in the public interest.” The three-quarters majority of the Legislature, one-third of which is nominated and 2/3rds elected on the basis of communal electorates means that the ministers can be kept in power even against the wishes of the majority of the elected representatives of the people.

In Cochin, one of the ministers is to be appointed from among the elected members of the State Legislature. He is styled “Minister for Rural Development” and is “to assist the Dewan in the administration of the Departments of Public Health, Panchayats, Co-operation, Agriculture, Ayurveda and uplift of the Depressed.” Nothing is said about his responsibility to the Legislature but it is made clear that the Maharaja’s prerogatives should be preserved unimpaired,” which means that the minister must carry on the administration of his departments in consonance with the wishes of the Ruler and the Dewan.

The Baroda Act contemplates the appointment of a minister from among the “non-official” members of the Dhara Sabha—who may not be an elected representative of the people. And the Gwalior Proclamation hopes that “in course of time and in the light of experience gained or acquired” it may be possible to select one minister from among the members—not necessarily, elected—of the Praja Sabha.

The Mysore Scheme makes provision for the appointment of not less than two of the ministers from among the elected members of the Legislature but expressly rules out the responsibility of the part or the whole of the executive to the Legislature.

As stated by the Mysore Reforms Committee, Dyarchy is unsatisfactory and complete responsibility is an impossibility at this stage.

In this connection it is necessary to draw attention to two points: (1) Mere appointment of one or two “elected” members as ministers cannot make the State government even responsive to the wishes of the majority of the people, because the ministers may not be selected from the majority party or group. As a matter of fact, the power of appointing ministers may be used to weaken the majority party. It is not always easy to withstand the temptations of office and power of patronage has been used in other countries to make legislatures subservient. (2) The assumption that there is identity of outlook and interests between the Prince and his subjects and between the officials and elected representatives of the people on which some of the Reform Schemes are based, is without any foundation. It is against all experience in this country and abroad and it militates against the very idea of democracy. Is it not a fact that the interests of those who are denied political power usually suffer? And is it also not true that the whole object of Democracy in distributing power equally among the people is to enable each class or section of the people to safeguard its interests?

Indeed, the weakest point of the reforms announced in the Indian States during the last three years is that, with the exception of Aundh, in no other State has any power been really transferred to the people or their representatives—what has been attempted is to associate in a few cases one or two non-officials with the State executive governments and in a number of them to create or enlarge representative chambers.

VIII

Most of the States that have introduced reforms have provided only unicameral legislatures. Their size is really too small for bicameral legislatures. Moreover, so long as the final power and responsibility for making laws is in the hands of the Ruler and his confidential advisers, the question of unicameral *vs.* bicameral legislatures cannot assume serious practical importance in the States. Even in the two States of Gwalior and Mysore, where provision is made for two chambers, the lower or the popular chamber is not, in the strict sense of the term, a law-making body—it is a consultative and a ventilating chamber, meant to voice the needs and grievances of the people and to elicit

public opinion on government measures and proposals. In Mysore, Bills cannot originate in the lower house or the Representative Assembly though it will ordinarily be consulted on the general principles underlying measures introduced in the Upper or the Legislative Council and its opinion will be taken into consideration both by the upper chamber and the Ruler before a law is enacted. Opinion of the Assembly supported by a 2/3rds majority will not be disregarded ordinarily, but if the government decides to ignore the views of the Assembly it will give reasons for doing so in a public statement. The Gwalior Proclamation, it is true, gives the right of initiating legislation to the members of the Praja Sabha but it is the Samant Sabha which is meant to be the real law-making body—"legislation initiated in the Samant Sabha will become law if assented to and in the form assented to by the Ruler." It is obviously not necessary to obtain the sanction of the Praja Sabha.

IX

The representative legislative chambers that have been projected under the recent reform schemes in the States are mostly of the Pre-Montford British Indian variety. They all contain an important nominated and official element. Even in Aundh the Raja has reserved to himself the right to nominate up to 5 members during the first five years to the Legislative Assembly consisting normally of 15 other members. The proportion of nominated to the elected members varies from state to state but it is fairly high in each State ranging between 33 and 50 per cent, as shown by the following figures:—

		Nominated	Elected
Baroda Dhara Sabha	...	18	37
Gwalior Samant Sabha	...	20	20
Hyderabad Legislative Assembly		43	42
(Note:—Out of 43, 7 are members of Executive Council, 3 represent the Crown lands and 5 the landed estates.)			
Mysore Legislative Council	...	24	44
Rajkot	...	20	40
Sangli	...	15	30
Sitamau	...	8	13
Seraikella	...	12	12

As already pointed out there are representative assemblies in addition in Gwalior and Mysore. The Gwalior Praja Sabha will have 35 nominated and 50 elected members. The Mysore Representative Assembly will now consist of 310 members normally, out of which only 10 members are nominated.

X

The system of representation is direct except in two small States—Aundh and Seraikella, where it is based on local Panchayats and district boards. For instance, in Aundh there is a Panchayat of 5 members, elected on adult franchise, for each town and village or group of two or more villages. These Panchayats are grouped into five Talukas, each of which has a Council consisting of the Presidents of the Panchayats in the Taluka. The President of each Taluka Council is an ex-officio member of the Legislative Assembly and each Taluka Council elects in addition two members, one of which may not be a member of the Taluka Council—making a total of 15 members besides the ministers in the Aundh Legislative Assembly.

In the other States the system of elections is direct and, except in one State, members are elected by both territorial constituencies, divided into urban and rural, and by certain special constituencies representing particular interests or institutions as in British India. A few of the States, such as Mysore and Rajkot, have also introduced separate communal electorates for Muslim and other minorities on the British Indian model. For instance, the Mysore Representative Assembly has 300 elected members, 211 of which are elected by general territorial constituencies, out of which 166 are urban and 45 rural; 67 are constituencies for the election of Muslims, depressed classes, Indian Christians and Europeans; and the remaining 22 members are elected by special interests such as the University, Planting, Industry, Trade and Commerce, Woman, Labour, Co-operation and Banking, and gold-mining. Similarly out of 44 elected members of the Legislative Council, 24 are returned by general constituencies, 10 by separate communal electorates and 10 by special constituencies.

The State of Hyderabad has earned the distinction of discarding general territorial constituencies and of extending representation of special interests, economic and communal, which is the most objectionable feature of the system of representation as it still prevails in British India. Representation of special interests is thoroughly undemocratic and leads to the over-

weighing of the legislature with vested interests. And when reinforced by separate communal representation it makes the legislature both reactionary and anti-national. In British India, advanced political parties like the Congress have retrieved the situation to a certain extent, otherwise British Indian legislatures would have become veritable "sinks of reaction."

The Hyderabad Reforms Committee and the State Government have condemned territorial representation as unscientific and a "worn-out" method, in spite of its universal prevalence in all democratic countries of the world. The question of functional groups *vs.* the neighbourhood group was scientifically examined by Miss M. P. Follat in her brilliant study entitled "The New State" and she conclusively proved the superiority of the neighbourhood group over the functional group from the point of view of the creation and expression of true public opinion or the general will. The Hyderabad Government has praised the principle of functional representation and has expressed the conviction, that the only hope of bridging the differences of race, language and religion in this country lies in the adoption of functional representation. And, yet curiously enough, it has sought to divide each profession and economic interest in the State on communal lines. Every professional and economic constituency is required to divide its representation into two equal parts—one-half of the members returned, must belong to the Muslim community, supported by at least 40% of the members of the Muslim voters in the Constituency, irrespective of the fact that the Muslims constitute less than 15% of the population in the State and that their number is very small in many of the professions and occupations. This is a piece of grave injustice done to the Hindus of Hyderabad. Indeed, it appears, that it was to hide this injustice and to cover it up under the high-sounding formula "equality of representation to the two major communities" that territorial constituencies were discarded and refuge was taken under the principle of functional representation. The motive behind the adoption of joint electorates appears to be the same—division of each interest into Moslem and Hindu would have made the injustice done to the Hindus unpleasantly prominent. In spite of this, however, the system of joint electorates would have been warmly welcomed if its beneficial effects had not been nullified by the further provision that a candidate must obtain at least 40 per cent of the votes of his own community in the constituency before he is elected.

Moreover, it must be remembered, that the principle of functional representation has only been partly adopted in the

scheme of representation finally sanctioned. The Hyderabad Legislative Assembly will consist of:—

A. Elected Members	...	...	...	42
Samsthan and Jagirs	...	...	4	
Maashdars	...	...	2	
Agriculturists	...	...	16	
Peasant Proprietors	...	...	8	
Pattadars	...	...	4	
Tenants	...	...	4	
Labour	...	...	2	
Industries	...	...	2	
Cammerce	...	...	2	
Banking	...	...	2	
Legal Profession	...	...	2	
Medical Profession	...	...	2	
Graduates	...	...	2	
District Boards	...	...	2	
District Municipalities	...	...	2	
Hyderabad Corporation	...	...	2	
B. Nominated Members...	...	...	...	43
Executive Councillors	...	...	7	
Other officials	...	...	14	
Non-officials	...	...	14	
University	...	...	1	
Harijan	...	...	5	
Lingayats	...	...	1	
Christians	...	...	2	
Parsi...	...	...	1	
Women	...	...	2	
Contractors	...	...	1	
Journalists	...	...	1	
Royal Domain	...	...	3	
Landed States	...	...	5	
Total	...	...	...	85

It will be seen that neither the graduates nor the District Boards nor the District Municipalities nor the Hyderabad Corporation can be described as representing any economic interest. Nor can the six seats assigned to *Samsthans*, *Jagirs* and *Maashdars*, in addition to the 8 seats given to crown lands and Landed Estates through nomination, be justified on the principle of functional representation—because agriculture is represented separately by 16 members. It will thus be clear that the principle of functional representation has been adopted merely

to serve communal ends and that it has not been made the real basis of representation.

XI

From the information available to me it is not clear as to what percentage of the population will be enfranchised in Hyderabad. In other States which have introduced reforms during the last three years the right of voting is confined to a very small percentage of the people. Franchise is regulated on the basis of property qualifications. For instance, in Baroda "A person is entitled to be an elector in a general constituency:—

- (1) who is a Khatedar of land which is assessed at not less than 30 rupees;
- (2) whose income is such as would make him liable to income-tax;
- (3) who owns immovable property worth not less than Rs. 1,000; or
- (4) who has passed the Matriculation examination or an equivalent examination or any higher examination."

In Rajkot franchise is granted to those who (a) have completed 21 years of age and (b) have also had three years' residence in the State and are holding immovable property of the value of not less than Rs. 1,000 for Rajkot and Rs. 300 for the villages or are holding not less than one *Santi* of cultivable land or paying annual *Ubhad Vero* of not less than Rs. 2.

The States of Mysore and Gwalior have, besides Legislative Councils, representative assemblies for which the franchise has been made low. The Gwalior Proclamation announces the intention of enfranchising for purposes of elections to the Praja Sabha, about 20% of the population.

In Aundh there is adult franchise for elections to the Panchayats, but, as already stated, elections to the State Legislative Assembly are indirect, which detracts considerably from the democratic nature of the franchise.

XII

The tenure of the legislative chambers has been fixed usually three years in most of the States and in all of them the Ruler has the power of extending the term or ordering a dissolution earlier.

In Mysore the tenure of both the chambers has been increased from three to four years under the recent reforms. The Aundh State Assembly is a permanent body, with 1/3rd of the members retiring every year.

The Legislatures are expected to meet in most of the States ordinarily twice a year. In Aundh the Constitution provides that not more than seven months must elapse between the two sessions of the legislature.

Each Legislative Chamber is presided over in most of the States by the Dewan or a nominee of the Ruler. Very few of the States provide even for elected Deputy Presidents. In Sitamau, the Heir-Apparent is the President of the Legislature. In Mysore, it is expected that after the first four years, the President of the Legislative Council will be an elected member of the Council. The President of the Mysore Legislative Assembly will, however, continue to be the Dewan and the ministers its vice-presidents.

XIII

Constitutional Reforms in the States introduced in recent years do not contemplate giving final authority to the Legislature either in legislation or control over the purse. Members are usually given the right to ask questions and supplementary questions, move resolutions, initiate bills and to discuss financial statements and proposals subject however to three important restrictions, viz:—(1) several important matters are excluded altogether from the purview of the legislature; (2) certain other matters require the previous written permission of the Ruler or the government before they can be considered in the Chamber: and (3) the Ruler reserves to himself the right of stopping any matter at any time or stage from coming before the legislature or its consideration from being continued. Further the Ruler has absolute vetoing power over the measures passed by the legislature and decisions arrived at by it and to restore any item of the budget reduced or rejected by the chamber, wherever that power has been given to it. Moreover, the Ruler can make laws and ordinances and sanction expenditure whenever he considers it necessary, of course, in the interest of the State and its people, without the approval of the legislature and even without consulting it. For purposes of illustration and making the above summary more definite and realistic, relevant provisions of the Government of Baroda Act, 1940, are quoted here:—

Section 17 of the Act states:—

“There shall not be introduced into or moved in the Dhara Sabha any bill or amendment or motion or resolution or question—

- (a) which would affect the discipline and well-being of His Highness’ army;
 - (b) which would affect the matters relating to His Highness’ office and the Household department;
 - (c) which would affect the relations and treaties with other States or Governments;
 - (d) which would affect the authority and position of His Highness and the members of His Highness’ family;
 - (e) which would regulate the borrowing of money, or the giving of any guarantee by the State, or amend the law with respect to any financial obligation undertaken by it;
 - (f) which would affect the provisions of this Act; or
 - (g) which would affect any other matter which may be determined from time to time by His Highness.
18. There shall not be introduced into or moved in the Dhara Sabha without the previous sanction of His Highness any Bill or amendment:—
- (a) which would affect the public debt or revenue or taxes, or which would create a charge on the government revenue and taxes;
 - (b) which would affect the religion or religious rights and usages of His Highness’ subjects;
 - (c) which would affect any Act, proclamation or order made or passed by His Highness in the exercise of His Highness’ prerogative; or
 - (d) which would affect the privileges of members of the Dhara Sabha.
19. If the Dewan certifies that the discussion of a Bill introduced or proposed to be introduced in the Dhara Sabha or any specified clause of a Bill or of any amendment moved or proposed to be moved to

a Bill, would affect the safety or tranquility of the Baroda State or any part thereof, he may direct that no proceedings or no further proceedings shall be taken in relation to the Bill, clause or amendment, and effect shall be given to that direction.”

Section 27 of the Baroda Act makes provision for returning a measure passed by the Dhara Sabha to it by the Dewan for its reconsideration and for “the assent of His Highness, who may declare either that he assents thereto, or withholds his assent therefrom.”

27(d) provides: “If a Bill is rejected at any stage by the Dhara Sabha the Dewan may certify that the Bill is an emergent measure and with this certificate it shall be placed before the Dhara Sabha. If the Dhara Sabha refuses to reconsider its decision, the Dewan may submit the Bill to His Highness who may enact it as an emergent measure.”

Section 30 of the Act makes provision for laying before the Legislature “a statement of the estimated receipts and expenditure of the State for that year.”

The expenditure is divided into two parts—(1) “expenditure charged upon the members of the State,” which “shall not be submitted to the rota of the Dhara Sabha;” and (2) “expenditure proposed to be met from the revenues of the State,” which “shall be submitted to the Dhara Sabha in the form of demands for grants” and which is given the power to assent, reject or reduce any demand subject to the important proviso that “any motion passed by the Dhara Sabha shall become effective only when accepted by His Highness.”

The items of expenditure not to be submitted to the rota of the Dhara Sabha are many and important including:—

- “(a) expenditure on matters reserved from the cognizance of the Dhara Sabha under Section 17,” already quoted above, which includes expenditure on the army, on His Highness and His Highness’ family, Household, etc.;
- “(b) Salaries of the Dewan and other members of the Executive Council;”
- “(g) Contributions and grants of all nature, continued or sanctioned by His Highness;”

“(i) Salaries of such other officers as His Highness may specify from time to time.”

and last but not the least is the provision “(k) such other expenditure as His Highness may specify from time to time.”

In addition the Act provides:—

35. “His Highness shall have power in cases of emergency to authorise any expenditure as may in his opinion be necessary for the safety, tranquillity or efficient administration of the State.”

It will be noticed that the language used in describing the powers of the Legislature is largely modelled on that of the Government of India Act, 1919, but the restrictions imposed, go very much further than those prescribed in The Act of 1919. As a matter of fact, the concluding clauses like

“ . . . any other matter which may be determined from time to time by His Highness” and

“such other expenditure as His Highness may specify from time to time”

reduce to nullity whatever powers are given by the preceding clauses. None-the-less, in one State, at least, *i.e.*, Mysore, “The vote of the Council rejecting or reducing any demand is binding on Government ordinarily” and it is only in cases of emergency that the government is authorised to sanction the necessary expenditure. This means that Mysore has entered the Montford stage of reforms.

Aundh is the only State which has gone beyond the Montford stage. The Constitution declares:—“The Legislative Assembly shall be the supreme authority in the State.” The Ruler is allowed only a suspensive veto—and if a measure is passed in three successive sessions it becomes law automatically. Similarly, the Constitution lays down that the Legislative Assembly “will exercise supreme control over the revenues of the State.” Even the privy purse of the ruler is rotatable. The only important item outside the control of the Assembly is the rotation of the State with the Paramount Power and other States.

XIV

Several of the States have taken steps to introduce or extend local self-government within their territories. Some of the States have also created statutory committees for associating them with

the various administrative departments. In this respect Hyderabad has gone further than the other States. “Government has proposed the appointment of Statutory Advisory Committees to advise ministers in respect of (1) Finance, (2) Public Health, (3) Agriculture, (4) Industries, (5) Education, (6) Hindu Endowments, and (7) Moslem Endowments.” The Minister in-charge will be the Chairman of each Committee, and half its members will be non-officials. Each Committee will have the power to discuss and record, for the consideration of the government, their opinions on questions of policy and on all new schemes involving expenditure.

XV

To sum up, under the stress of popular pressure, Rulers in some of the States have introduced administrative and constitutional reforms. But with the exception of Aundh, the States still lag far behind British India. In some respects Mysore is still in the vanguard; in others Cochin, Rajkot and Sangli have marched ahead of her. They have passed beyond the pre-Montford stage. Baroda and Gwalior are on the border but the other States are still in the pre-Montford stage. But it appears that the Indian States are definitely following in the footsteps of British India and they are not able to avoid the mistakes made in British India. Political communalism threatens to vitiate self-government in the States and if not checked in time will make the problem of responsible government in the States as insoluble as in British India.

REVIEWS

OXFORD PAMPHLETS ON WORLD AFFAIRS, No. 26.

THE NAVAL ROLE IN MODERN WARFARE by Admiral Sir Herbert Richmond.

We know from this pamphlet what an immensely difficult and vital task is performed by the Royal Navy in the present war. The Navy maintains the life-lines of communication of the British Isles with the rest of the world without which it would be impossible for Britain to continue to exist. The command of the seas which means the maintenance of the lines of communications for the home country and their denial to the enemy is the very basis of Britain's existence. The task has become increasingly difficult with the growth of the navies of the other Great Powers and the newer developments in the instruments of warfare such as the submarine, the floating mine and the aerial bomber. Admiral Sir Herbert Richmond's pamphlet describes the rôle of the Navy in war, the objects and methods of naval war and the limitations laid upon its conduct by international conventions as also the rights and duties of neutrals and neutral shipping. The subject is both controversial and highly technical. The pamphlet deals with all the relevant aspects of the question and incidentally draws our attention to the significant differences between the point of view of Germany and that of other States on the question of naval warfare. The pamphlet contains a short bibliography for the help of those who would like to study more deeply the problems of naval warfare. If for no other reason than that of appreciating the services of the Royal Navy the pamphlet may be recommended.

OXFORD PAMPHLETS ON WORLD AFFAIRS, No. 21.

THE NAZI CONCEPTION OF LAW by Walter Jones.

The Nazi conception of the Law is not so much law as a new political theology, with two cardinal principles—an integrated, racially homogeneous nation and a Leader not chosen by the people and yet combining in his person in some mystic way a perfect representation of the people and perfect authority. The Führer's word is the ultimate source of all law. This means of course no law in the ordinary sense of the word. This practical dictum is sought to be reconciled with the theory of the Historical School of Jurisprudence that all law is an emanation from the *Volksgeist*, the soul of the people.

Some of the consequences of this view of the Law must be noticed. There is first the attempt to substitute the older Codes derived from Rome by a new German Code—a task which could be

effected only at the expense of reasonableness. Secondly, there is the subordination of the individual to the State or Community, a denial of the rights of the individual and an assertion of the authority of the State which means the Party. The Leadership principle means the end of Trade Unions and individual rights and a stern discipline in the interest of the State. The racial principle means the exclusion from the benefits of the State of all non-Aryans. Thirdly, there is the rejection of international law and obligations, as in the Nazi view, there can be no binding law among peoples without a community of blood. This means also that the Germans have a right to the mastery of the world and the exploitation of the other parts of the world, being invested with a divine mission for this end. With a view to achieve the unity of the State there is regimentation of the entire body of lawyers and a complete subordination of the Judiciary to the Executive, and Law is given an extremely fluid character. All in all the Nazi conception of the Law is the very antithesis of what Liberals and Progressives have hitherto regarded as law. It is, in a word, divorced from conceptions of social justice.

These are well explained in this pamphlet. Both these pamphlets illustrate what a distinguished publicist has aptly termed the clash of character between the Prussian and the Englishman. As Fisher puts it England grew, Prussia was manufactured. We are witnessing the process to-day as well as the dreadful consequences.

N. SRINIVASAN.

OXFORD PAMPHLETS ON WORLD AFFAIRS, No. 28.

BRITAIN'S AIR POWER. Author E. Colston Shepherd, Editor of *The Aeroplane*. Printed and Published by the O. U. P. Reprinted March 1940. Price 3d. net. Pp. 32.

The principles, tactics and equipment on which the Royal Air Force was conceived before the present War began and as these developed during the static phase of the first six months have been described in the pamphlet. Factually as well as formally there have been enough changes in the R. A. F. to make this pamphlet out-of-date.

Two main types of work performed by the R. A. F. and the Fleet Air Arm have been described. Three types of planes, namely, the Fighters, the Bombers and the Reconnaissance, have been dealt with. Some details have also been given of the Sunderland Flying-boats, the Spitfires and the Hurricanes. The Wellington and the Blenheim bombers and the special type of the Army Co-operation plane, the Lysander, have also received their due share of attention from the author.

A brief account is also given of the organization of the R.A.F. into the various Commands, and of the relation between the R. A. F. and the Air Forces in the Dominions.

That British Air Power is at a disadvantage geographically as compared with the German antagonist has been emphasized. Though the R. A. F. has been giving a fair account of itself in the recent raids on Germany's vital spots, one cannot help the impression that the R. A. F. is yet on the defensive. With the help of the new American Lease and Lend Bill, let us hope, however, that the R. A. F. would perform better on the aggression.

SUDHIR DAS GUPTA.

THE DETAILED MAP OF ABYSSINIA, by Abdul Kadir. Size 24 in. into 34 in. Price 12 annas. Publishers—Khalid Co., Delhi. Can be had of Maktaba Jamia, Delhi.

It was an excellent idea that led to the publication of this detailed map of Abyssinia, although its execution could certainly have been made more effective by the use of different colour inks to show the various kinds of products in the country.

The map marks the important lakes, rivers, railways and towns, as well as the agricultural and mineral products of the various areas. In two small sketches in the corners have been shown (a) the various distances from the capital, Adis Ababa, to the frontiers, and (b) the distance of Abyssinia from India. On the thick cardboard cover, brief descriptive notes about Abyssinia's extent, climate, population, religion, produce, communications and earlier history have been given. These notes, it must be added, are full of misprints and misspellings, which could have been avoided with a little care.

BOOL CHAND.

OXFORD PAMPHLETS ON WORLD AFFAIRS: Pamphlet No. 13

THE REFUGEE QUESTION—By John Hope Simpson.

This interesting brochure discusses in simple and clear language, the refugee question, with special reference to the Jewish problem, which has become increasingly grave in the After-1918 period all over the world. War, nationalism and racial persecution were responsible for driving large numbers of people from the countries in which they lived and worked, and the world is now presented with a problem "which can no longer be settled by individual charity." As the author pertinently remarks, "The essence of the problem is political, . . . unless Governments are prepared to regard it as a major political disturbance, whose reactions affect the well-being of each civilised state and of the comity of civilised nations, no radical solution can be expected, and the private energy displayed will largely be wasted." But beyond this broad statement of fact, there is no suggestion of any constructive proposal for the solution of the problem.

PAMPHLET No. 15. CZECHOSLOVAKIA—by R. Birley.

This pamphlet deals, in succinct language, with the history and culture of the unfortunate Czech people and examines the nature of the Republic which has been destroyed by the Nazi onslaught in 1938-39. The author, by means of ample data, disproves the theory that the Czechs were a race naturally subservient to the Germans and that the Republic of Czechoslovakia was an artificial creation which could not hope to endure. In his own words "one who has heard the men and women of this race speak of their national history, who has read of Charles IV and John Hus and Palacky, who has stood in St. Vitus' Cathedral by the tomb of St. Wenceslas, who has watched the flowing Vltava and heard Smetana's symphonic poem to the river, where the songs of the people mingle with the surge of the waters, such a one *knows* that the Czechs are a nation and that their greatness through ten centuries of history is their own." But however much one may grant the separate nationality of the Czechs and however much one may condemn the Nazi annihilation of this country, one wonders whether the separate nationality of a people does automatically imply its separate autonomous existence; whether the root of the trouble in modern Europe is not the existence of numerous small nation States powerless to defend themselves; and whether the ultimate security and peace of Europe, nay of the world, do not lie in a Federal Union of Nations rather than in their separate Sovereign existence.

PAMPHLET No. 18. NATIONAL SOCIALISM AND CHRISTIANITY (by N. Micklem).

This pamphlet explains clearly the conflict between Nazism (which is totalitarian and all-embracing in character) and organised religion. The origin and nature of this conflict are analysed and the persecution of the Catholic and Protestant Churches in Germany described. Although one may agree with the author that "the clash between National Socialism and the Christian two conceptions of God, two 'anthropologies,'" and that "in Church rests upon the incompatibility of two views of the world, National Socialism there are no ultimate universal standards," and "what Germans wish is right, what Germans think is true: there is no transcendent God whose Law is universal, whose Love knows no favouritism and no limits," it is still difficult to see eye to eye with him when he says that "all political questions are at bottom theological" and "that it is this idea of Christendom which now appears not as a mere dream of the Middle Age but as the burning issue of our time." One wonders whether in the name of organised religion and God, greater destruction of life and property has not taken and is not taking place than in the various wars which are recorded in history. The Crusades are historical instances and the communal troubles in India and Ireland furnish up-to-date proofs of this indisputable fact. The root of the trouble is not theological, but economic and social factors that lie at the bottom and so long as economic and social inequalities, whether

individually or collectively, continue to exist, so long will continue the ills of the world unsolved. And it is here that organised religion could do much by trying to redress the inequalities and not by splitting up humanity into so many different air-tight groups labelled as Hindus, Muslims, Christians, etc.

E. ASHIRVATHAM.

LECTURES ON JURISPRUDENCE by K. R. R. Sastry and Ram Kishore Gupta (Kitabistan, Allahabad).

The book under review is an exceedingly handy survey of the Science of Jurisprudence in the form of lectures which should prove a useful guide to all who are interested in the study of Law. The author's connection with the Law Department of the University of Allahabad has qualified him eminently for this work: and the result is a production marked by sound scholarship, methodical structure and lucid exposition which only a really good teacher can combine in his attempt to produce a readable book on an abstract subject.

The first half of the work is devoted to a critical outline of the fundamentals of Jurisprudence in which the Science of Law in all its bearings—the nature of Law, kinds of Law, sources of Law, Religion, Custom, Jurisdic writings and legislation have been very well brought out: and the contribution of most of the schools of thought,—analytical, historical, metaphysical and comparative has been briefly but quite lucidly incorporated in the body of these lectures. Though the sociological point of view has nowhere been completely lost sight of, perhaps a more profuse use of "Sociological Jurisprudence" would not have been inconsistent with the spirit of the modern age: and in this connection Roscoe Pound may have come in for ample notice that he admittedly deserves. To quote a recent writer "It is the duty of lawyers to think as citizens of a changing world, to know what is going on, and to discharge their unescapable duty of law-making in the light of that knowledge." In Dean Pound's own words:—"Let us put the new point of view in terms of *engineering*; let us speak of a change from a political or ethical idealistic interpretation to an engineering interpretation. Let us say that the change consists in thinking not of an abstract harmonizing of human wills but of a concrete securing or realising of human interests."

With us in India the Hindu woman's legal position is a burning question of the day. No Indian author of a treatise on Jurisprudence in the present times can be excused for not giving sufficient prominence to this question. A more liberal use of the sociological method would have at once brought this omission home to the authors.

And what of the definition of Law itself? The authors, doubtless, have not spared themselves in arriving at a satisfactory

result supplied by Sir John Salmond, "The Law consists of rules recognised and acted upon by the courts of justice." (Page 27.) Rules, indeed! But does that really carry us very far in actual life or in the court of law itself? In the administration of law we have the judge *and* the jury—the hard headed stern intellect *and* the emotional factor pleading for interests of daily life. Such a position cannot, possibly, be better expressed than law being "the sum of *influences* that determined the decisions of a judicial court."

In the second part of the book "Elements of Law," the authors have treated the subject of Rights and Liability admirably well.

Altogether the book is a very creditable production—handy for students of law and not without appeal to the general public interested in social and political institutions.

T. K. SAHANI.

PALESTINE by James Parkes (No. 31 of the Oxford Pamphlets on World Affairs). Pp. 32. Price 3d. (1940.)

The Pamphlet describes, firstly, the historical development of the events that have led up to the present situation in Palestine and, secondly, the social, industrial and economic experiments that have been made (especially by Jewish settlers) in that country during the last twenty years. The author has without doubt stated the claims of Britain, the Arabs and the Jews *impartially* (and for this he must be congratulated), and has rightly pointed out that their interests are incompatible, and yet they are 'equally justifiable' and hence 'to a very large extent each of the three parties concerned has perfectly legitimate reasons for acting as it has done.' This is why Palestine is 'still waiting for the Soloman, whether British, Jew or Arab, who will produce a political solution,' and the author hopes that 'its possibilities and its achievements are already considerable that it is difficult to believe that a political solution will not be found.'

The author further believes that the conflict between the Arab and the Jew is in fact the conflict between the East and the West—a conflict between two standards of living and two conceptions of life—and even, if you like, it may be a conflict which has behind it political and economic reasons also in which the Christian and the Muslim Arab is equally hostile to the advent of the Jew; but he forgets that the real cause of this perennial conflict is the permanent historical religious antagonism between the Jew and the Mussalman which cannot be easily reconciled till eternity.

THE FOURTEEN POINTS AND THE TREATY OF VERSAILLES by G. M. Gathorne-Hardy. (No. 6 of the Oxford Pamphlets on World Affairs.) Pp. 40. Price 3d. (1940.)

"The Treaty of Versailles has been widely assailed, often by people who are by no means familiar with its terms or who have

wilfully misrepresented its character. In particular German propagandists have claimed that Germany was induced to lay down her arms by an undertaking to make the settlement conform to certain agreed principles (President Wilson's celebrated 'Fourteen Points'), which the Treaty in fact violated or ignored." With these words the Publishers introduce this Pamphlet to its readers and suggest that its object is 'to examine this charge and to find how far it can be justified.'

It is true, no doubt, that Mr. Lloyd George also 'cannot discover a single particular in which the treaty has departed from the terms of peace laid down by the Allies before the war came to an end,' but there are equally great statesmen who have condemned it in no unmistakable terms and who cannot be accused either of having 'misrepresented it wilfully' or having been 'unfamiliar with its terms.' Thus General Smuts said 'The real work of making peace will only begin after this treaty has been signed.' Senator Knox said 'The Treaty of Versailles is almost universally discredited in its parts. Its economic terms are impossible; its League of Nations is an aggravated imitation of the worst features of the ill-fated and foolish Holy Alliance of a century ago.' Mr. H. A. Gibbon in his 'Europe since 1918' has given an impartial survey of the Armistice and the Peace Conference and has examined in detail the good points and the worst features of the Treaty of Versailles. In the end, he has been led to remark that because of their secret treaties and engagements (such as with Italy and with Japan, etc.) the Allies were so fixed up in their attitude that when Wilson reached the Paris Peace Conference '*nothing was left*' of the Peace Programme he had enunciated in his Fourteen Points and subsequent discourses.

These judgments of General Smuts, Senator Knox and Gibbon surely have nothing to do with German propaganda. We also do not endorse the view of Hitler that the Treaty was nothing but an 'unheard robbery of our people' or that it was a mere 'shame and an outrage,' but we do maintain that the vast mass of *informed opinion* has condemned it in various ways (such as in its *method* and in its *work*).

However, it is to the credit of Mr. Gathorne-Hardy that he has analysed the Fourteen Points in relation to the Treaty *very realistically* and he has succeeded admirably in showing that the Treaty represents the only working compromise between the vague idealism of Wilson and the differing and even conflicting 'national standpoints and interests of the Allies.'

ILYAS AHMAD.

ERRATA

On page 363, line 8 and footnote 10, of the *Indian Journal of Political Science*, Vol. II, No. 4, please read 'Graham Wallas' instead of 'Graham Wallace'.

NOTICE

The Fourth Conference of the Association will be held at Bombay either at the end of December 1941, or early in January 1942 (the exact dates will be announced later) under the Presidentship of Dr. V. S. Ram, Professor of Political Science, Lucknow University.

The subjects for discussion shall be:—

- (a) Medieval Political Theories.
- (b) Constitutional Development and Constitutional Law of British India.
- (c) Economic Activities of the State.

Papers not exceeding 10 typed foolscap pages should reach Dr. V. S. Ram, Lucknow University, Lucknow, before November 10th, 1941. *A Brief synopsis should accompany the paper and both must reach Lucknow before the 10th November.* This is most important.

Members are requested to write papers and make it a point to attend. *It may be noted that papers which do not fall within the scope of the subjects selected and which do not reach Lucknow before November 10th, 1941, will not be accepted.* The Indian Economic Conference will also be meeting at Bombay and the dates and times will be so arranged that persons can attend both the Conferences if they so desire.

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All those interested in the study and advancement of Political Science are requested to become members of the Association.

Yours Sincerely,

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Secretary & Treasurer,

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MADRAS

THE SOCIAL AND POLITICAL IDEAS OF IBN KHALDUN*

BY

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In our enthusiasm to emphasise the European origins of social and political thought, we are apt to ignore or underestimate the contributions of some of the real founders of the subject. The history of modern social and political thought will remain incomplete unless we take into account the share of the oriental thought as well. What follows is an attempt to discuss certain aspects of the writings of the great medieval figure, Ibn Khaldun, and to draw comparisons, wherever possible, between his ideas and those we come across in European thought. The features of permanent value in the ideas of the writer, together with their modern significance are also examined briefly.

Born in 1332/732 A.H. in Tunis, Ibn Khaldun came of one of the influential families of Seville. His education consisted of the usual courses in Ancient Arabic Poetry, Grammar, Logic, Mathematics, Philosophy and the various branches of Muslim Theology. "Plato's Republic, the Pythagorean-Platonic Philosophy, but without its marvel-mongering outgrowths and the historical works of his oriental fore-runners, particularly of Masūdi, have had most influence on the development of his thoughts."¹ After the completion of his education he became Secretary to the ruler of Tunis. But this was just the beginning of his career. The greater part of his subsequent life was spent in service of the several rulers in Muslim North Africa and Spain. His constant movements, alternating between these two countries, were due to the court intrigues engineered against him by those jealous of his power and high office. Such a state of affairs forced him to become something of a political adventurer and this reminds us of the life of the Florentine Political Theorist, Machiavelli. It was during the evening of his life that Ibn Khaldun wrote in retirement his famous *History of the Muslim Civilisation* together with the still more famous *Prolegomena*.

* A paper submitted to the Indian Political Conference, Third Session, Mysore, December, 1940.

¹ Dr. T. J. De Boer: *The History of Philosophy in Islam*, translated by E. R. Jones, p. 203.

In the last part of his life he occupied the post of Chief Kazi of Cairo. He died in 1406/808 A.H.²

Ibn Khaldun lived during a momentous period of Muslim History. The political upheavals in the Arab Empire had already set in motion the process of dissolution. Soon after the decline of the Moors in Spain, there had come into existence numerous principalities both in the southern portion of the Peninsula and in Africa. These events left a deep mark on Ibn Khaldun. They made him practical and cautious in his political conduct and reflective and pessimistic in his mental outlook.

It is in such a background that his famous work *The History of Muslim Civilisation* should be viewed.³ His penetrative powers made him probe into the causes of the rise and decay of civilisations. On the basis of data gathered from his reading of history of the Arabs in particular and of other peoples in general, he tried to discover the general laws governing the course of social evolution and put down the results of his inquiry in the *Prolegomena*, the most important part of his history. It is an "introduction to the study of history and growth of civilisation." The second part of Ibn Khaldun's universal history contains the history of the "Arabs, Nabataeans, Syrians, Persians, Israelites, Copts, Greeks, Romans, Turks and Franks, and the third part contains the history of the Berbers." But we are concerned in this paper only with his *Muqaddima* (Prolegomena) which deals "with all branches of Arab Sciences and culture and remains as regards the depth of thought, clearness of exposition and correctness of judgment, undoubtedly, the most important work of the age which seems to be surpassed by no other work of a Muslim author."⁴

As a preliminary to the study of the social and political ideas of Ibn Khaldun, it is necessary to discuss, at some length, his conception of history, for both of these subjects are closely inter-connected. As a matter of fact his observations on society and State are derived, fundamentally, from his theory of the nature and significance of history.

Ibn Khaldun's approach to history is entirely different from the traditional view of the subject. History, before, was a

² For details of Ibn Khaldun's life, see *Ibn Khaldun*, by N. Schmidt.

³ The full title of his work is *Kitāb-ul-Ibar, wa dīnām el Muhtada wa'l Khabar, fi ayyām ul 'Arab wa'l Ajam wa'l Berber* (the book of examples and the collection of origins and information respecting the History of the Arabs, Foreigners and Berbers).

⁴ Quoted in *Encyclopaedia of Islam*, Vol. II, p. 396.

narration of events, especially, political and military. With Herodotus and Thucydides it was military history; with Aristotle it was constitutional history. But Ibn Khaldun widened its range. In his words, "History should aim at shedding light on the various stages through which it passes in the natural course of events. It should shed light on its passage from savagery to greater and yet greater refinement of manners and customs; on the realisation of the common interests of family and tribe; on the various stages in which one nation gains predominance over others, leading to the establishment of empires and dynasties and, finally, on all the changes which in the course of natural events, affect the character of society."⁵ One thing is clear, viz., Ibn Khaldun views history as a study of social phenomena in their entirety. He lays emphasis on diverse aspects of human activity. Cultural history which is supposed to be a modern branch of history had already found a place in his *Universal History*. He includes in history the political, constitutional, economic and religious aspects. He enlarges still further the scope of history by including in it the study of the various sciences in his times. We don't come across such a cosmopolitan conception of history in any one of the writers preceding him. Neither had he immediate successors to take up his work. It was long after that his work was resumed by others.

His one aim was to raise history to the rank of a science. And for the achievement of this end he laid down certain advanced principles of historical criticism.⁶ He sounded a note of warning against the errors committed by his predecessors and set up independently a few rational principles. To begin with, he realised that the chronological method of describing events was most unsuited to the type of subject-matter he was to handle. Hence he gave it up in favour of the topical method, introduced for the first time by the Arab historian, Masudi. He went thoroughly into the question of the common sources of historical errors and showed, in detail, how to avoid them. The historian should approach his subject in an unprejudiced fashion, should examine the authenticity of sources before utilizing the material, should try to discover the causations of events, should have a full knowledge of the historical background, should take into consideration the time-factor in order to avoid anachronisms, and

⁵ Quoted by Khuda Bukhsh in his *Ibn Khaldun and his History of Islamic Civilisation*, Islamic Culture, Vol. I, No. IV.

⁶ *Muqaddimai Tarriki Ibn Khaldun* (being an Urdu translation of the *Prolegomena*), Part I, pp. 8-44.

should not form hasty judgements on the basis of false analogies. These are just a few of the canons laid down by the writer. It is true that the Muslim historians had already a few guiding principles passed on to them by the early traditionists. But Ibn Khaldun put the whole thing on a scientific basis. It is a pity that he himself could not conform to the principles while writing his famous history. Nevertheless, they have a theoretical value and have served as a beacon to the historians of the succeeding generations.

No less important than his historical criticism is his method. He adopts the empirical and comparative technique. He went to the collective experience of mankind for his laws. Before establishing his generalisations, he made extensive researches and collected sufficient data from the history of the Arabs, mostly, and from the history of other nations, to a small extent. That is why his work is full of illustrations.

Fully equipped with his new method and guided by his scientific approach to history, he expounded his philosophy of history. He made a clear distinction between the apparent and the real aspects of history. "History is described as being in external form the display or delineation of the events which occur throughout the course of ages in the experience of peoples and dynasties and in its internal characteristics, the examination and verification of facts, the attentive investigation of other causes and profound and comprehensive insight into the way in which social phenomena have been produced."⁷ The writer's emphasis is on the nature and significance of social phenomena. Not content with just a panoramic view, he takes a stereoscopic view. He is keen to discover the laws of historic causation. Dismissing the notion of history as just the plaything of individuals who emerge from time to time, he seeks to examine the social manifestations together with their inter-connections. Such a secular approach keeps him away from any theological discussions. The description of the whole course of human history as "The struggle between two types of society, the City of God and the City of Devil, having for its end the victory of the former," does not find a place in his writings.

He discusses, with profuse illustrations, the part played by environment in shaping history. Geographical factors like climate effect the physique and character of men and bring about racial differences.⁸ They also influence the sciences, arts,

⁷ Flint, *History of the Philosophy of History*, p. 162.

⁸ *Muqaddima*, Part I, pp. 115—123.

industries, dress, dwellings, flora and fauna. While reading Ibn Khaldun we are reminded of Bodin, Montesquieu and Buckle who have given expression to similar ideas in their works. We cannot say with any amount of certainty that these writers were influenced by Ibn Khaldun. But this much is certain that Ibn Khaldun was a pioneer in this respect.

Having expounded the geographical basis of history, the writer proceeds to discuss the economic aspects of the problem. He lays down that the institutions of a country are determined, to a large extent, by the mode of subsistence of the people inhabiting it. He shows how agricultural economy and nomadic economy produce different types of society.⁹ Such a view makes us think at once of the Marxian approach to history. We are not hinting for a moment that here we come across the Marxian theory, systematically worked out. But we do certainly emphasise that while discussing the historical origin of the modern economic interpretation of history, we must take full cognisance of the contribution of Ibn Khaldun towards the above theory.

Ibn Khaldun's philosophic approach to history enables him to formulate his theory of social evolution. First comes the nomadic society. It represents a simple mode of life. The people wander from plain to plain in search of pastures and water. The mode of their subsistence produces in them certain high moral qualities like independence of action, courage, perseverance, austerity, etc.¹⁰ They are organised on a tribal basis and are imbued with the sense of tribal honour. The cohesive element in their social life is "Asbiath"¹¹ or group-feeling.

This group-feeling has its origins in blood kinship. But in later stages, its basis is entirely transformed. "Everyone regards himself as the part of the whole and the whole stands out for the individual." The prime object is defence against the external attack and the method adopted is loyalty to a common head. Before the advent of Islam, "Asbiath" was based on blood kinship. Subsequently it was transformed into the religious

⁹ *Muqaddima*, Part I, pp. 179-180.

¹⁰ *Muqaddima*, Part I, pp. 183—188.

¹¹ The term, "Asbiath" has been differently translated as consanguinity, clannishness, communal feeling, group-feeling, etc. The last term conveys our meaning comprehensively while the others give us only a partial sense.

fraternity.¹² It put an end to petty jealousies and introduced a powerful sense of unity among the warring tribes. But this is only for a short period, for Ibn Khaldun is aware of the fact that excluding the first forty years of Islamic history, the subsequent Arab history was a resumption of the pre-Islamic tribal feuds.

The second stage of social evolution is marked by a period of conquest.¹³ This is essentially the period of military exploits and of the foundations of political society. Imbued with a strong sense of group-feeling, the nomads begin extensive conquests. Ibn Khaldun tries to find a clue to the Arab domination in the religious group-feeling of the people. But he realises the limitations of the Arabs in their attempts to subdue people with stronger group-feeling.

Finally, we come to the third stage of social evolution. This is the epoch of civilisation and subsequent decay.¹⁴ Kingdoms are established; cities are founded; and there is all-round prosperity. But soon people fall an easy prey to luxurious life and idleness and lose, subsequently, their original qualities. They become less and less self-reliant, lose their enterprising nature and become too much attached to the soil. "Asbiath" remains no more a dynamic force with them. Having lost the real qualities associated with "Asbiath," they cling to the form and pride too much, on their descent. In short, their group-feeling weakens considerably, their resistance power decreases and they succumb easily to the external attacks. In such a state of affairs, a fresh and the virile nomadic race appears on the scene and defeats the decadent race. The victors pass through the same stages and this cycle is repeated once more. And the human history, in its ultimate analysis, consists of such recurrent cycles.

It is true that Ibn Khaldun's theory was drawn largely from his reading of the history of the Eastern countries and we do not find exactly the same process repeated in the Western countries. Nevertheless the theory is highly valuable inasmuch as it lays emphasis on the ethical basis of social evolution. Never before had there been an attempt to understand the nature of social evolution in such a manner. Nearly three centuries hence the Italian philosopher, Vico, developed the idea of spiritual cycles in history, viz., "Emergence from the bestial into the barbarian

¹² *Muqaddima*, Part II, pp. 9-10.

¹³ *Muqaddima*, Part I, pp. 212-214.

¹⁴ *Muqaddima*, Part II, pp. 25-29.

age, subsequent, spiritual refinement through intellect and custom, the transition to the era of humanity, gradual enfeeblement in vital energy, corruption and relapse and then the resumption of the cycle."¹⁵

Having discussed the writer's social ideas we now take up his political idea. Ibn Khaldun has a twofold explanation of the origins of the State. His approach is purely secular. He does not consider that divine injunctions are necessary for founding the State. He is fully aware of the fact that political societies exist and flourish without divine laws to follow. He bases the foundations of political society on the social impulses of man. He quotes the classical saying that man is a social animal. But he is not prepared to consider the State just a natural phenomenon. He points out that it is a product of deliberate action as well, for, whereas animals behave instinctively, men behave, in addition, consciously. Certain psychological powers of man like those of thinking and discriminating enable him to realise the necessity of grouping together for the satisfaction of economic ends and of protection against the tyranny of the strong.¹⁶ His observations on the subject are very similar to those of Hobbes with the only difference that he has no elaborate remarks to make on the drawbacks of the state of nature.

His discussion on the course of political evolution is equally interesting. Out of the social impulse arises the family and out of the family the community and the tribe. The tribe becomes the basis of political union. The strong cohesive element in the tribe is the presence of group-feeling. Now there is mutual warfare amongst the tribes for supremacy. As a result, the victorious tribe assumes the distinct position and this marks the beginning of kingship.

Such an account of the course of political evolution leads him to discuss the various forms of government. Ibn Khaldun justifies kingship for the same reasons as he had already put forward in connection with the origins of the State. He shows that kingship is essential as a safeguard against the human propensity to violence and plunder. Further, kingship connotes the natural desire of man to assume the highest power to himself. But he recognises that as a protection against the possible tyranny, checks on sovereignty, either human or divine, are necessary.

¹⁵ Article on Vico in the *Encyclopaedia of Social Sciences*.

¹⁶ *Muqaddima*, Part II, pp. 55-56.

Aristocracy is another form of government. It is the emergence of a competing power in revolt against the person of the king. It appears usually in the period of disintegration.

Theocracy, in the opinion of the writer, is the best form of government. He considers divine guidance necessary for perfect or model states, for, the true knowledge of spiritual and social good is beyond the limited scope of human comprehension. It is on such a basis that he discusses Caliphate.¹⁷ His discussion on the above subject covers the ground already trodden by writers like Al-Ghāzzali and Al-Māwardi and hence we will allude to it only briefly. He refutes the notion that the Caliph's function is just to curb the social disintegrating forces. The primary function of the Caliph is to safeguard and enforce *Shariah* (Muslim Code). Such a responsible task can be performed only by people who satisfy certain conditions. Knowledge of *Shariah*, sense of justice, mental and physical soundness, immunity from restraints—these are some of the conditions laid down by the writer. He recognises the power of the people to depose the Caliph in case he fails to discharge the function relating to his office.¹⁸ He is of opinion that the Caliph, with the consent of the community, can nominate his successor.

The most important part of his political ideas is his discussion on rise and fall of empires.¹⁹ Just as individuals have a life-history of their own, empires also have periods of growth, maturity and decay. He formulates, thus, an organic theory of empire. The foundations of the empire are impregnated in group-feeling, either in its original form or in its later manifestations. Imbued with this spirit of oneness, the people set upon the conquest of territories. Ibn Khaldun remarks in this connection that the conquest of heterogeneous population is difficult and illustrates his point from the Arab conquest of North Africa and of the Berbers. He recognises the limits to the extension of an empire.²⁰ The number of troops at the disposal of the conqueror determines the extent of the empire. Further, the remoter the outposts of the empire, the more difficult is the task of keeping in check the constituent parts.

¹⁷ *Muqaddima*, Part II, pp. 61—115.

¹⁸ For a detailed discussion, see my article, "Muslim Political Theory of Rebellion," *Indian Journal of Political Science*, Vol. I, No. 1.

¹⁹ *Muqaddima*, Part II, pp. 23—48.

²⁰ *Muqaddima*, Part II, pp. 15-16.

The second phase of the empire is marked by the inauguration of despotic rule. Whereas, in the beginning, the sovereign shares power with his followers, claims no prerogatives and pursues the policy of moderate expenditure and light exactions, he changes his ways gradually. He gathers around him a few favourites and tries to curb the power of his original followers. He assumes despotic rule and becomes the founder of a dynasty.

We reach the final phase when the sovereign's chief consideration is his personal pleasure. There is extravagance and maladministration. The expenses of the ruler and his satellites mount up and they are met by increased taxation. There is encroachment on the liberty of the people—their very life and property is in danger.

Such a state of affairs sets in motion the process of disintegration of the empire. The writer traces the course of decline with a wealth of details. The sovereign loses the loyalty and support of his kinsmen, followers and army. The subject races rise in provinces. The principalities assert their independence. Discontented elements secede from the empire and inhabit regions remote from the capital. They gather momentum and when the central power is in a crumbling state they attack it and carve a new State or Empire. Normal economic activities receive a rude shock. Famine and disease follow the breakdown of the financial machinery.

Ibn Khaldun emphasises the fact that the decline is not due so much to the extraneous factors as to intrinsic qualities and inherent nature of the empire. The decay of the empire becomes inevitable. When the decline sets in, nothing can stop it just as nothing can stop old age. Here we find the writer in the rôle of a historic determinist.

Corresponding to the three stages in the history of an empire he expands a theory of its duration.²¹ "The first generation founds; the second maintains; the last demolishes. That is the cycle of all civilisation." The nomadic life maintains the original qualities but the life of luxury and ease results in their entire demoralisation. The whole period is calculated to last for three generations, covering, roughly, about 120 years.

What are the features of permanent value in the ideas of Ibn Khaldun? Have they any modern significance? It is a fact that as we read Ibn Khaldun, we, quite often, begin to feel that we are going through some modern treatise on political and social theory. He has given expression to quite a number of

²¹ *Muqaddima*, Part II, pp. 29—32.

ideas which are perturbing the modern mind and require urgent solution at our hands. During periods of fight between the "Rational" and the "Irrational" for supremacy, the remarks of Ibn Khaldun on the philosophy of history have a special significance. His firm belief in the historic causation and the rule of certain fundamental laws restores our staggering faith in the final triumph of reason. His cosmopolitan view of History makes us think of civilisation as a "co-operative adventure." His remarks on environment divert our attention from the "absolute" to the "relative." His observations on group-feeling have a modern bearing inasmuch as this concept has now become an invariable accompaniment of social and political cohesion. National, racial and ideological loyalties are the modern counterparts to Ibn Khaldun's original idea. During this period of Imperial crisis, the writer's pathological analysis of empires is full of lessons for us. "Not only those who, consciously or unconsciously, bring about changes in the world that are at once noticeable, but also those who, sooner or later, affect its thinking, are constructive forces in human society,"²² and Ibn Khaldun is one such constructive force.

²² Schmidt: *Ibn Khaldun*, p. 46.

THE HINDU THEORY OF INTERNATIONAL RELATIONS AS EXPOUNDED IN KĀMANDAKA'S NĪTISĀRA*

BY

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The *sovereign* is the centre round which Hindu Polity is built up. The sovereign is the symbol of unity and represents the general will. The ties that bind the sovereign to his people are indissoluble in so far as there is an identity of interests between them. He is the true sovereign who rules his kingdom not in his interests, but in the interests of his people that inhabit it. The sovereign, according to Hindu conception, can have no interests and ambitions of his own, out of relation to those of the people. If he is ambitious, he is ambitious for the sake of his State and expresses ambitions of his people. The desire for expansion of the kingdom is the desire of his own people to expand. The desire for expansion of territory is considered by political theorists like Kautilya and Kāmandaka as perfectly legitimate for any sovereign to attempt. These thinkers were the products of their time, which was characterised by the rapid rise, decline and fall of kingdoms and interstatal animosities. Perpetual fear of invasions is found to colour their political philosophy. Unless we take into account the historical context of those times we would perhaps be out of tune with some of their teachings. The historical perspective is absolutely necessary while dealing with ancient political thinkers. What a modern philosopher-historian, Prof. R. G. Collingwood, says about this matter, is worth remembering. According to him "History did not mean knowing what events followed what—It meant getting inside other peoples' heads, looking at their situation through their eyes and thinking for yourself whether the way in which they talked it was the right way." This is what I have attempted to do in this paper. We may also remember at the same time that "the history of political theory is not the history of different answers given to one and the same question, but the history of a problem, more or less, constantly changing, whose solution was changing with it." In actual fact, the world of our times does not seem to be, from the ethical point of view, very much better

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

in international relations than what it was in the time of Kautilya and Kāmandaka though in our time political ideologies imbued by high ethical purpose are struggling to assert themselves against odds. I refer to Mahatma Gandhi's attempts to spiritualise politics in India and the teachings of political philosophers like T. H. Green in the West.

The existence of warring states naturally cry for the strong leadership of one man who has the grit and prowess of subjugating his enemies and consolidating and preserving the security and peace of the state. Courage and the desire to subjugate are, therefore, considered to be the necessary attributes of a sovereign. Such a sovereign is called the *Vijigīṣu* which literally means one who aspires for conquest, not conquest for the vanity of military glory, but for the sake of self-preservation of his state. In this he must have the backing of his people. The support of the people cannot be won by a king who has not won the affections and regard of his subjects for whose welfare he must have dedicated his life. Territories won must be consolidated and consolidation implies the creating of a sphere of influence all around him as far as it could extend. This implies strengthening of the allies and neutralising of the enemies. This scheme of maintaining a balance of power is a scheme of delicate adjustments elaborately worked out by Kāmandaka in his *Nītisāra*. This doctrine is known as the doctrine of *Maṇḍala*.

We know precious little about Kāmandaka. What little is known about him is thus summed up by the late Mr. T. Canapati Sastry in his preface to his Trivandrum Sanskrit series edition of his *Nītisāra of Kāmandaka*.

"When and where the author, Kāmandaka or Kāmandakī lived, it is not possible to determine. It is certain, however, that he is anterior to Bhavabhūti who flourished in seventh century A.D., for it is legitimate to surmise that Bhavabhūti was conversant with the *Nītisāra* of Kāmandaka as he thought it fit to give the name Kāmandakī—the traditional sense of which is restricted to the author of the *Nītisāra*—to a female ascetic in his *Mālatī-Mādhavā* who is described as efficient in the art of diplomacy. *Nītisāra* is cited at the end of the first chapter of *Daśakumāracharitra* of Daṇḍin who lived in the latter half of the sixth century A.D. Dr. Rajendralal Mitra, in his preface to the *Nītisāra of Kāmandaka* observes that a work of the like title was taken to the Island of Bālī by the Hindus who emigrated thither about the beginning of the Christian Era." This is all that is known about Kāmandaka and his date.

Kāmandaka devotes the twelfth and thirteenth chapters of

his work to the explication of the concept of *Maṇḍala* which may be translated as the sphere of influence in its political context. *Maṇḍala* is literally a circle or sphere. Its centre is the *Vijigīṣu*. The circle consists of twelve kings, the five kings whose dominions are in the front, the four kings whose dominions are in the rear of his kingdom, the *Madhyama*, the contiguous corridor states and *Udāsīna* or states which, wherever they may be, owing to their geographical position, are capable of maintaining their neutrality and desirability of being neither hostile nor friendly.

The *Vijigīṣu*, being the centre of the circle, must strive gradually to widen the circumference so as to envelope a wide territory surrounding his kingdom. The farther the circumference of his sphere of influence is extended the more remote is the possibility of aggression. Only thus can he preserve the sovereignty and integrity of the state. The whole political game consists in the nice adjustment of balance of power among the surrounding states which if upset will imperil his own kingdom. This demands eternal vigilance and anticipation of aggression even from the most unexpected quarters. The state and its institutions must be organised on this basis. To be merely on the defensive would not prevent aggression. The king must take steps to protect his sovereignty by constant preparedness and active but subtle efforts towards the expansion of his '*Maṇḍala*.' All international interstate relations are to be based on this conception of '*Maṇḍala*,' which is the foundation of practical international politics. The objective of '*Maṇḍala*' may be said to be the organization of collective security on an imperialistic basis. Kāmandaka likens the '*Maṇḍala*' to the outer rim of the wheel connecting the spokes radiating from the axle. If the axle is strong and sound, it would be capable of holding the spokes and the rim in place in the course of the wheel's revolution. Any weakness in the hub of the wheel is disastrous; the spokes fall out and the rim becomes broken and the wheel is destroyed. It is therefore the duty of the king to keep the wheel of his *maṇḍala* pure, i.e., free from obstruction which, however slight to start with, may clog the wheel and finally break it. The *maṇḍala* must be '*viśuddha*' or pure and not '*aśuddha*' or impure. The latter becomes a fact when imperceptible obstructive elements are surreptitiously introduced by hostile agencies with the intention of breaking the wheel.

The problem is then to maintain the strength of the axle and preserve its centripetal character. This is, in other words, the problem of self-preservation of the *Vijigīṣu* and Kāmandaka

mentions five accessory factors contributing to this result, viz., a strong and wise ministry, fortified position, consolidated kingdom where all incipient opposition is neutralized, a solvent treasury with a systematized and regularized flow of revenue and an efficient army always kept alert by suitable military exercises. To these five, Kāmandaka adds, following one Brihaspati whom he cites, a hierarchy of kings in the ambit of the 'Maṇḍala' and at the apex the supreme sovereign. The state thus is characterized by these seven attributes. These seven constituents of the state will preserve it from internal disorder and external aggression. Even the slightest weakness in one of them is enough to start disintegration of the State-System.

As a preface to the function of the sovereign as the pivot of the 'Maṇḍala' Kāmandaka analyses the nature of the sovereign who deserves the appellation of *Vijigīṣu*. Lack of enthusiasm, love of sloth, and paucity of energy are the most insidious foes of a sovereign. Constant alertness, watchfulness of the activities of his officers, the capacity to feel the pulse of his nation of which he is the arbiter, are necessary factors in the composition of the king's nature. These natural inclinations must have been trained by a systematic physical, intellectual and moral discipline. He must have acquired a general acquaintance with all departments of learning and be an example to his subjects of physical, intellectual, aesthetic and moral culture. Lack of general education of a fairly high order renders the king inefficient to that extent. This education must be supplemented by the knowledge of military science. Added to all this, what constitutes the essence of his kingship is his knowledge of his duty and responsibility:

‘*Sva-karma-dṛṣṭa-śāstratvam*’

which is said to consist in ‘the act of cherishing his subjects.’

Prowess or *pratāpa* is very important for the king. Even if he has all the qualities that are enumerated above and lacks power, his position soon becomes undermined. He must keep his prowess alive and energetic by warlike preparations and by the waging of wars against hostile forces. It is this that really gives him the name ‘Rājā.’ Says Kāmandaka:

“*Sarvair gunair vihinopi sa rājā yaḥ pratāpavān
Pratāpa-yuktāt trasyanti pare simhān mṛgā iva*”

He must inspire terror in the hearts of his enemies, like a lion which strikes terror into the hearts of the inferior animals. Might, therefore, is indispensable for the maintenance of the

state but it is not might for its own sake but for the sake of the people within the state. Its object is to provide for them the external conditions absolutely essential for the good life—the life of *Dharma*. Kāmandaka compares the king to an expert farmer who, intent on reaping a rich harvest secures his field of crop by enclosing it with thorny plants and protects by freely using the cudgel against thieves and beasts that come to destroy it. Likewise, a king should protect his own kingdom against aggressors. Softness, timidity, weakness in these respects will imperil the state. The tie between the subjects and the king is so close that one sustains the other. It is a case of mutual dependence. The king protects his subjects from harm and provides conditions for the free development of their capacities through a social milieu and in their turn they sustain the king by the payment of their services and taxes. This is beautifully expressed by Kāmandaka when he says that “A florist both tends and sprinkles water on his plants and culls flowers from them” (Ch. 5, verse 84). I have referred to the intimate relation between the sovereign and his subjects just to show that whatever the sovereign does in extending and expanding his kingdom has as its final objective the welfare of the people. It is not the individual lust for conquest but the desire for the increasing prosperity of his realm that makes him launch on his military campaign against actual and potential enemies. Wanton aggression on the slightest pretext is not justified though a show of aggressiveness is said to be useful to the sovereign. He must try as far as possible to tread the path of justice and bring about the purification of the *Maṇḍala*. The *Maṇḍala* consists of allies, enemies and the neutrals. As to how the king must deal with each one of these is described in detail by Kāmandaka.

The aim of the king should always be to secure for himself a large number of allies of various descriptions. He must be able to distinguish between excellent, mediocre and ordinary allies. Allegiance to an ally should be abjured only after a deliberate calm consideration of facts and only when offences have been repeatedly brought to notice. Hastiness in falling out with other kings or kingdoms is a sign of weakness in the king. The king should remember that one who is an enemy need not always be an enemy. Circumstances may change and with altered circumstances new alliances may be forged and old alliances shaken off. Kāmandaka says that the *Vijigīṣu* should make friends even with his foes if they become instrumental in his own aggrandisement. The king must avoid foolish optimism in believing that one who has been ally for long will continue to

be so. It is best for him to work on the assumption that it is coalescing of self-interests that brings sovereigns together into the ambit of a *Maṇḍala*. A purely altruistic motive is inoperative in interstate affairs. The logic of the fish, '*Matsya-nyāya*' prevails among the states, the bigger always attempting to devour the smaller and the weaker. This renders the position of weak and small nations absolutely parlous. Safety lies for these states in being drawn into the *Maṇḍala*, into some kind of federation, whereby small and weak states would be able to participate in the strength and safety of the bigger states which include them under their sphere of influence. This is the justification for expansion of dominion, not so much for acquisition of territory but by extending the *Maṇḍala* or political sphere of influence.

While one is dealing with an avowed enemy, Kāmandaka justifies the adoption of means which are none too scrupulous. Four methods of dealing with the inimical states are mentioned: *Ucchedana*, *apacaya*, *pīdana*, and *karṣaṇa*. Attempts forcing him to quit his territory, the undermining of the enemy's strength by sowing dissensions among his best supporters, (the commentator says: "*Apacayo Yogyapurusādīnām Kṣayah*") harassment of all kinds, destruction of property and military resources, and cutting off communication, and food-supply finally culminating in possible assassination complete this grim picture of the treatment of the enemy.

The *Vijigīṣu* may resort to all possible means of winning over to his side an ally common to him and to his enemy. It is easy to subjugate enemies alienated from their allies. Such alienation is a considerable part of diplomacy. Constant pressure must be brought to bear on the *Udāsīna* states within the *Maṇḍala*, that is *neutrals*. Neutrality must be made to give place either to alliance or to hostility. Non-belligerency of an intervening neutral state must always be looked upon with suspicion. The only safeguard against aggression by a powerful foe, according to Kāmandaka, is the power of sustaining an assault of the enemy, knowledge of all the remedies against danger, promptness in detecting the weak points of an enemy, familiarity with the nature of war and peace, strict observance of secrecy regarding all consultation and actions. These sum up the code of diplomacy as envisaged by Kāmandaka. These are more in the nature of practical recipes and maxims for the king to be actually followed than a theoretical discussion of the legality or morality, justification or the lack of it, that would naturally form the subject of discussion in a book on political

philosophy. Kāmandaka's *Nītisāra* is more a practical guide-book of politics than an attempt to build up a theoretical science of politics. It is throughout very realistic waiving aside all *a priori* considerations and considerations which are extra-political. But the book is not without a guiding ethical motive. The *summum bonum* of political activity of the king is clearly mentioned as the dedication of the kingdom rendered flourishing and prosperous by his activities for the enjoyment of those who seek to live the good life or the perfect life. This ideal runs like a golden thread through Kāmandaka's *Nītisāra*. The moral justification of sovereign power is expressed by Kāmandaka in his formula '*Lokādhāraḥ Śriyo Rājñām*.' Regal glory entirely depends on the goodwill of the multitude. Consent and not force is the basis of sovereignty which, when based on moral purity, is said by Kāmandaka to be stable like water in a motionless vessel. It is under a ruler who rules by the consent of his people and who possesses the really kingly qualities of *Tyaga*, *Satya* and *Saurya*, selflessness, uprightness and prowess that the citizens of a state live as happily as under the roof of their parents. No wonder that Kāmandaka exclaims that such a sovereign is the author of the world-order ("*Rājāsya Jagato Hetuḥ*") and deprived of such a leader, people become hopelessly tossed about in the world by the winds of circumstance like a rudderless frail bark tossed about on a stormy sea.

THE ORIGIN OF THE STATE ACCORDING TO BHĪṢMA (Mahābhārata, Śāntiparvaṃ)*

BY

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Introduction.

In the opening passages of the 58th chapter Yudhiṣṭhira puts a question to Bhīṣma—What is the origin of the word, *rājā*? Yudhiṣṭhira feels that the origin of this word must be very profound, because the happiness of all men depends on the happiness of the person to whom this word is applied. In answer to this question Bhīṣma explains the origin of *rājya*.

In this connection a few words on the circumstance of this discourse may not be out of place. The fighting between the Pāṇḍavas and the Kauravas is over. The Pāṇḍavas have a definite success. Yudhiṣṭhira has become the king. He wants to know his real duties as a king. According to the direction of Śrīkrṣṇa, Yudhiṣṭhira goes with him to Bhīṣma. Bhīṣma, lying on the bed of arrows, is in the last state of his life. Śrīkrṣṇa with his divine power makes Bhīṣma quite healthy both in mind and in body. Bhīṣma fully regains the strength of his mind and of his learning. In addition to this, with the grace of Śrīkrṣṇa, the *satva* aspect is fully manifested in the mind of Bhīṣma and *rajas* and *tamas* have disappeared from it. He is fully prepared to teach *dharma*. He has a divine eye and with this he can clearly see the truth as it is. (51. 14-21.) Śrīkrṣṇa recognises the abilities of Bhīṣma: "From the beginning to the end your life is absolutely free from sin. By all the kings you are recognised as the knower of all *dharma*s. You are old in age. You have learning and the practice consistent with learning. You are an expert in politics and in various other sciences. You have served the Ṛṣis and the Devas. Therefore the whole science of politics must be taught by you. (53. 35-37.)" These facts give us an idea of the full qualifications of the teacher of politics.

Bhīṣma, the teacher, recognises the greatness of Yudhiṣṭhira, the pupil: "Yudhiṣṭhira is an embodiment of *dharma*. His

reputation is pure. He has courage, self-control, forgiveness, vigour, personality, honesty, charitable disposition, meditation, application, power, sacrifice, study and learning. He never does *adharma*. He is kind to all. (54. 2-10.)" These ideas indicate the full qualifications of the student of politics.

What is on the whole indicated in these passages is that the following teaching is really profound. The teacher, the taught, the director and the circumstance of the teaching are, indeed, very great. Therefore, great care and insight are required to interpret the teaching.

The State is characterised by Dharma and Palana.

To begin with, Bhīṣma characterises the State in the *Kṛtayuga* as follows:—"There was neither *rājya* nor *rājā* nor *daṇḍa* nor *dāṇḍika*. The people were protecting themselves by means of *dharma*. (58. 14.)" This means that *pālana* by means of *dharma*, without the influence of any external force such as *rājya*, is the differentia of the State in the *Kṛtayuga*. But under different circumstances this state may not be possible and *rājya* and so on may be necessary to establish and maintain *dharma* and *pālana*. Even then it is easy to see that after all it is *dharma* and *pālana* that characterise the State.

There are two types of the State —Kartayuga and Raja.

Bhīṣma distinguishes two types of the State and characterises each in the following manner:—

Kartayuga.

In the *Kārtayuga* State there is only *dharma* but no *adharma*. No *varṇa* likes *adharma*. Without any doubt the *yoga* and *kṣema* of the people are safeguarded. The *vaidika karma*s are safely conducted and they are fruitful. The seasons function well. The people are free from illness. The voice, colour and *manas* of the people are pleasing. No man suffers from any disease and no man is short-living. No woman becomes a widow. And no man is sinful. Without cultivation the earth yields food-stuff. The useful plants grow of their own accord. The skin, leaf, fruit and root of a plant have full vigour. There is no *adharma* and there is only *dharma*.

It may be noted that these ideas are based on the general Indian conception that the whole world with all its aspects including even the so-called natural aspects is the result of human

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karma. The *Kārtayuga* State is the result of *dharma*. By *dharma*, in this connection, is meant the *Varṇāśramadharmā*. *Pālana* is implied in *dharma*. So in the *Kārtayuga*, *dharma* and *pālana* are spontaneous and they are not forced by any external agency.

Rajya.

The things that characterise the *Kārtayuga* are absolutely necessary for the welfare of the people. The absence of any of these things makes life inconvenient. To avoid this trouble, law and order must be established and maintained. This is possible only in a *rājya*. *Rājya* implies *rājā*, and *rājā* can function only with the help of *daṇḍa* and *dāṇḍika*. With these elements there appears what is called government. Government is impossible without the laws that determine the relations of the government to the people of *rājya*, on the one hand, and to the other *rājyas*, on the other. These are the laws of politics and the science of politics is given the name *Daṇḍanīti*. It is a *rājā* that must exercise *Daṇḍanīti*. A successful application of *Daṇḍanīti* to the activities connected with government needs a careful observation of time and circumstance. What is good in one period may not be good in other periods, and what is effective under one circumstance may not be effective under other circumstances. So a successful application of *Daṇḍanīti* presupposes great wisdom on the part of the *rājā*. The immediate result of this application is the betterment of time and circumstance, and this means the betterment of the conditions of the people. For this reason a *rājā* is described as the director of time.

The cause for the disappearance of the Kartayuga (58. 15-21).

“As the people were protecting one another according to *dharma*, they had *dainya* (inferiority complex). Next *moha* (delusion) entered into them, and destroyed their knowledge. The destruction of knowledge was followed by the destruction of *dharma* and in the place of *dharma* there appeared *lobha* (miserliness). The people thought of the things they did not have. There appeared *kāma* (the desire opposed to *dharma*) in them. With *kāma* they had *rāga* (attachment). *Rāga* made them blind to *kārya* and *akārya* (right and wrong). As a result they did not abandon *agamyāgamana* (the acceptance of the non-acceptable), *vācyāvācya* (the speech of the non-speakable) and *bhakṣyābhakṣya* (the eating of the uneatable). They did both

good and bad things. Under this circumstance the Veda was not respected and sacrifice was not conducted. This is how *Kārtayuga* disappeared. (The disappearance of the Veda and sacrifice stands for the idea of the disappearance of spiritual outlook on life.)

How in the ideal state of things people could have *dainya* needs an explanation. The explanation seems to be this—Under a particular circumstance if men enjoy continued *pālana* without much effort on their part naturally they come to have the feeling of gratitude towards those that protect them. As a consequence of this feeling they may feel themselves to be inferior to the latter. This is *dainya*. Further, the nature of time also may help this degeneration. (In the *Aranyaparva* we are told that time is one of the creative principles. Even God is taken to create the world of each period according to the nature of time.)

The appearance of Rajya.

By the destruction of *dharma* the position of the Devas is affected. (The human *dharma* is the principle of the existence of the Devas. *Gītā* v.) They consult *Brahmā*. To set things right, *Brahmā* composes *Daṇḍanīti* consisting of a thousand chapters the subject-matter of which being *Trivarga*—*dharma*, *artha* and *kāma*—the three goods of men. *Dharma* is the origin of *artha* and *kāma*. *Daṇḍanīti* is so called, because it makes *trivarga* possible and it maintains *trivarga*. Next, this science undergoes a gradual abridgement in the hands of *Śiva*, *Indra*, *Bṛhaspati* and *Śukra* in order, and thus it becomes more easily understood even by the ordinary mortals.

Next the question of making use of *Daṇḍanīti* arises. The Devas approach *Viṣṇu*. *Viṣṇu* becomes the first to make use of *Daṇḍanīti*. He creates *Virajā*. From *Virajā*, *Kirtimān* appears. *Kirtimān* is followed by *Kardama*, *Ananga*, *Atibala* and *Vena* in order. *Vena* is devoid of *dharma* and he is led by *rāga* and *dveṣa*. The *Ṛṣis* kill him with the grass consecrated by *mantra*, and they churn his right hand and *Prthu* appears. *Prthu* has a sharp intellect that can apprehend *dharma* and *artha*. The *Ṛṣis* teach him wisdom and *dharma*, which form the essence of *Daṇḍanīti*. He pleases the people and for this reason he is called *rājā*. *Viṣṇu* himself is present in *Prthu* and establishes *dharma* and order and protects people according to *Daṇḍanīti*. This is how *Rājya* appears. And in *Rājya*, *dharma* and *pālana* are effected by an external force, i.e., *Daṇḍanīti*.

The origin of the Kārtayuga State.

In determining the origin of the *Kārtayuga* State certain observations seem to be necessary. According to the Indian conception of the world, there can be no first beginning and the last end of the world. From the beginningless time the world comes into being and goes out of it and appears again and disappears in due course of time. The process of the world is thus beginningless and endless. We can only speak of the *kalpas* (cycles) of the existence of the world. The conception of the *kalpas* is based on the truth that nothing material or spiritual can have, in substance, the first beginning and the last end. The cause of the appearance of each *kalpa* is the beginningless *karma* of the individual souls that are benefited by the creation of the world of that *kalpa*. God creates the world according to the *karma* of the souls that live in the world. Further, time is divided into four *yugas*—*kṛta*, *trētā*, *dvāpara* and *kali*. These *yugas* follow one another and thus after *kali kṛta* appears. These *yugas* evolve several times in one and the same *kalpa*. It may, however, be noted that a *kalpa* begins with *kṛta* and ends with *kali*.

Consistently with these ideas we may, no doubt, hold that the cause of *kṛta* is the *karma* of the souls that live in it. But why in every *kalpa* the *karma* that makes *kṛta* possible operates first needs a consideration. Having in mind the teaching of the *Mahābhārata* in general and the teaching of Bhīṣma in particular, one may take the following to be the relevant answer. Man is by nature good. He is by nature a social creature and he desires to be in a company and wants that others should partake of his joy. By nature he does not want to see others in trouble. These native virtues are ever present in man. Irrespective of the external conditions, he enjoys his natural virtues. How many men are not good without any idea of the government under which they are supposed to live? Even the evil conduct of a man presupposes his natural goodness. Even the most wretched man has his own company and to please that company he commits sins. A man may be said to be the worst possible thief, but he never steals the things of those with whom he identifies himself. Even the man that commits suicide, does so for the love of himself. He hates his present environment, feels that it is the source of his trouble, knows that he cannot rectify it, likes to free himself from the trouble and determines that he would safeguard his interest in himself by committing suicide. *Bṛhadāraṇyaka* says that the self likes anything for the love of itself.

Further, if man is not by nature good, then there would be no meaning in anybody's attempt at setting him right. If man is by nature evil, then even an ideal government cannot correct him. Nature cannot be altered. And in fact if man is by nature evil any sort of government is impossible. The possibility of a good government presupposes the natural goodness of the originators of the government. Evidently the goodness of these originators cannot be due to the fact of the government they originate. So a good government is based on the natural goodness of men; and the natural goodness of men is the very presupposition of any kind of law and order.

The question may appear—If man is by nature good, how does he become evil? Bhīṣma says that *dainya* and so on make man evil. His description of the evil condition of men is very carefully expressed. He never says that the evil condition of men consists of only *doṣa*, but he holds that the evil condition is a mixture of *doṣa* and *adoṣa*. According to him even the *kali*, which is said to be the worst possible period of time is characterised by one-fourth of *dharma* and this means that there can be no condition of life that is utterly devoid of *dharma*.

Further, the relative merits of *dharma* and *adharma* may be considered. *Dharma* is self-supporting. There can be *dharma* even in the absolute absence of *adharma*. But the case of *adharma* is different. *Adharma* presupposes *dharma*. In the absence of *dharma* *adharma* cannot subsist. *Adharma* and deception are intimately connected. A liar goes on successfully for the time being, because others do not know that he is a liar and for the time being they take him to be honest. So a lie presupposes honesty at least in appearance. Without this basis, lying is impossible. So *adharma* presupposes *dharma* and the evil condition of man presupposes the condition of his good nature.

The truth of these considerations is, in a sense, recognised by the later Indian philosophers also. We may, for example, take the *Sāṅkhya* position that of the three constituents of *prakṛti*—*satva*, *rajas* and *tamas*, *satva* operates first, because it is good; and as the result there appears *buddhitattva*, in which *satva* dominates.

Consistently with the spirit of these ideas we may hold that the origin of the *Kārtayuga* State is the true nature of man. In this State there was no *Daṇḍanīti* and no necessity for *rājya*. Man, by his own nature, observed *dharma* and *pālana*. *Dainya* and other vices appear in man owing to particular external conditions.

The origin of Rajya.

With the degeneration of mankind owing to *dainya* and so on the *Kārtayuga* State disappeared. There arose the confusion of *dharma* and *adharma* and on account of this *pālana* suffered a lot. To re-establish *dharma* and *pālana*, Brahmā composed *Danḍanīti*. Several others abridged this science and made it quite useful to men. Then the necessity arose for a *rājā* to make use of *Danḍanīti* effectively. Viṣṇu became the first *rājā* and established *dharma* and *pālana*. Thus *Rājya* came into existence. The origin of *Rājya* is evidently the wisdom of the authors of *Danḍanīti*.

Whatever value may be given to the theological aspect of the teaching of Bhīṣma, one thing is certain. The author of *Danḍanīti*, as it is expounded in the *Mahābhārata*, is Bhīṣma. The *Rājya* in question is that of Yudhiṣṭhira. And the source of this *Rājya* is the wisdom of Bhīṣma. The theological aspect of the teaching is, at best, the expression of the general Indian way of looking at things that the best in the world has a divine origin. Thus the wisdom connected with *dharma* and *pālana* is divine and the *rājā*, who establishes and maintains them, has a divinity in him. (In this connection that the Ṛṣis created Prthu and taught him *Danḍanīti* must not be forgotten. It illustrates how the wisdom of the philosophers is the origin of *Rājya*.)

The aim of Rajya.

The aim of *Rājya* is the re-establishment of the *Kārtayuga* State. The *rājā*, who really satisfies *Danḍanīti*, re-establishes *Kārtadharma*.

Thus Bhīṣma has in view three stages of the existence of men—the *Kārtayuga*, confusion of *dharma* and *adharma*, and *Rājya* leading to *Kārtayuga*. This idea is in keeping with the other general Indian conceptions. In the philosophy of the self we are told that the self is originally pure, owing to *avidyā* it has the state of bondage in which purity and impurity are intermixed, and with the spiritual discipline the original purity of the self is regained. (The original purity of the self is of course logical, but it illustrates the spirit of the present consideration. The conception of the *Kārtayuga* State has also a logical priority to that of *Rājya*.) Further, a *jñānin* is often compared to a young boy who is not yet affected by the vices of the world. (*Bhāgavata*, 11.5.) This comparison means that the boyhood is pure, manhood is impure and the purity of the boyhood is regained when the man becomes a *jñānin*,

The view of Bhīṣma compared to the Modern views.

Bhīṣma's view of the origin of the state has all the virtues of the different theories of the origin of the State as expressed by the European thinkers, but it is free from the defects of these theories.

The modern thinkers give us in all four types of views with regard to the origin of the State. An attempt is made in the following pages to see how far the ideas underlying these views can be applied to the view of Bhīṣma.

1. The Theory of the Social contract.

This theory distinguishes two periods of man's existence—the period of the law of nature or natural law and the period of civil society or body politic. In the former there is no State and with the latter the State appears. The natural law is characterised by human rapacity and in the latter human law operates.

But the position of Bhīṣma is entirely different. According to this position man's nature is pure and the vices like rapacity appear in man owing to the external conditions like *dainya*. The operation of human law is an expression of man's nature; and with this expression there is the *Kārtayuga* State. Plato and Aristotle come nearer this truth when they uphold that the social bond with his fellowmen forms an essential part of man's nature. The period of the law of nature corresponds to the state of man's life between the *Kārtayuga* and *Rājya*.

Hobbes holds that the state of nature is a state of war and therefore man is driven to join himself with his fellows under some common authority. These two ideas are mutually inconsistent, because how the warring nature miraculously submits itself to law and order cannot be justified. The position of Locke that "the state of nature is not one of universal war, but it is inconvenient and unsatisfactory" corresponds to the intermediate stage of Indian division. The same observation holds good with reference to the position of Rousseau that the primitive condition of idyllic felicity becomes no longer advantageous as the members of the race increase.

We may however note one virtue in the contract theory that it after all recognises the capacity for contract in man. Indian view makes the best use of this virtue. The chief defect in the contract theory is that it does not justify the expression of this capacity in man, as it starts with the assumption that man is by nature evil. Indian view believes in the natural greatness of

man and holds that all good arrangements of man are the expressions of this greatness.

2. The Theory of Divine Origin.

The essential meaning of this theory is that each and every existing State represents an institution of deliberate divine creation; and the monarch represents direct divine agency against whom no supposed principle of individual rights can be valid. This theory is sound in its general meaning that all human institutions represent in a sense the controlling power of God. The Indian view has nothing to say against this meaning. This is perhaps one of the reasons why the Indian teaching is generally mixed with theological ideas. But the theory of Divine origin implies much more and it denies political supremacy to the mass of the community. The Indian view does not subscribe to this view. According to Bhīṣma *pālana* is the only aim of any government, and this is impossible unless the mass of the community is sufficiently respected. Further, corresponding to "Divine right of kings" there is the Indian expression, "The king is a form of Viṣṇu"; but the implications of these expressions are profoundly different. "Divine right of kings" implies the negation of the individual rights against the king; but "The king is Viṣṇu" is an expression of the complete identity of the king with the individual interests. According to Indian tradition *pālana* is an aspect of Viṣṇu and it is *pālana* that makes one a *rājā*. So the belief is that a *rājā* is as intimately connected with the people as Viṣṇu, the creator, is. According to this view a *rājā* is not a *pālaka*, but a *pālaka* is *rājā*.

3. The Theory of force.

This theory holds that government is the outcome of human aggression. This is partly true, i.e., it is true in so far as it means that under particular conditions force is required to establish *dharma* and *pālana* and in this sense it can be applied only to *Rājya*. But one must not overlook the fact that the conception of *Rājya* is really based on the truth of human greatness. This means that to emphasise human aggression is wrong.

4. The Historical Theory of the State.

Modern thinkers consider the previous three theories to be fallacious and support the historical or evolutionary theory of

the State. This theory stands for the idea that the State is not an invention; it is a growth, an evolution, the result of a gradual process running through all the known history of man. It may be noted that this theory presents one of the aspects of *dharma* and *pālana*. The practice of *dharma* requires the observation of experience. This is the idea involved in *deśadharma* and *kāladharma* and consistently with *dharma*, *pālana* must be conducted. In order to be sound, the historical theory must recognise the natural greatness of man that makes evolution or progress possible. On the part of the Indian thinkers the recognition of this truth is however, responsible for the idea of the *Kārtavya* State. How far this State is a historical fact needs an investigation. The conviction of the Indian thinkers is that this State is really historical. Further, the historical theory of the State seems to emphasise the known history of man. Though this is correct the possibility of the unknown history of man needs to be duly recognised.

In the sight of the foregoing ideas, it may be concluded that Bhīṣma's theory of the origin of the State is based on the true insight into the real nature of man. And in this connection a word on *Varṇāśramadharma* may not be out of place. Two aspects are involved in this conception—birth and function. With regard to the latter, there can be no difference of opinion; but the importance of the former aspect depends on what value we attach to racial or parental inheritance. If the birth is also emphasised, then *Rājya* having in view the establishment of *Varṇāśramadharma* becomes only an ideal towards which the present conditions must move.

THE WORKING OF THE SYSTEM OF PRIMARY ELECTIONS IN INDIA*

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The System of Primary Elections.

In some of the general multi-member constituencies of the Provincial Legislatures, seats are reserved for the representatives of the Scheduled Classes. Two sets of elections are held for filling these seats. In the primary elections, the Scheduled Class members who are included in the electoral registers of the General constituencies form the electorate. Voting is by the method of single non-transferable vote. The primary voters elect four persons for every reserved seat. If the number of persons contesting a reserved seat is four or less than that, no primary election is held, and all the candidates are declared elected.

In the General Elections, only the persons returned by the primary voters are eligible to contest the Scheduled Class seats. Voting is joint, the Scheduled Class and the Caste Hindu electors voting together.

The Object of the Primary Elections.

The system of primary elections is instituted in order to ensure that the members returned for the reserved Scheduled Class seats enjoy the confidence of a good section of their community; that they are not merely dummies set up and elected by the Caste Hindu electors, who form a majority of the electorate of the General constituencies, in order to subserve their own ends. The authors of the Poona Pact, according to Dr. Ambedkar,

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desired that the persons contesting the reserved seats at the final elections should have secured the approval of at least 25 per cent of the Scheduled Class voters at the primary elections.¹

Paucity of Candidates at the Primary Elections.

The object of the primary elections has not been fully realised, because in most constituencies the number of persons contesting a reserved seat is less than the number of persons to be elected. The paucity of candidates might be considered to be due to the educational and economic backwardness of the Scheduled Classes and the absence of a strong directing class among them. At first sight, this view appears to be well-founded; but, on further examination, it is seen that it does not offer the right explanation. Although the Scheduled Classes are very backward, economically and socially, the number of persons contesting the reserved Scheduled Class seats at the primary elections, it must be noted, compares very well with the number of persons contesting other communal seats.² The real explanation for the paucity of candidates at the primary elections appears to lie in this fact: the voters have to elect four persons for every reserved seat, but, normally, so many candidates do not seek election in any kind of constituency; the number of candidates required to be elected by the primary voters is fixed too high.

¹ p. 66. *The Indian Delimitation Committee* Vol. III. Evidence by Dr. Ambedkar.

² 1937: *General Elections: Lower Chambers.*

Province.	Average No. of Scheduled Class candidates per reserved seat at the primary elections.	Average No. of candidates per seat in General constituencies (excluding Scheduled Class seats).	Average No. of candidates per seat in Muhammadan constituencies.
1	2	3	4
Madras	4.0	2.14	2.72
Bombay	3.6	2.12	2.7
Bengal	2.0	3.35	3.0
United Provinces	4.55	2.6	2.4
Central Provinces	3.85	2.8	3.0

Its Consequences.

In most of the constituencies primary elections are not held³ as the number of persons seeking election is less than the number of persons to be elected. In the general elections, if there are only as many candidates as there are seats to be filled, it is assumed that the candidates have the support of the whole body of voters, and they are declared elected. The adoption of the same procedure at the primary elections appears, at first sight, to be quite the thing to do. But, a little more thought makes it clear that the procedure runs counter to the main object of the primary elections, namely, that of excluding from contesting the reserved seats those candidates who do not command the confidence of a good section of their community. Under the present system, many of the candidates who are declared elected without the primary elections being held might not have any support among the electors. Their election might have been due only to the paucity of candidates and the consequent absence of primary elections. Unless primary elections are held and the candidates are supported by a specified percentage of voters, the Scheduled Classes might justly feel that the paucity of candidates at the primary elections has allowed candidates who are not in their confidence to get elected in the final elections with the support of the members of the majority community.

³ 1937: General Elections: Lower Chambers.

Province	Total No. of reserved Scheduled Class seats.	No. of seats for which primary elections were held.	Ratio of 3 to 2.	Average No. of candidates per reserved seat in the primary elections.
1	2	3	4	5
Madras	30	6	20%	4
Bombay	15	2	13·3%	3·6
Bengal	30	6	20%	2·0
U. P.	20	10	50%	4·55
Punjab	8	Nil	Nil	3·0
Bihar	15	Nil	Nil	1·4
C P.	20	5	25%	3·85
Orissa	6	Nil	Nil	2·33
Assam	7	1	14·4%	2·85
Total	151	30	19·9%	...

The Draft Scheme of the Simon Commission Examined.

It is, therefore, clear that the present system should be modified in certain respects. Before considering the lines on which the present system should be modified, we shall examine the scheme of primary elections put forward as worthy of consideration by the Indian Statutory Commission. The scheme is briefly as follows: "Any person belonging to a minority community who desired to stand for the provincial council would have to be a candidate of his communal primary election. Voters would have as many votes as there were candidates, but could not give more than one vote to any one candidate. Any candidate obtaining a number of votes equal to a certain percentage, say 60, of the number of electors voting would be entitled to go before the general electorate of that constituency. The result would be that any candidate of a minority community elected by the general constituency would have previously been passed by *more than half of his communal electors* as satisfactory from the communal point of view."⁴

The scheme is attractive at first sight. But, on closer examination, it does not appear to be very different from the system of separate electorates. Under the scheme, voting is distributive, and to be elected in the primary elections, the candidates should have the support of a majority of the voters. As in the case of separate electorates, it would be quite easy for a communal party to function effectively and to capture all the seats at the primary elections. The party might, then, direct all excepting one of the candidates to withdraw from the final contest, and the Caste Hindu electors might be deprived of their voice in the filling of the Scheduled Class seats. If withdrawal after the primary elections is not permitted, the only satisfaction that the Caste Hindu electors can have is to elect one of the members of the panel prepared by the communal party and passed by the voters of the community at the primary elections. The scheme is, therefore, opposed to the spirit of the Poona Pact and cannot be adopted.

Suggestions advanced.

The object which the authors of the Poona Pact had in view can be fulfilled better if the present system of primary elections is modified in one of the two ways:

(1) It was noticed above that the number of candidates to be elected by the primary electors is fixed too high. The

⁴ *The Indian Statutory Commission: Report*, Vol. II, p. 86.

number could be lowered, and that would reduce the chances of a paucity of candidates coming in the way of holding primary elections.

(2) A better way would be to hold the primary election if there are two or more candidates. Voting being by the method of single non-transferable vote, all those who secure not less than 25 per cent of the votes cast might be declared eligible to contest the reserved seat in the general elections. If, in any constituency, no candidate polls 25 per cent of the votes cast, a re-election might be ordered, the candidate who has polled the least number of votes in the previous election being excluded from the contest.

PARTY, POLICY AND ADMINISTRATION IN LOCAL BODIES*

BY

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Parties are essential for the functioning of representative government. They frame and place alternative policies before the electorate. They select candidates and help them to win elections. The party which is returned in a majority to the Legislature forms the Cabinet or Government. The cabinet implements the party programme by appropriate legislation and executive action. The actual administration is carried on by the body of expert administrators and officials, who are recruited on the basis of merit and experience, are paid a decent salary and enjoy security of tenure. The members of the cabinet who are each placed in charge of a Department lay down the general principles to be followed in the application of the policy decided upon by the Legislature, and watch and supervise the application of these principles. The Legislature controls administration, not by attacking or criticising the permanent officials, but by holding the Ministers responsible for any defects in administration. The Legislature and the Ministers do not, as a rule, interfere with the details of administration. Thus politics or policy-determination is kept distinct from policy-enforcement or administration. The former is the sphere of the elected member, the latter of the trained administrator. Co-operation between the two is necessary for success in administration, and co-operation is possible only if the expert does not dabble in politics. He must not belong to a party, but must be ready to co-operate with any party that comes to power. Otherwise he cannot expect to be allowed to enjoy permanency of tenure in office. Thus, under the cabinet system of government, the connection between party, policy and administration is close, yet their respective spheres are clearly marked out and kept distinct.

The prevailing discontent with the working of local self-government in our country is largely due to a lack of balance and

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

harmony between party, policy and administration. Parties which contest for election to local bodies do not place before the electorate any policy or programme of action based on local issues. They are generally the same parties—whether national or communal—which strive for mastery in provincial and national politics. The members of local bodies are therefore elected on issues not relevant to the kind or nature of the work they are called upon to do in the local sphere. These parties enter local politics with a view to increase their party following and consolidate their position and influence in the localities by the use of the political power and patronage vested in those bodies. They give jobs and contracts with scant regard to efficiency and economy. Secondly, the respective spheres of party leader and paid administrator are not kept distinct. The party leader is required to discharge three incongruous functions. He is elected the chairman or president of the local body and in that capacity has to preside over its meetings, interpret and apply rules of procedure and decide on points of order with a sense of impartiality as between his own party and the opposition. As the leader of the majority party in the local body, he has to shape and determine the policies and principles to be carried into effect. He is also the chief executive authority of the local body and in that capacity has to supervise and control the work of his subordinates in and outside the office, give effect to the resolutions of the council and exercise a large number of powers vested in him by the Act or the rules made under it. Such a combination or confusion of functions has led to a great many evils. It is not possible to expect him as President to be impartial in the conduct of meetings when he and his administration are severely criticised and motives are attributed to him in the making of appointments or the giving of contracts; and when resolutions are ruled out of order and inconvenient business is adjourned from meeting to meeting including even answers to questions, feelings rise to fever-heat and the members of the opposition make protests, resort to obstructive tactics, table no-confidence motions and when all these are of no avail, stage walk-outs and thus give some relief to their pent-up feelings. Such scenes and demonstrations, no doubt, invest with life and liveliness the proceedings of the council which otherwise are somewhat drab and uninteresting, but they do not in any way enhance the dignity or prestige of the council in the eyes of the people. Then, in the sphere of administration, the combination of the functions of the political executive with those of the professional administrator has been responsible for much of the ineffectiveness and inefficiency

usually associated with local administration. The office of the President or Chairman is honorary and the incumbent of that office, who is generally a busy doctor, lawyer or businessman, has neither the time nor the professional competence to engage himself in the actual work of administration. In fact, that is not his business. But the Act has conferred all the administrative powers on him and he construes the Act far too literally, and instead of contenting himself with general supervision over the conduct of administration by the departmental heads, tries to keep all administrative details in his own hands. As the work is far too heavy and technical for him, he is forced to leave the bulk of it to the secretary or manager, but he refuses to delegate any of his powers to him—not even powers of control over the staff working in the office—for fear of minimising his own importance in the eyes of the people. The manager, unable to command, has to humour his subordinates and use persuasion in the disposal of the large arrears of work, which is however not very effective. Political considerations often interfere with the proper conduct of administration and coercive measures are not generally sanctioned by the Chairman to realise arrears of taxes, enforce sanitary regulations, remove encroachments etc., for fear of offending an influential citizen or a powerful interest.

It is, therefore, obvious that any comprehensive scheme of reform of the system of local self-government in our country must aim at (a) the formation of parties with policies based upon purely local issues and (b) the differentiation of the functions of the political executive and the professional administrator. But is it possible to form local parties based upon purely local issues? In no country in the world do we find purely local parties functioning in municipalities and local boards, nor do we find any parties divided on purely local issues. There are no such differences between the Republican and the Democrat in American municipalities and the Conservative and the Liberal in English boroughs and counties on civic policies and programmes. Such differences have no doubt emerged to some extent in England since the advent of the Labour party. But the Labour party is a national party and not a local party, and its policies have raised definite local issues, not merely because they are local, but because they are closely connected with, and indeed form part of, vital national issues. In England, even though elections are contested on party lines, the administration is carried on, on the whole, without reference to party. This is clearly reflected in the government and organization of its counties and boroughs. The Mayor, who is elected by the

council at the beginning of every year to preside over its meetings, resembles the Speaker of the House of Commons and not the Prime Minister. The council which may be compared with Parliament carries on the government through its committees (consisting of members of both the parties), which are each placed in charge of a Department and discharge the functions of a Cabinet Minister in relation to administration. The committee system may of course be worked, and in recent years has no doubt been worked in a few important cities on party lines, but it has come into being and has, on the whole, been worked on a non-party basis.

Local Government is so very restricted in its scope, both in the nature and number of its functions and the extent of the control exercised by the Provincial or National Government over its activities, that it is concerned with administration rather than with policy. Most of the functions which local bodies discharge are not purely local in character, but semi-national, in some aspects of which the Nation as a whole is interested. In these matters, the general lines of policy are laid down by the Provincial Government and the local bodies merely give effect to that policy. Thus, for instance, when the Provincial Government passes an Elementary Education Act or a Public Health Act, it is administered through the agency of the local bodies instead of by the Education or the Public Health Department of the Provincial Government. So, from the point of view of the Provincial Government, the local bodies are merely giving effect to the Act—are engaged in administration. We may therefore call the local bodies semi-autonomous administrative bodies. They have been allowed some amount of discretion in every matter that they administer, and it has been said that wherever there is an element of discretion, there is always involved a question of policy. Policy no doubt involves discretion, a choice between alternatives, but is it correct to say that the exercise of discretion invariably involves a determination of policy? When the Health Officer decides that a house is unfit for habitation, that a tenement is overcrowded, that a licence is not to be granted to the keeper of a lodging-house, he is exercising discretion, but there is no question of policy involved in his decision. Such matters as these are decided by the council, sometimes in the initial stage at the instance of the Health Officer, and sometimes at a later stage on appeal preferred by the aggrieved party against the decision of the Health Officer, and in giving a decision, the council is not formulating policy, but participating in the work of administration. It is only when the council decides to

provide protected water-supply or electric lighting, to adopt a townplanning or a drainage scheme, to enforce compulsion in elementary schools, to run buses or municipalise markets, that we can say it is deciding questions of policy, but such questions do not arise every day and on such matters there is generally agreement rather than any difference of opinion among the local people. It is only in such minor matters as the opening of a school or dispensary, the construction of a public drain or latrine, the establishment of a park or market, repairs to roads, the number of pipes or lights in a particular street or locality that differences of opinion arise in the council. Differences may also arise in matters involving the exercise of administrative discretion. It is not possible to formulate alternative policies on the basis of such purely local matters or matters involving administrative discretion. Thus, as broad questions of policy are generally decided by the Provincial Government, as there is generally agreement in the locality regarding such general questions as the provision of civic amenities and services, as differences arise only in the application of general principles or administrative details to particular localities or persons, it is not easy or possible to form parties based upon local issues. It is therefore best to carry on local government on a non-party basis. But parties, though they may not be necessary to formulate alternative policies on local issues, are however necessary, except perhaps in villages and small towns, to select candidates and canvass for their election. If national parties enter into local politics, we need not therefore conclude that they are doing a disservice to local government.

What is needed, therefore, is not the formation of parties on purely local issues which is not always possible, nor the elimination of national parties from local politics which is not desirable or even possible, but to reduce and, if possible, remove opportunities for the misuse of patronage for party purposes. As party-government is not needed in local bodies and as the sphere of local self-government is extremely restricted, there is no need to adopt all the elaborate organization of the cabinet system in local government. The English system of committee government seems to be best suited to local bodies. It encourages a non-partisan attitude on civic questions and makes every member feel that he has a share in shaping policy and exercising power. The council is a small body unlike the Parliament, its work is not so heavy as that of Parliament, and the issues it has to decide are not susceptible of division on party lines. Therefore it can do the work and discharge the functions of both Parliament and Cabinet in local affairs. There is no doubt need

to separate the functions of the administrator from those of the political executive. Control over the staff working in each Department, the conduct of the day-to-day administration including the collection of taxes, the enforcement of the provisions of the general and special Acts passed by the Legislature, the rules and regulations framed by the Government under them and the bye-laws and resolutions passed from time to time by the council should be delegated either by convention as in England, or by statute as in the case of municipalities in the Madras Presidency, to the Executive Officer and the other departmental heads. The council, while not interfering with the details of administration, should exercise general supervision over the work of the Executive Authority, the Health Officer and other departmental heads, and check and revise their acts only when they involve the exercise of administrative discretion.

Reform of local government in the Madras Presidency has, on the whole, followed the above lines. Executive Officers known as Commissioners have been appointed to all Municipalities under an Act of 1933. But this reform has yet to be introduced in the District Boards. The Public Health Act of 1939 has entrusted to the Health Officer in Municipalities as well as District Boards powers of control over the staff in his department and executive powers in relation to public health administration. One peculiar feature of the Madras system of local government is the provincialisation of important local government officers like the Commissioner, the Health Officer, the Engineer, and the Local Fund Assistant Engineer. Provincialisation has no doubt many advantages, but its one great drawback is that local bodies are thereby deprived of control over their own officers. In the case of the Health Officer and the Engineer, who are recruited on the basis of certain definite technical qualifications and who, as the nature of their work is mainly technical, do not come into frequent conflicts with the council, this defect has not been acutely felt. But in the case of the Commissioner, where the qualifications prescribed are very elastic and the nature of the work is general bringing him into close and intimate contact with the council, conflicts and collisions have not been rare. It was with a view to purify local politics that the power and to some extent the patronage hitherto vested in the Chairman have now been transferred to the Commissioner. But as the Commissioner has been appointed and dismissed for purely political reasons, the original purpose for which the appointment was created has not been fully realised. It has merely transferred patronage from the party in power in the local council to the party in power

in the Provincial Government. It is therefore in the interests of the Commissioner to work amicably with the Council, if the party in a majority in it belongs to the party in power at the Provincial headquarters; and to slight its members and disregard its wishes, if that is not the case. In the interests of the smooth working of local government, it is absolutely necessary therefore that the Commissioner should not be allowed to take part in party politics. In order to secure the neutrality of the Commissioner in local politics, he should be appointed by the Council, subject to the approval of the Government for his appointment and dismissal, as is the case with the town clerk in England; or if it is thought that recruitment on a provincial basis attracts a better type of officer, he should be appointed and dismissed by the Provincial Government on the recommendation of the Provincial Public Services Commission, as in the case of members of the Provincial Services. To purify local government from the corruption of party politics, it is also advisable to recruit all the local government officers and servants (drawing a salary of, say, Rs. 20 or more a month) through the agency of Provincial Public Services Commission, which may also be given the appellate authority in such matters as reduction to a lower post or dismissal, while leaving the formal power of appointment to the Council and disciplinary control over the staff to the Commissioner. These measures of reform, if adopted, will minimise the importance of party politics in local affairs, encourage the development of a non-partisan attitude in the Council towards local matters, improve the relations between the Council and its executive officer and conduce to the smooth and efficient administration of local services.

AFFAIRS IN CHINA*

CHINA'S FINANCIAL FRONT AFTER FOUR YEARS OF WAR

Following is part of the statement made by Dr. H. H. Kung, Vice-President of the Executive Yuan and concurrently Minister of Finance, on the fourth anniversary of the war:

The problems and difficulties confronting China's wartime finances are numerous. Ways and means have to be found for meeting a war budget several times larger than peacetime expenditures. Heavy outlays are required for war relief purposes arising from the enormous destruction of life and property both in the front and in the rear. Still greater funds are to be provided to accelerate reconstruction projects essential to national defence and rehabilitation. The nation's financial and economic resources have to be mobilized and co-ordinated in order to overcome the wartime difficulties hampering the normal development of trade, industry, mining, agriculture and communications. Sound measures have to be adopted to assure the maintenance of the stability of the nation's currency and credit structure.

METHODS OF WAR FINANCING

There are as a rule four principal methods of war financing; namely, voluntary contributions, increased taxation, loan flotation and note-issue expansion,--aside from those of requisition, mobilization of war fund reserve and conversion of state properties.

Being primarily an agricultural nation with abundant hidden wealth, China's economic structure in protracted hostilities is more conducive to the conservative policy of military and financial resistance, and the chances of its ultimate victory depend mainly on playing for time and on the co-ordinated development of personal and national productive power. For China, this is the logical wartime policy from the standpoints of both military strategy and financial power.

* This information has been kindly supplied by *The China Information Committee*, Chungking, China.

EDITOR.

PEOPLE'S PATRIOTIC CONTRIBUTIONS

A noteworthy fact in connection with China's war financing is the patriotic support of its people. The whole nation has responded readily to the Government's call for needed funds and war relief materials. The loyalty and generosity of China's sons and daughters abroad is particularly praiseworthy. They have contributed hundreds of millions of dollars to the National Treasury, subscribed enthusiastically to the National War Bonds, and invested considerable sums for the wartime development of mining and industries in China's hinterland. Moreover, their remittances home increased from \$300,000,000 annually in the pre-war years to \$600,000,000 since the hostilities began and have been a helpful factor in reducing China's adverse balance of international payments.

TAXATION ADJUSTMENTS

The low per capita wealth of the Chinese people, coupled with the already heavy hardships brought upon them by the war's ravages, the Government's lack of an adequate system of direct taxation, and the enemy's occupation of many important cities, have precluded any large reliance on increase of taxation as an effective means of raising war funds.

Aside from the institution of the excess income (or war profit) tax and the inheritance tax, the Government has made various taxation adjustments calculated to reduce the people's burden, particularly of those living in or adjacent to the war-torn areas, to encourage export trade, to assist industrial production and to promote thrift and economy. The land tax, hitherto administered by the local governments, should be taken over by the Central Government for reorganization in order to unify and improve its administration and increase its yield for war use. In June the Third National Financial Conference was convened to consider practical ways and means for giving effect to this and other fiscal reforms to meet the wartime needs of the action.

INTRODUCTION OF PUBLIC TREASURY SYSTEM

In connection with the reorganization of the nation's fiscal system, the introduction of the Public Treasury System on October 1, 1939, is a distinct wartime improvement. The new system has the advantage of centralizing the receipts and disbursements of public funds, at the same time of separating the two functions. It will necessarily result in closer co-operation of the nation's political and financial powers.

ISSUE OF WAR LOANS

Fiscal theory recommends that extraordinary wartime needs be financed largely out of revenue; nevertheless, experience has shown that where this is impossible the emergency can be met for a considerable period by relying largely upon borrowings. Since the outbreak of the present hostilities, China has had to depend on continued borrowing to meet 70 per cent of its war budget. Thanks to the people's patriotic support and the banks' loyal co-operation, the Government has been able to carry out the borrowing program smoothly and, up to the end of 1940, has authorized internal loan issues equivalent to the total of \$4,750,000,000.

During the same period, loans issued in Japan amounted to about 17,670,000,000 yen. In other words, Japan's new debt due to the "China Incident" is about four times as large as China's (at official rates of exchange), and the per capita debt is increased by about \$10 in China and 250 yen in Japan, the ratio being 1 to 25. Comparing the total national indebtedness of the two countries outstanding at the end of 1940, the figures would be roughly \$9,250,000,000 for China and 28,250,000,000 yen for Japan. That is to say, Japan's present national debt is more than three times China's burden, while the present per capita debt is about \$20 in China and 400 yen in Japan, the former being only about 1/20 of the latter. During 1941, new bond issues are expected to reach considerable figures in both countries.

FOREIGN CONFIDENCE AND FINANCIAL ASSISTANCE

China is appreciative of the friendly assistance which different countries have extended to China in the form of credits during the present hostilities. These include the several Commodity Credits and Currency Stabilization Loan extended by America, the Export Guarantee Credit and Currency Stabilization Fund Credits extended by Great Britain, the Nancheng Railway Loan extended by France, the Barter Trade Credits extended by Soviet Russia, and large amounts of private credits for purchases of materials in different countries. The extension of these credit arrangements has been helpful in the stabilization of China's war finance while at the same time beneficial to the economics of the lending countries themselves. It bespeaks confidence in China's financial future and presents a striking contrast to the fact that in the world's financial capitals the doors of borrowing are closed to Japan.

WARTIME DEBT SERVICE

Outstanding in China's wartime financial record is the Government's scrupulous anxiety to live up to its obligations. China's determination to uphold its credit has been such that for well over a year following the outbreak of the present hostilities, it continued to meet its debt service fully and regularly. Without seizing upon some pretext for declaring a general moratorium, China girded its financial loins and paid.

This is all the more gratifying in view of the Japanese interference with the lion's share of the customs and salt revenues—the two principal securities of China's obligations. In respect of the customs alone, revenues forcibly detained by the Japanese had accumulated to the extent of more than \$750,000,000 by the end of 1940.

Services of obligation contracted during the war have all been met fully and promptly. China's wartime accomplishment in fulfilling its obligations, in contrast to Japan's high-handed interference with that honourable performance, is a record which China's creditors may not soon forget.

WARTIME MONETARY MANAGEMENT

Like any country at war, China has had to meet certain currency difficulties that are the necessary adjuncts of warfare, and has found it necessary to enforce certain measures of exchange control to permit adjustment to economic and trade conditions. Because of the existence of extra-territoriality and of foreign settlements and concessions, and in view of the extent and importance of the areas affected by Japanese interference, particularly in Shanghai which is China's commercial and financial centre, the Chinese Government has found it difficult to enforce rigid measures of financial control such as other countries have adopted.

Nevertheless, China has been able to maintain the exchange stability of its currency to a degree generally regarded as remarkable.

Throughout the period of hostilities, China has maintained both in "occupied" and unoccupied areas an acceptable medium of exchange which has consistently been demanded by the people in preference to the issues of notes the Japanese and their puppets have attempted to circulate at the point of bayonets. China's legal tender has the distinct advantage of free convertibility into foreign currency. Although there have been marked changes in the value of the national currency in the foreign exchange market,

due largely to speculation, the Government has continued to make exchange available to legitimate business requirements. The existence of the so-called "black market" in financial centres is not an uncommon phenomenon in countries subject to exchange control, even in peace time.

INCREASED CIRCULATION OF CURRENCY

The volume of currency in circulation has expanded considerably since the opening of hostilities, from \$1,444,000,000 to several times that figure. The increase in note-issue has been brought about more by economic reasons than by fiscal necessities. As a consequence of hostilities, increased hoarding and holding of cash balances by the public to meet emergency requirements have entailed a larger volume of currency. Extended circulation of the national currency in areas formerly served by local currencies, notably in Yunnan, Szechwan, Kwangsi, Sikang and Sinkiang, has likewise resulted in a larger circulation. Moreover, circulation of the national currency has continued even in the areas occupied by the Japanese, especially in Central China, in the foreign-controlled areas in Shanghai and Tientsin and in the territories where the Chinese guerillas are active.

Undeniably the war has been a severe strain on China's economy, but in the madness of the Japanese aggression even the important interests of western Powers have been trampled upon with impunity. The interruption of China's progress is undoubtedly one of the greatest tragedies of history. Japan's slogan of creating a "New Order in the Far East" is but a camouflage for its two-fold object of dominating China in its own interest and of expelling the interest and influence of western Powers from the Far East. But China has been able to maintain a financial front stronger and more endurable than its enemy had conjectured. Committed to its dual policy of armed resistance and national reconstruction, China is confident of its ultimate victory.

WARTIME EDUCATION ADJUSTMENTS IN CHINA

Four years since the outbreak of war, Chinese educational institutions have grown in quantity and improved in quality. This has been brought about through redistribution of the schools of higher learning, standardization of the courses, readjustment of the curriculum, improvement of the teaching system, organization of teachers' training and formation of educational districts. In making these changes, the Ministry of Education has in mind

as underlying principle the co-ordination of education and national reconstruction, of cultural and technical instruction and the national defence program, of family and school life and, lastly, of theory and practice.

After the Japanese occupation of China's coastal regions and with the enemy occupied territory extending further inland, the Ministry of Education has been able to carry out the long needed readjustments. The institutions of higher learning have been redistributed by amalgamation, division or reorganization. The National Tsinghua University, National University of Peking and private Nankai University were combined into the National South-West Associated University at Kunming. The present National North-Western University at Hanchung, Shensi, is a combination of the former National Peiping University, National Normal University of Peiping and National Peiyang Engineering College. The National North-Western Teachers' College, formerly the Teachers' School of the National North-Western University, was separated from this institution.

During the four years of war all plans for higher education have been formulated with a view to meeting the needs of national resistance and reconstruction. Required courses and electives have been carefully worked out by experts of the Ministry of Education. Special emphasis is laid on courses with a direct bearing on present-day Chinese problems.

To bring about improvements in the subjects taught and other necessary reforms, the National Institute of Compilation and Translation was consolidated. The National Council of Higher Learning was inaugurated, and some hundred institutions of research were put directly or indirectly under the control of the Ministry for the sake of centralization and systematization.

But Chinese higher education has not only improved in quality but also expanded in quantity. After four years of rebuilding, the number of colleges, universities and technical institutes has now increased to 113. This growth was marked by a new system of normal colleges which differ from the old one by the longer period required for graduation, better-chosen courses and free tuition. This last factor has enabled many promising but poor youths to enter the teaching profession. At present, there are seven national normal colleges; one at Nantien, Hunan; one at Chengku, Shensi; one for women, the National Women Teachers' College, at Peisha, Szechwan; and four incorporated into the National Central, National Chungshan, National Chekiang and National South-Western Associated Universities.

The formation of educational districts has greatly facilitated the execution of the secondary education program. Secondary education institutions include middle, normal and vocational schools. China's middle schools, like her colleges, universities and technical institutes, before the war clustered in cities near the coast. The Ministry of Education promulgated regulations dividing each province into middle school districts in accordance with population, financial conditions, cultural level and communication facilities. The regulations provided that the schools in each district should organize research committees to study the problems of educational development. Normal school districts were also marked out in the provinces, with one school each for men and women in every district.

There are altogether 1,973 secondary education institutions in Free China. Of these, middle schools number 1,202 and normal schools 500. All are distributed in accordance with the districts mapped out by the Ministry of Education. The remaining 271 are vocational schools.

Much attention has been paid to the promotion of vocational education. Training schools have been established and short-course classes conducted for mechanics, electricians, and other skilled workers. Special classes are available in more than ten colleges and universities for advanced studies in these fields.

Illiteracy has been combated through compulsory primary education, people's and citizens' schools and social education. The enforcement of the compulsory education program dates back to the summer of 1935 when the Government promulgated regulations aiming at completing the program within five years ending in 1939. It was expected that during the period 40 per cent of all children would go to school for one year. After the first five-year period, a four-year program for 1940 to 1943, was to be enforced during which 80 per cent of the children of the country were to receive two years of compulsory education. By another four-year program ending in 1949, all illiterate children in China were to be educated.

According to the people's education program, there should be during the first two years at least one people's school every three *pao* (each *pao* has 100 households). In this way, there should be more than 260,000 people's schools for the 800,000 *pao* of the entire nation. In the fifth and last year there should be at least 800,000 *pao* people's schools besides 80,000 or more *chen* (or *hsiang*) central schools. To complete this comprehensive schedule, it is estimated by the Ministry of Education that

at least \$2,932,000,000 and 1,600,000 trained teachers will be needed.

Social education aims not only at enabling the people to read and write but also at giving them a knowledge of rural and city life, of how to improve living conditions at home and of how to promote public life. Vehicles for the promotion of social education include adult schools, folk reading centres, public playgrounds and other physical culture facilities, phonetic classes, general commercial and industrial continuation schools, schools for the blindmutes, reformatories, institutes for orphans and destitute children, museums, art exhibits, theatres, cinema houses, music clubs, educational films, radio broadcasts, circuit corps, libraries and "people's readers."

For the maintenance of the nation-wide network of social education institutions, the Government spent \$11,205,095 in 1939-40. By the end of 1940, China succeeded in wiping out illiteracy in 46,348,460 of her people; 140,000,000 illiterates remain to be educated.

SOCIAL EDUCATION MAKES RAPID PROGRESS

Rapid progress in the promotion of social education in Free China during the past three years of war is shown in a survey recently completed by the Ministry of Education. Social education institutions in 1939-40 numbered 206,932 with 4,806,718 students.

These figures mark considerable increases as compared with the years 1938 and 1937. The number of institutions in 1938 was 147,515 with 3,175,475 students, in 1937 institutions numbered 132,853 and students 2,813,074.

Social education institutions consist not only of regular schools but also of training classes and circuit corps engaged in teaching the rudiments of social science to the masses.

The survey covers 21 provinces in Free China and the municipality of Chungking. Kwangsi tops the list with 44,102 institutions in 1937, 27,038 in 1938 and 44,406 in 1939-40, while students numbered 381 in 1937, 396 in 1938 and 1,422 in 1939-40. There is a reason why the number of students in Kwangsi listed is much smaller than that of institutions. The student totals comprise only those students who studied in regular schools with social education courses. The institution totals are made up of educational organizations of every kind, including mobile and mass education classes.

Among social educational institutions in Free China with regular school courses are the numerous drama schools. Outstanding are the National Academy of Dramatic Arts at Kiangnan, Szechwan, the Experimental College of Dramatic and Operatic Arts in Chungking and an experimental drama school in Chengtu.

WOMEN'S ADVISORY COUNCIL ACTIVE IN MANY FIELDS

A good illustration of the services rendered by Chinese women to their country, especially in the field of reconstruction, is afforded by the work of the Women's Advisory Council of the New Life Movement Association. It was expanded to its present size of nine departments following a meeting of women leaders called by Madame Chiang at Kuling in May, 1938. Since then women's activities in China have been co-ordinated. The nine departments are: general affairs, training, livelihood, production, war relief, refugee children, rural service, co-ordinating, and cultural.

The need for a large number of trained personnel to lead women's activities and to participate in the multiple work of the council prompted the establishment of the training department. Between July, 1938 and the spring of 1940, seven training classes were held, in which 1,000 young enthusiastic girls, mostly middle school graduates, were given political and military training and were taught "how to approach the inhabitants of rural regions; how to give instruction in character buildings; how to improve the standard of living of the people; how to safeguard the interests of the people; and how to promote wholehearted and unselfish devotion to the winning of the war." Besides, they were taught handicrafts and home industries.

PEACE AND COLLECTIVE SECURITY*

BY

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A. The Problem Stated.

Everyone, excepting a Trietachke here or a Mussolini there, wants peace and abhors war. So vitally are men interested in peace and affected by its disturbance that the benefits of one and the evils of the other are a matter of common knowledge and need not be dilated upon here. Still there do occur in the modern world so many wars that bring destruction "with the maximum of efficiency and the minimum of indiscrimination;"¹ that "peace is only a suspension of war"² is not the despair of a General Sikorski alone. Why? The causes of War, however, it is presumed, are sufficiently manifest to the world and need not be discussed here in detail. War is too complex a phenomenon to be the result of a single cause as a Marxist or Psychoanalyst would have us believe. Numerous factors go to make man "unique in the organisation of mass murder of his own species,"³ and the relative responsibility of each varies with each violation of peace. In a nutshell, they are made up by economic and political imperialism that leads to imperialist and inter-imperialist wars for the acquisition of new or the transfer of old empires, narrow nationalism that is frantic about preserving the Austinian traditions of sovereignty, grievances of political minorities and irredentism, armament races and rivalry for key positions; and the psychoanalyst explains the aggressiveness of individuals, that makes the running of war machinery a smooth task, by sadism and masochism that have their own causes.

How can these hindrances to international peace be obviated that war may become unnecessary and impossible is the problem.

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

¹ & ³ Huxley: *Ends and Means*.

² Quoted in De Lights' *Conquest of Violence*.

B. Suggestions Examined.

We propose to examine first the more important of the many cures that have been put forward by different schools of thought.

(1) *The Pacifist.*

The absolute pacifists are true Christians like the Quakers, and non-Christians like Gandhi, whose "faith remains sure and immoveable that hatred can only be overcome by love,"⁴ and who are against all war, irrespective of their alleged ends, for no war, they hold, can have any moral justification. To avoid war, according to the pacifists, peoples must follow a passive policy of non-resistance, and states must disarm unilaterally, without waiting for disarmament by others. Imperial powers should be prepared to give up their empires which are, even from the economic standpoint, not worth fighting for. This is the best way to conquer the ill-will of the potential enemy, as "it is difficult to remain fierce when there is no occasion for fear and when pride has been fully gratified."⁵ The pacifist often pointed out the safety of one of the smaller European powers even when defenceless—now a thing of the past—though also without empires, to prove the truth of his creed.

The individual should, to achieve peace by this method, non-participate in any war as much as they can under conditions of modern warfare, and try to detract from the war-path as many as they can without, however, endangering his life for, "not only is it the interest, it is also the duty of the pacifist to survive . . . when few hold the truth, the greater is their duty to the truth they hold."⁶

We need not pronounce here on the morality of the pacifist method which is really debatable. However, from the viewpoint of practical politics of the world we live in, adherence to this doctrine as a remedy to war is not at all sufficient. It presumes too much about the nature of man and his groups; it "over-estimates man's tender emotions and under-estimates his self-assertiveness and pugnacity."⁷ So far as there are armed nations round it no country will disarm unilaterally to expose

⁴ George Lansbury: *My Quest for Peace*.

⁵ Bertrand Russell: *Which Way to Peace?*

⁶ C. E. M. Jaod: *Guide to Modern Wickedness*.

⁷ R. B. Fraser: *Pacifism and Collective Security in War and Democracy*.

itself to the temptations of its armed neighbours. Pacifism can bring permanent peace, but only if adopted universally and this is a very big "if." No nation will decide in the Gandhian way to follow pacifism which would leave it defenceless.⁸

Thus pacifism, as a method applicable for securing peace in the world, does not meet the immediate practical requirements.

2. *The Marxist.*

According to Marxism, all the factors conducive to war are, directly or indirectly, traceable to the existence of the capitalist system of economy, i.e., production under private ownership, for profit which results in large accumulations of wealth due to the "disequilibrium between production and consumption."⁹ The capitalist class in what Lenin calls "the monopoly stage" of capitalism¹⁰ needs new areas to be exploited for its profits. The world being limited, this demand of the capitalists of various countries, naturally, conflicts and gives birth to huge conflagrations which in fact are inevitable so long as the capitalist states last. Capitalists can manipulate big armies to murder each other in their interest, because the state—"that citadel of the concentrated power of the ruling class"¹¹—is only a tool in their hands, and, by the control of "the essential means for production of political opinion,"¹² they disguise the true ends of wars from the people at large in "stupefying vapours of propoganda."¹³

It is established thus that "property . . . is the principle of anarchy and the enemy of society"¹⁴ and so, to abolish wars, capitalism must be wiped out from the face of the Earth. A world of socialist states is the remedy. A planned socialist economy, producing for use, has no superfluous commodities or money to hunt markets for. They will be not competing but complementing units of a single world economy. All national antagonism will die; "Socialism like Catholicism is, in essence, antagonistic to national particularism."¹⁵

⁸ N. Angell: *Peace with the Dictators?*

⁹ Hobson: *Imperialism, A Study*.

¹⁰ Lenin: *Imperialism: The Highest Phase of Capitalism*.

¹¹ Bukharin: *Marism and Modern Thought*.

¹² John Strachey: *Theory and Practice of Socialism*.

¹³ Rudlin: *Growth of Fascism in Great Britain*.

¹⁴ H. N. Brailsford: *Property or Peace?*

¹⁵ Mosca: *The Ruling Class*.

There is doubtless much truth in the Marxist allegation about capitalism being a danger to peace, and one's intellectual honesty may not allow him to deny the validity of Marxism on this point. But it must also be admitted that Marxism, holding capitalism as the sole cause of war and the inevitability of war in an Imperialist world, cannot logically suggest any method to safeguard peace, until capitalism is abolished from the entire world, which may be still very far off. The method of socialisation of all the world is apparently too long and too debatable to stop men from trying other ways of stabilising peace.

3. *The Revisionist.*

Another remedy, for undermining the inducements to war, which had gained considerable currency among thinkers on the subject of world peace, was that of modification of the existing treaties, particularly territorial redivision with a view to re-adjusting the economic opportunities of certain dissatisfied Powers. This doctrine is known as that of revision or peaceful change, and aims at preventing war by rendering it unnecessary; it was provided for in the League Covenant, Article 19, which, however, remained ignored till the threats of the "Have-nots" became serious. Revival of faith in it was due to the realisation of the robbing character of the 1919 treaties *plus* a pacifist sentiment born out of defeatism among the ranks of the sated powers. It was suggested before the present European War that the colonies be redistributed or put under an international body consisting of the representatives of all the industrial nations of Europe, *i.e.*, all of them should jointly own all the colonies. Peaceful change must be made, according to the advocates of this theory, a permanent institution of world politics, as nations "wax and wane" and the *status quo* need constantly be adjusted. Peaceful change has been advocated, not unaccompanied by other recommendations, by such persons as Mr. Mortished of the I.L.O.,¹⁶ Dr. J. J. Bonn of the London University,¹⁷ Sir Arthur Salter,¹⁸ Senor Medariaga,¹⁹ and this is perhaps what W. Arnold-Forster also means by "sterilising political frontiers."²⁰ Significantly, the belief in the utility of this method, of a change in the control of colonies, is confined to European writers.

¹⁶ & ¹⁷ Problems of Peace, X Series, *Anarchy or World Order*.

¹⁸ Security—*Can We Retrieve It?*

¹⁹ *World Design*, Part II, Chapter I.

²⁰ *Intelligent Man's Way to Prevent War*.

The defects of the doctrine are obvious. It is based on the immoral assumption that parts of the world will continue, for a long time, to be exploited as colonies and empires, which are to be treated as mere pawns in the game of Western diplomacy. It can, at best, be only a partial cure of wars, as it aims only at preventing inter-imperialist wars, looking at the problem of peace from a purely European angle. As a method of securing world peace it is very inadequate and is only a partial cure of a most complicated problem.

By what measures, then, can peace be secured?

C. *Proposals for Stabilising Peace.*

1. *The abolition of Colonies and Dependencies.*

We know that the economic advantages of political control tempt nations to aggression and make colonies bones of international rivalry, jealousy and contention. Their abolition is the first step essential for minimising conditions inimical to international peace. For the average Western pacifist, such a step is perhaps too radical to be recommended. What he usually recommends is that colonies be turned into a free-trade region under international control by which step he hopes to obviate inter-imperialist clashes. Such an attitude reflects not only a gross indifference to the interest of the colonies and disregard for the wishes of the subject people, but also an almost sinful failure to recognise, that international peace means absence also of intra-imperialist friction and war. "What is required in the interests of peace is not a share out of the right to exploit, but the all-round abolition of exploitation as an operative principle."²¹ The subjugation of a people breeds racial hatred and animosity which are latent causes of bloody struggles and jeopardise healthy international co-operation. Therefore, if peace is to be secured, not between the industrial nations of the West alone, but for the entire world, nothing short of complete abolition of colonies and dependencies is necessary.

Before proceeding to the next proposal, it has to be mentioned here that the demand for compulsory introduction of the "open-door" in the colonies has little appeal. The point is that nations should be left free to look to their economic interests. Why should a nation be prohibited from entering into a trade agreement to its advantage or adopting a tariff policy essential for the development of its infant industries? Let nations choose

²¹ Leonard Barnes: *Empire or Democracy?*

free trade when they see their good in it. Dragging colonies into free trading units, perhaps even in Sir Strafford Cripps' "Economic Co-operative Group,"²² may in effect, prove to be nothing more than the creation of so many Congo Basins.

2. *Protection for Minorities.*

It has been seen how the question of minorities can undermine international peace. The number of minorities should be reduced to a minimum. No strategic considerations, as were given the upper hand in 1919, should be allowed to obstruct their reduction. The cultural and economic rights of minorities can be better guaranteed by their incorporation in the constitutional law of the states concerned, improvements in the machinery to insure their enforcement and secure redress of the minorities' grievances. The League procedure was very dilatory. A permanent international commission, in which the parties cannot exercise undue influence, will have to be created. It should have its agents in areas where the question is acute.

3. *Absolute Disarmament.*

One of the most urgent steps is complete disarmament. Of course a police force necessary for maintaining order has to be conceded. Armaments, unless abolished altogether, cannot be effectively controlled. It is an evil which admits of no mitigation but only complete extermination. The best way also of avoiding all the complexities of the problem of disarmament—the question of qualitative restrictions, of reserves, of classifying weapons into defensive and offensive, of convertible machines, of affecting budgetary limitations, etc.—is to abolish armaments altogether.

It need not be said that this step involves also the abolition of private manufacture of armaments.

Mercantile marine and civil aviation will have to be put under the control of international bodies. They cannot be abolished, nor the risk of their being abused can be taken.

There will have to be created an international body whose honest agents will watch the activities of the governments of the various states, and supervise their industries, specially chemical, steel, and iron, lest armaments are secretly piled up.

One may not be charged with baseless optimism if he hopes that nations, under the changed circumstances, will be sane enough to accept disarmament when individual defence has been substituted, and there are no empires to be kept in perpetual

²² *The Struggle for Peace.*

subjugation. (It is significant that Litvinov's proposal for absolute disarmament, at the Disarmament Conference, was supported only by Turkey; both had no empires.)

Of course nations will have to be provided with an alternate defence before they can be expected to disarm. The question whether security must precede disarmament or disarmament precede security may be controversial from the abstract plane but the actual course of post-Versailles history has proved beyond doubt that nations will not disarm unless they are given reliable guarantees—automatic, and without the legal gaps of the 1919 League Covenant—against aggression.

The best alternative to self-defence that nations can get is Collective Security—the same principle which insures the safety of an individual within the state.

4. *Establishment of Collective Security Through An International Authority with an International Force.*

Acceptance of the principle of collective security means that nations will give up the right of self-defence, i.e., fighting for preserving their self-judged rights, aggression against one being treated as aggression against all, which will be met by their pooled might. The principle of collective security is "to make defence the function not of each rival party to a dispute but of the whole community upholding the principle of third party judgment,"²³ the transfer of force "from the litigant to the law."²⁴ The pacifist attitude has recently become more appreciative of this principle; it is admitted that even when all force is bad, force applied to uphold law is the least questionable that "legal killing is better than private killing."²⁵

When nations give up the mutually exclusive right of judging their own rights, a system of international law will be necessary. Aggression will have to be defined precisely and third party judgment made available in cases of disputes—justifiable and non-justifiable; for the former, we already have an efficient court and for the latter too, a reliable international tribunal, better constituted than the present League Council, can be established.

However, all this will be meaningless until nations agree to create an international authority—a kind of a super-state with

²³ N. Angell: *Peace with the Dictators?*

²⁴ N. Angell: *Intelligent Man's Way to Prevent War.*

²⁵ N. Angell: *Peace with the Dictators?*

armed might of nations pooled under its control so that it may be able to enforce third party judgment and punish the violator of law. It—a super-state or world-federation or whatever it may be termed—is the essential backbone of the collective security system. The 1919 League has failed, whatever its other defects might have been, to a great extent because of its impotence.

The New League should have under its direct control an efficiently equipped army whose smallest unit even must be international in personnel. The international army should not be concentrated at one place. Its divisions must be stationed at various centres—say three in Europe, Asia, South America, North America each, and two in Africa, and maybe one in the Pacific—close to what may be considered danger spots. This will satisfy also the craving for regional security pacts. It may be hoped that it will seldom have to be actually used. It need not be very large, when nations have been disarmed.

This international authority must have the complete paraphernalia of a Government in the sense that men employed in its work will not be officials of any state, for then alone can absolute loyalty be expected; "the word 'International' is in itself not worth more than the word 'national,' if it is the same men who are included therein,"²⁶ Geneva was merely the meeting-place of national statesmen, and it failed. It must also have its own ambassadors or agents in every country of the world, to represent it and report to it. The finances of all this machinery for collective security and international peace can be distributed between nations, as is the expenditure of the present League of Nations.

With this international authority will be linked up the other international institutions like the Minorities Commission and the machinery for supervision of disarmament and a commission for movement of populations, etc.

Thus the world will have recognised fundamentals of international law and an international judiciary, an international executive (if the word can be so used), and an international army. It may not be possible to have an international legislature for a long time to come but the rudiments of international law can be agreed upon by, the not new, means of periodic international conferences. The question of the membership and jurisdiction of this international authority is important. Of late, some important writers have recommended a geographically limited application of the principle of collective security, a

²⁶ Romain Rolland: *I Will Not Rest*.

world system being kept only as the ultimate goal. Streit would limit it to the North Atlantic Democracies, twelve to twenty in number, which, he thinks, have between them sufficient wealth and power to deter aggression; world union is only his ultimate objective.²⁷ Sir Strafford Cripps also makes a world confederation "the long-term objective;" his "Economic Co-operative Group" is open only to socialist states who can make the minimum "moral subscription" and there is to be an "inner ring."²⁸ Sir Arthur Salter²⁹ also recommends a collective system with continental pacts as the units on which the world system will be a superstructure only. These proposals would only make war an inter-continental issue, or a conflict between big groups based on political ideologies. "To perpetuate the division of continents (as also between groups of democratic and despotic state-systems) is only one degree less injurious to world unity than to perpetuate the division of nation."³⁰ Such proposals may even be inimical to an international understanding so essential for universal peace, for they tend to widen, rather than shorten, the gulf between the different states, by emphasising their differences and diversities. A collective system must be, as far as possible, universal. It is difficult to agree with Sir Alfred Zimmern, when he says,³¹ that the autocratic states will have to be kept out of a world order. Every state, whatever its domestic polity, should be induced, by all permissible means, to join the system of collective security. If a Berlin-Moscow Pact is possible for war purposes, if trade treaties between all sorts of states are a daily occurrence and there are so many other instances of fully world-wide co-operation, there is no reason to believe that nations will refuse to co-operate in the realisation of a scheme so beneficial to all, in a world with few objects of national greed or international jealousy. However, it cannot be denied that the success of a collective system will vary with its membership and the extent to which it includes potential opponents.

What should be done with the present League of Nations? Nobody can suggest the abolition of its non-political bodies like the I.L.O., the Bank of International Settlement and the Permanent Court of International Justice, etc., but its political machinery, in view of the radical changes that it will require for

²⁷ Streit: *Union Now*.

²⁸ Streit: *The Struggle For Peace*.

²⁹ Streit: *Security*.

³⁰ C. R. Buxton: *Intelligent Man's Way to Prevent War*.

³¹ Problems of Peace Tenth Series: *Anarchy or World Order*.
F. 8

THE MONROE DOCTRINE*

BY

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Origin.

The United States of America welcomed the revolt of the Spanish Colonies in the New World (1808—1822) as one more milestone in the liberation from the sway of the Old World. As early as 1822, President Monroe, sooner than all other countries, despatched diplomatic missions to the 'independent nations of the American Continent.' But the Counter-Revolutionary Holy Alliance of Europe was stretching its hand out across the Atlantic and England was proposing a joint note by herself and the U.S.A. pleading for 'amicable negotiations' between Spain and her Colonies. This attitude of England made the U.S.A. nervous about her intentions, specially because she had long cast her eyes on Cuba and other Caribbean Islands. Meanwhile, the prime inspirer of the Holy Alliance against liberalism, *viz.*, Russia, was stealthily creeping south, from Alaska along the Pacific Coast. The times called for a spirited and far-reaching Declaration of the American attitude towards both worlds, Old and New, and both hemispheres, East and West.

The Message.

The Message of President Monroe, delivered before the Congress on 2nd December, 1823, laid down (a) that European powers shall not be allowed to interpose in any form in the problem of the new Spanish Republics and (b) that any attempt on the part of any of the Allied Powers to extend their system to the Western Hemisphere will be considered as endangering the safety of the United States. Thus, U.S.A. became the guardian of the Revolution and the champion of Americanism. (c) It promised protection for the *status quo* by laying down that the U.S.A. will not interfere with the existing dependencies of any European power. (d) It held up a hand of warning to Europe by saying that "the American Continents by the free and inde-

pendent condition which they have assumed and maintain are henceforth not to be conceived as subjects for future colonisation by any European power." The Message expressed once again the doctrine of isolation when it said that 'America has never taken any part in the wars of European powers in matters relating to themselves nor does it comport with her policy, so to do.' (e) It contained the seeds of future trouble with the nations of South America, because, it said, "with the movements in this hemisphere, the United States is more immediately connected." As President Wilson said, "The Monroe Doctrine did not disclose the use which the U.S.A. intended to make of her power on this side of the Atlantic. There was no promise in it of what America was going to do with the implied and partial protectorate which she was apparently trying to set up on this side of the water." Until the Isthmian problem began to loom large, however, the U.S.A. left South America almost to itself, in spite of the Message. During the attempts by England and France about 1846—1850 to create a Balance of Power by means of control over Texas, Oregon, California and New Mexico, President Polk reiterated the Message. The Mexican adventure of Napoleon III and the attempt of Spain to recover part of her empire compelled the U.S.A. to use it as "a big stick." Thus, the Message became a Doctrine, an adored article of faith, "one of those habitual maxims which are no longer reasoned upon, but felt." The Venezuela Boundary Dispute in which the U.S.A. compelled England to abide by arbitration tested the strength of the Doctrine. The South African War and the German sympathy with the Boers revealed to England the need to cultivate American friendship and so, though the despatch of Secretary Olney was according to President Cleveland 'a 20 inch Gun,' Great Britain agreed to the American proposal. This change in the reaction of Britain caused by her predicaments in Europe, Asia and Africa strengthened American hands in dealing with Cuban and other Caribbean problems and even in readjusting her position in Central America by the amendment of the Clayton Bulwer Treaty.

Latin America.

Meanwhile, the Panama Policy of the U.S.A., her interference in Far Eastern affairs, the Spanish War and the annexation of the Philippines, the spread of dollar-diplomacy in Latin America and declaration of a 'manifest destiny,' stamped America as an Imperialist Power on the war-path. Secretary Olney had said, "Today, the United States is practically sovereign

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

on this continent and its fiat is law upon the subjects to which it confines its interposition." The Monroe Doctrine was felt as imposing an isolation upon South American nations by the Yankee colossus of the North. These nations are linguistically, culturally and historically related to Spain and to Catholicism and in origin and race and character, there are fundamental antagonisms between U.S.A. and the erstwhile Spanish Empire. A Peruvian diplomatist Garcia Calderan says, "The evolution of the North is slow, and obedient to the laws of time, to the influences of custom; the history of the Southern peoples is full of revolutions, rich with dreams of unattainable perfection." And again, "In the friendship of U.S.A. with the South there will always be disdain; in their progress, a conquest; in their policy, a desire of hegemony." European countries interested in the South American trade and in appropriating the vast living spaces there and also in breaking the political and economic position of the U.S.A. have been active in widening the breach.

The Good Neighbour.

The U.S.A. since 1900 has, therefore, persistently wooed South America into an acceptance of the Monroe Doctrine, while trying to avoid the formation of a Pan-American Federation or even Pact. In 1906, President Roosevelt said, "In many parts of South America there has been much misunderstanding of the attitudes and purposes of the United States toward the other American Republics. An idea had become prevalent that our assertion of the Monroe Doctrine implied or carried with it an assumption of superiority and of a right to exercise some kind of protectorate over the countries to whose territory that doctrine applies. Nothing could be farther from the truth." President Wilson said in 1913 at a meeting of the Southern Commercial Congress, "I want to take this occasion to say that the United States will never again seek one additional foot of territory by conquest." And later in 1915, "All the Governments of America stand, so far as we are concerned, upon a footing of genuine equality and unquestioned independence." Wilson strove to wipe out the distrust that had become chronic in Latin America and put forward the Monroe Doctrine as an instrument of Pan-American protection, though he had no qualms about the benevolent imperialism that U.S.A. had established in the Caribbean Sea and in Central America, as evidenced by the protectorates in Cuba, Panama, the Dominican Republic, Nicaragua and Haiti. This "Good Neighbour" policy succeeded

so well that eight Latin American Republics declared war on Germany along with U.S.A. and five others broke off diplomatic relations. Wilson believed that by Article X of the League of Nations Covenant, he was only globalising the Monroe Doctrine.

The League.

In order to pave the way for the acceptance by the United States of the Covenant, Wilson secured the adoption of the rather equivocal Article XXI which said, "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace." The Republic of El Salvador addressed a note to Washington when the Senate was deliberating upon the Covenant asking what the Monroe Doctrine mentioned in Article XXI really meant. Secretary Colby replied that President Wilson had defined it in his speech of January 6, 1916. When Costa Rica applied to the Council of the League of Nations in 1928 for a definition of the Doctrine, the Council referred to this reply given by Colby. Wilson had stated in that speech, "The Monroe Doctrine was proclaimed by the U.S.A. on her own authority; it has always been maintained and always will be maintained on her own responsibility." This was not at all consoling. Many of the States of Central and South America joined the League of Nations because the U.S.A. had refused to join it and because they felt that it will stand them in good stead in the event of American aggression. Mexico and the Argentine Republic while joining the League of Nations expressly stated that they could not agree to the Monroe Doctrine, as defined in Article XXI.

Pan-Americanism.

The United States, therefore, struggled hard to win back the sheep that had strayed away. Secretary of State Stimson said in 1931, "The Monroe Doctrine was a declaration of the United States versus Europe; not of the United States versus America." Conciliation, conventions and other resolutions contributing to closer ties were entered into with many States after the Pan-American Conferences at Havana in 1928, Montevideo in 1933 and Lima in 1938. Thus a system of collective security has been built up in the New World on the foundation of arbitration and the outlawry of war.

A great impetus has been given to Pan-Americanism under the auspices of the U. S. A. by the rise of Totalitarian States

and the formation of a Second Holy Alliance which even Japan has joined in order to put down parliamentarism and liberalism. As in 1823, once again the U.S.A. has gathered under her wings the republics of the New World and they too are found co-operating by the lease of naval and air bases, confident of the military power of their northern neighbour, who is prepared to keep the foe at arms' length. The hesitation of the U.S.A. to plunge into the war is due not only to the tragic failure of the idealistic readjustments after the last war consequent on Old World stupidity but also to the deep-rooted respect for the policy of isolation laid down by the Doctrine. The present war, however, is bound to give the Latin states a welcome reorientation of policy and we can confidently predict that Pan-Americanism will become an accomplished fact as soon as the danger from the Axis Powers increases in Atlantic or Pacific waters.

Other Monroe Doctrines.

The Monroe Doctrine has never yet asserted a control over the affairs of other independent states in America. The protectorates and even the conquests of America are under a process of liquidation. It, therefore, seems rather strange that Japan should justify her conquest of Manchuria and of Northern and Eastern China on the basis of a Asiatic Monroe Doctrine, which protects an East Asian Morality. Of the German claim to compare the invasion and occupation of Central and Western Europe into the influence of the U.S.A. over the rest of America, including Canada and the A B C powers in South America, the less said the better. The pretext is too patent and absurd. Elihu Root, Secretary of State, said in 1914, "Grandiose schemes of national expansion invoke the Monroe Doctrine. Clamours for national glory from minds too shallow to grasp at the same time a sense of national duty invoke the Monroe Doctrine. The intolerance, which demands that control over the conduct and the opinions of other peoples which is the essence of tyranny, invokes the Monroe Doctrine." The Monroe Doctrine had its origin in a conflict of philosophies. It had for its purpose the protection of the Central and South American Republics in developing and working out a philosophy and a system which they had freely chosen. And so, it is absurd for Japan or Germany to speak of a Monroe Doctrine of their own.

The Future.

Let us close with a sentence from a speech delivered by

Secretary Hughes in 1923. "The future holds infinite possibilities, and the Doctrine remains as an essential policy to be applied wherever any exigency may arise requiring its application. To withdraw it or to weaken it would aid no just interest, support no worthy cause, but would simply invite trouble by removing an established safeguard of the peace of the American Continents."

**DEVELOPMENTS IN LAW, CONSTITUTION
AND ADMINISTRATION: PERIODICAL SURVEYS**

**THE FIRST LEGISLATIVE ASSEMBLY OF THE U.P.*¹
(29th July, 1937—30th October, 1939)**

BY

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A. The U.P. is one of those provinces which were given for the first time a double-chambered legislature by the 1935 Act.² The Legislative Assembly was the lower chamber and its life was to be five years. The Assembly had to be called within six months of the operation of the new constitution in the Province. The Act began to operate in the U.P. in April 1937. The U.P. Assembly started its life on the 29th July, 1937. The Governor could summon, prorogue and dissolve it.

B. The composition of the Assembly was provided by its statute.³ Its total strength was prescribed at 228, of which 140 were general seats (including 20 reserved for the depressed classes), 64 were for Muslims, 2 for Europeans, 2 for Indian Christians, 1 for Anglo Indians, 3 for Commerce and Industry, 6 for land-holders, 3 for labour, 6 for women (2 reserved for muslim women), and one for the Universities. The elections to the Assembly were completed early in 1937. There were about 179 rural constituencies and 31 urban. The number of women members returned was about a dozen as some of the general seats were also captured by them.

The Legislative Assembly had several parties; the Congress secured a majority of 138, the Muslim League party had a membership of 27, National Agriculturists 16, Hindu Independents 10, and the Independent Muslims 30. The first two parties were well organised and disciplined with full paraphernalia of

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

¹ N.B.—The extreme accuracy of every figure in this paper is not guaranteed.

² Section 60(a), 1935 Act.

³ Fifth Schedule to the 1935 Act.

parliamentary parties. The party-whips had quite a busy time. The division on various questions reveals that the parties exacted strict loyalty and the party-system had a full play in the Assembly. The strength of the parties kept on varying slightly, e.g., that of the Congress party rose by about 10 and that of the Muslim League to about 40. The parties continued to function even after the Assembly was suspended.

The House had power to appoint committees for "any of its internal businesses."⁴ Whenever it was so decided a bill would be referred to a Select Committee appointed by the House for the purpose. The composition of the Select Committee partially and its strength were fixed by the standing orders. The House had also some important standing committees. One was the standing Finance Committee formed at the beginning of its first session for giving advice and opinion to Government in matters referred to it. It consisted of fourteen members elected by the House and the Finance Minister was its Chairman.⁵ Another committee was the Public Accounts Committee composed of the Finance Minister and eleven other members elected by the House annually. The Committee was to choose its own chairman. The work of this Committee was to consider the Auditor General's report on the appropriation accounts of the province and also to see if the money shown as disbursed in the accounts was properly available to the services and purposes for which it was charged, and that expenditure conformed to the authority which governs it, etc.⁶ The personnel of these committees included members of different parties.

C. The House elected a Speaker and a Deputy Speaker in the second sitting of its first session, a nominee of the Governor having acted as the Speaker on the first day.⁷ The election of both the Speaker and the Deputy Speaker was unopposed, there being only one Congress candidate for each of the offices. The Speaker was a member of the Congress party and on election he made a statement on the question of his party affiliations, assuring that he would, like his French and American prototypes, not allow his party loyalty to effect his actions and decisions as the Speaker of the House. It was not necessary for him, he said, to follow the English convention. His connection with the Congress

⁴ Standing Order 27.

⁵ Standing Order 86.

⁶ Rules 60, 61.

⁷ Under Rule 3 (2).

party formed for some time a public controversy and formed also the subject of three questions submitted by a member, which though disallowed by him, brought forth another assurance from the Speaker of his impartiality in protecting the rights and privileges of all the members. Despite these assurances a notice of a motion for adjournment to discuss the "active participation of the Speaker in politics" was given. It was also disallowed as the Speaker could not form the subject of discussion in the House, but the Speaker again said, "I do not believe in the convention of the House of Commons. I believe rather in the convention of France and the U.S.A. and of some of the other countries . . ." Finally, the House adopted a resolution, moved by a member of the Government, regarding the freedom of the Speaker to take part in political affairs. The various rulings of the Speaker do not betray any partiality towards members of the Congress party or against the opposition. In the House he was strictly neutral, giving independently his rulings which several times went against Congress members also. We can easily say that the Speaker adorned his office with dignity. He commanded the fullest respect due to him from members of all the parties and never failed to deal strictly with even a slight outrage on the prestige of his office or the House. On questions of procedure he often took the view of the House, once even to the extent of allowing a division on such a question,⁸ and consulted the Advocate General before giving his rulings as to the interpretation of constitutional provisions about procedure, or Assembly Rules, etc. In all, the Speaker gave less than half a dozen rulings on points of procedure involving the interpretation of the Rules. On several occasions the Deputy Speaker presided. Many times, in the absence of both, the meeting of the House was presided over by a member of the panel of Chairmen which consisted of four members appointed to it in the beginning of every session by the Speaker.⁹ Members of different parties were nominated to this panel.

Besides some other allowances, the Speaker and the Deputy Speaker were granted, by an enactment of the Provincial Legislature, a salary of Rs. 500/- a month, and Rs. 2000/- a year, respectively.

The Assembly had its Secretary and an office composed of several assistants who comprised the Legislative Department of the U.P. Government Secretariat. Its chief work was to keep

⁸ See the Proceedings of 28.9.1937 (1937).

⁹ Under Rule 3 (i).

the record of the proceedings of the House, receive various notices and questions submitted by the members, etc. It was also the channel of communication between the Governor and the House.

D. Besides the provisions of the 1935 Act, the House had 61 rules and 99 standing orders, framed under Section 84 (3) of the 1935 Act, to regulate its procedure and the conduct of business. These rules and standing orders were only the modified copy of similar rules prescribed for the Dyarchy legislature.

There was a very slight difficulty felt over the question of the language to be used in the House. The 1935 Act prescribed English for all proceedings but said that the rules of procedure shall permit the use of "another language" by those who were not acquainted with it.¹⁰ The rules of procedure in the U.P. Assembly permitted the use of Hindi or Urdu by such persons, but the Speaker could ask the member to speak in any language he was "known to be proficient in."¹¹ In September 1937, the Speaker was approached by those members who could not follow the proceedings of the House in English. No specific remedy could be thought of; the Speaker only reiterated his right to call upon an English-knowing member to address in Hindustani whenever he considered it necessary. But perhaps this right had never to be exercised by the Speaker. Actually the speeches in the House were given in all languages—Hindi, Urdu and also the English. It seems perfect freedom was given to the speakers in the matter of language. In the proceedings of the House, supplied to every member, each speech was recorded in the script of the language used in delivering it. Another statement by the Speaker was invoked by an objection raised on the toughness of the language used in certain speeches. The Speaker deprecated the use of highly Sanskritised or Arabicised words, though, he said, he could not dictate the vocabulary to be used. But, generally, the language spoken by the members was plain enough to be understood by almost the whole House.

E. Between July 1937 and November 1939, when it was suspended, the Assembly held about two hundred sittings and all its sessions, including the Summer, were held at Lucknow, the winter capital of the Province. Thirty-one sittings were held in 1937 and about 80 each in 1938 and 1939. Only a very few times had the Assembly to sit jointly with the Upper House.

¹⁰ Section 85.

¹¹ Rule 19.

Once it was to listen to the Governor's address and twice for the consideration of bills over which they had disagreed.¹²

The quorum of the Assembly as fixed by the Constitution Act, came to 38 (one-sixth or 17% of the total strength).¹³ The actual attendance in the House, on an average of all the meetings, came to about 165 or 72%. The highest attendance was on the first two sittings—210 or 92%—on both the days and the thinnest attendance was 108 or 47%, i.e., less than one half even. The attendance-line shows a steady decline. The enthusiasm of the representatives of the people was cooled by time or by the staleness of the agenda which may be held as partly responsible for the marked decline in attendance during the last year for which the average comes only to about 147 or 64% as against about 176 or 77% for 1938 and about 186 or 82% for the first year. The seats of persons who, without the permission of the House, did not attend for sixty consecutive days could be declared vacant by a motion of the House.¹⁴ But in most of the cases such members, on petition, got the leave of the House. There is perhaps only one instance of a seat being declared vacant in the way.¹⁵

F. The business of the House consisted mainly of consideration and passing of bills, resolutions, discussion on motions of adjournment, consideration of different reports presented to it, besides questions and answers. The Governor had the power to allot days for the transaction of non-official business and to classify it, as also official business, further for different days.¹⁶

(1) Bills could be introduced by private members but it required a notice of fifteen days or more, up to two months, if so desired by the Governor.¹⁷ No further proceedings could be taken if a member objected that the bill was not available for at least seven days, unless the Speaker decided to suspend this rule.¹⁸ A bill, after introduction, could, on the motion of the member-in-charge, be taken into consideration, referred to a Select Committee, or circulated for eliciting opinion thereon; the

¹² They were: The U. P. Sale of Motor Spirit Taxation Bill
The U. P. Courtfees (amendment bill).
The U. P. Stamp (amendment bill).

¹³ Section 66 (3) and Rule 5.

¹⁴ Section 68(4).

¹⁵ The seat of Rani Jagadamba Devi of Ajodhya(?)

¹⁶ Rule 8 and Standing Order 6.

¹⁷ Rule 24.

¹⁸ Standing Order 47.

last two motions could be moved by any member.¹⁹ The Select Committee had to report within two months of the bill's reference to it. After its report was presented, the bill could be taken into consideration, circulated for eliciting opinion or recommitted. When the House had agreed to consider the bill, amendments could be moved, with two days' notice by any member. Each clause of the bill had to be called, and the question on it put, by the Speaker separately.

During the life of the Assembly till October 1939 in all about seventy bills were tabled and out of these fifty were passed. Some bills were still pending when the Assembly was suspended. Only about a dozen bills were introduced by private members and none of them went any further than the committee stage, more than half did not reach even that stage. The procedure of the official bills was, on the other hand, effected only by the suspension of the Assembly. The average of the time taken by the bills in completing all the stages in the Assembly comes to about fifty days. About a dozen bills, small in size and of a non-controversial nature, were passed in one or two days only. The longest time, about a year, was taken by the U.P. Tenancy Bill,²⁰ which was perhaps the biggest and the most important bill passed by the House. Several bills were meant only to amend the older laws of the Province. The different bills passed embrace a wide range of subjects and effected, for the first time, different aspects of the economic life and the social structure of the Province. Some bills, e.g., the Sugar Factories Control Bill, the U.P. Moneylender's Bill were aimed at the regulation of trade and Commerce. Some had a pre-eminently moral end, e.g., the U.P. Release of Prisoners on Probation Bill, U.P. Borstal Bill, and the U.P. Maternity Benefit Bill. Several bills adopted by the Assembly aimed at the amelioration of the peasant classes, e.g., the U.P. Consolidation of Holdings Bill, U.P. Rent and Revenue (Relief) Bill, U.P. Agriculturists and Workers Debt Redemption Bill, and over all, the comprehensive Tenancy Bill.

About a dozen of the Bills passed by the Assembly were sent back by the Upper House with its amendments. Only in cases of about half of such bills did the Assembly agree to the Council's amendments and about half of such cases of disagreements were solved by joint sittings.

¹⁹ Standing Order 48.

²⁰ Introduced on 20.4.1938 and passed in final form on 24.4.1939.

Three annual budgets came up before the Assembly. The Rules and Standing Orders prescribed a separate procedure for them. The budget for a financial year had to be placed before the Assembly on a day fixed by the Governor in the preceding year; on that day there could be no discussion on it.

It was dealt in two stages: general discussion, and voting of demands for grants. The Governor was to allot days for the discussion of the budget.²¹ A motion for reduction in, or omission of, a grant could be moved with a notice of two days before the day fixed for the discussion, which could not occupy more than two days. The Governor could allot days, not more than 15, for the voting of the demands. The budgets actually did not occupy more than fifteen days of the Assembly. The passing of the supplementary demands for 1937-38 and 1938-39 occupied only two days each.

(2) Any member of the House could move, if the Speaker admitted it, a resolution on a matter of general public interest which, on adoption by the Assembly, was to have only a recommendatory force on the Provincial Government.²² The resolution had to be precise, raise a definite issue, and concern the Provincial Government primarily. The Governor also could disallow a resolution if he thought that it effected any of his functions that he had to perform in his discretion or individual judgment.²³ His consent was required also for moving resolutions concerning relations between His Majesty or the Governor General and a foreign State, an Indian State or its rulers, administration of excluded areas, or tribal areas.²⁴ The moving of a resolution required a fifteen days' notice of the intention. Any member could move an amendment to the resolution when it was being discussed.²⁵ A second resolution raising "substantially the same" question could not be moved within six months of the first.²⁶

In all, over thirty resolutions were tabled. About twenty were adopted by the House and three were negatived. About ten were withdrawn after having been moved. Some of the resolutions were concerning some of the most important topics of Indian politics and administration. One resolution of the

²¹ Rule 53.

²² Rule 35.

²³ Rule 32.

²⁴ Rule 33.

²⁵ Standing Order 78.

²⁶ Standing Order 83.

Assembly demanded a Constituent Assembly to frame India's constitution; another rejected the proposed federal scheme for India; by another the Assembly demanded the provincialisation of certain "Imperial" services. The last resolution adopted by the Assembly was the War Resolution conveying its views, protests and recommendations on the question of India and the War to the British Government, through the Provincial Government and the Government of India. The separation of judiciary and executive was recommended by another resolution. Some of the resolutions were, on the other hand, on much less important matters, e.g., one demanded the prevention of adulteration of *ghee* (a kind of oil used in cooking).

(3) Motions for adjournment of business of the House were not uncommon. A member, with the permission of the Speaker, could move for adjournment to discuss a definite matter of urgent public importance, and of recent occurrence.²⁷ Matters on which a resolution was prohibited, as also matters already discussed or under consideration otherwise, could not form the subject of such motions. The mover had to hand over a written statement on the matter to the Speaker who, on finding the motion in order, was to take for its admission the leave of the Assembly which had to be granted if supported by thirty-eight members.²⁸ If the leave was granted, the Assembly adjourned at 4 P.M. for the discussion of the matter which automatically terminated after two hours during which time no speech could be more than 15 minutes long.²⁹ Notices of about 35 such motions were handed over to the Speaker. Of these the Speaker ruled out over ten and disallowed about ten. However, even when the motions were ruled out of order they did invoke some discussion on the question and generally extracted from the Government an explanatory statement on the topic. A few were not admitted for want of Governor's consent and one was refused admission by the Assembly. About half a dozen of these motions were withdrawn though usually after some discussion. Only less than half a dozen of such motions were fully discussed and talked out, and two were negatived. Such were the divergent fates of these resolutions. In their subject matter too they differed widely. Not rarely was the unsatisfactory nature of replies given by Government to certain questions the subject of an adjournment motion; this reflects the keenness of the Assembly to assert its

²⁷ Rules 15, 16.

²⁸ Standing Orders 42, 43.

²⁹ Standing Order 44.

influence on the Government. Dissatisfaction with Government's measures towards breaches of Law and Order caused by communal disturbances also occasioned several such motions, while some were meant to ventilate grievances of the landlord class against the new agrarian policy of the Congress Ministry. How far these motions influenced the Government which had a stable majority behind it, it is not easy to say.

(4) For interpellations the first hour of every sitting was reserved.³⁰ Questions required a notice of 15 days unless the Speaker, with the consent of the Minister concerned, permitted a shorter notice. The questions had to be handed over to the Secretary of the Assembly and admitted by the Speaker. They had to be only requests for information addressed to the Minister concerned, and short. On the request of the Minister, the Speaker could extend the time for answering questions by not more than two weeks, delay after which had to be explained by the Minister. For further elucidation of facts, other members could put supplementary questions which right the members did frequently exercise. Questions about the relations between His Majesty or the Governor General and a foreign state, Indian state or their rulers, excluded areas, as also relations between the Provincial Government and the Governor General or the Secretary of State could not be allowed except with the permission of the Governor given in his discretion. The Speaker could disallow a question which did not concern the Provincial Government primarily. The Governor also could disallow questions if he thought they would effect his functions to be discharged in his discretion or individual judgment.

Except for the first few days, questions and answers were a daily feature of the Assembly's agenda and occupied about their full time. There were short notice questions also. In the earlier days, the Speaker had once to request the members to exercise this right more judiciously and with some restraint, when the number of questions given notice of for the session had swelled to over two thousands, besides the short notice questions.³¹ Whenever the members felt that the answer given was only evasive, they made no secret of their feelings and sometimes went even to the extent of tabling an adjournment motion to discuss the answers.

G. The standard of debate in the Assembly does not reflect any wide knowledge of the broad principles of politics or econo-

³⁰ See Standing Orders from 29 to 39, and Rules 9 to 13.

³¹ See Proceedings for 5.10.1937.

mics on the part of the average member of the House, and the speeches lacked the force of logic and the brilliance of high oratory. The best speeches do not rise above mediocrity. We may say that it was not unnatural in a big House elected on a wide franchise. We can perhaps also say that very learned speeches were not necessary for the House of its complexion. In the record of the debates one often comes across pungent remarks and satirical retorts which reveal a certain amount of bitterness of feeling between the majority party and the opposition. Perhaps the best parliamentarian of the House was fortunately the Prime Minister who combined in himself coolmindedness, a spirit of legitimate compromise, the patience to hear another man's viewpoint, with a good speaking power.

This first Assembly of the U.P. was suspended, *sine die*, in November 1939, after it had adopted the War Resolution.

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THE WORKING OF THE PUBLIC SERVICE COMMISSION IN BENGAL*

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No apology need be made for taking up the Public Service Commission and its working in Bengal during the last three years and a half as a subject for academic study. Public Service Commission is a pivotal factor of democratic government as it has been evolved in many countries during the last one century. It was brought home to the framers of the present constitution of India, as it had been brought home earlier to the statesmen of several modern democracies, that popular government without the check of an impartial Public Service Commission might easily reduce itself to a mere scramble for jobs. Such a body was in other words not a mere honorific adjunct of autonomous and responsible government set up by the Government of India Act, 1935. It was, we may repeat, a basic factor of this government. There is utility, therefore, to examine as to how this important body has been allowed to function during the last forty-three months of its life in Bengal.

Before, however, we proceed to discuss the working of the Commission in this province, it may be useful to relate in short the origin of the idea of the Commission and the history of its establishment in this country. The idea was first formulated in the middle of the last century by two distinguished Britishers, one a statesman and the other an administrator. For some years before 1848 the inefficiency of the existing organisation of the permanent services in Whitehall was a subject of talk in many circles in Great Britain. At last in this year an inquiry was instituted by a Treasury Minute into the condition of things in the different departments of the Government of England. It should be noted that Lord John Russell, the Whig leader, was at the time the Prime Minister and Sir Charles Wood, the Chancellor of the Exchequer. The person first entrusted with the inquiry was Sir

Charles Trevelyan,¹ then permanent Secretary to the Treasury. When he had conducted his inquiry to a great extent, he was joined by Sir Stafford Northcote, the famous Victorian statesman. In 1853 after several years of investigation, they together submitted the report on The Organisation of the Permanent Civil Service to the Chancellor of the Exchequer.² In this report they recommended the establishment of a Central Board consisting of several persons of the highest standing in the country and presided over by one who would have the status of a Privy Councillor. It would be the duty of this Board to examine the candidates for offices in Whitehall and give a certificate to the deserving among them.³

The Central Board, recommended by Sir Charles Trevelyan and Sir Stafford Northcote, was set up by an Order in Council in 1855 under the title of Civil Service Commission. Its duty was "to conduct examinations of young men proposed to be appointed to any of the junior situations in the civil establishments." It should be noted that in 1855 competitive examination was first held to recruit covenanted civilians for Indian administration under the Government of India Act, 1853. During the first three years the examination was held under the auspices of the Government. But with effect from 1858 the British Civil Service Commission was entrusted with holding the examination and giving the necessary certificate to those of the candidates who had successfully competed. So the governing service in India had henceforward the advantage of being recruited by an impartial body of men who had an excellent standing in British social life. But the uncovenanted services which acquired an increasing size and responsibility in this country and which were organised on a new basis on the

¹ Sir Charles Trevelyan was a Hailebury civilian who came to this country in the late twenties of the last century. As an Under-Secretary to the Government of India he was responsible for an excellent report upon inter-provincial trade barriers which hampered commerce a great deal. He married Macaulay's sister when Macaulay was Law Member in India and was later appointed permanent Secretary to the Treasury in Whitehall through the good offices of his distinguished brother-in-law.

² Now Mr. Gladstone.

³ The idea of a Central Board as recommended in the Report was certainly the most important contribution made by the 19th century to the growth of administrative and official thought. It is interesting to remember that an ex-administrator of India was one of the two originators of this idea.

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

recommendations of Aitchison Commission of 1886-87 had not the advantage of recruitment by any such impartial body.

In fact so long as the government of this country was frankly bureaucratic in character, the question of establishing a Public Service Commission in India was not allowed to be raised. Even Mr. Montague and Lord Chelmsford in their Report on Indian Constitutional Reforms preferred to keep silent about this subject. They emphasised no doubt the necessity of protecting the legitimate rights and privileges of the public servants working under every government in India.⁴ But beyond this they did not go. They did not recommend the establishment of any public service commission in this country. The Government of India, however, in its first Despatch on constitutional reforms pointed out that in most of the Dominions the establishment of such a commission had been necessitated by the demand for protecting the public services from political influences. In India also "the prospect that the services may come more and more under ministerial control does afford strong ground for instituting such a body." The suggestion made in the first Despatch by the Government of India was acted up to by the Secretary of State and the Government of India Act, passed in 1919, contained a section regarding the establishment of a public service commission in India.

Section 96C of the Government of India Act, 1919, provided that "there shall be established in India a Public Service Commission, consisting of not more than five members, of whom one shall be Chairman, appointed by the Secretary of State in Council." It further laid down that the Public Service Commission "shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State-in-Council." In view of the compulsory character of the provision of Section 96C of the Government of India Act, 1919, it was expected that the establishment of the commission would synchronise with the first operation of the Act. But while the Act was put into operation early in 1921, the Commission was not constituted until 1926. The delay was caused by the inconclusive but protracted correspondence between Whitehall and Simla regarding the character of the Commission to be set up in India. The Public Service Commission would exercise functions in regard to recruitment and control of the public services. This was the demand of the Act. But what these functions actually would be, it was for the

⁴ Para 325.

Secretary of State-in-Council to determine by rules. Before the rules were framed, the Government of India had to be consulted. Now the opinions expressed by this Government did not appear acceptable to the Secretary of State and his Council. After nearly four years of protracted correspondence the subject was referred to the Royal Commission on Superior Services which was appointed in 1923 and was presided over by Lord Lee. This Commission paid "special attention" to this matter and was convinced that "the statutory Public Service Commission contemplated by Government of India Act should be established without delay."⁵ The Report of the Lee Commission was published early in 1924 and its other recommendations were given effect to almost at once. But the recommendation regarding the establishment of the Public Service Commission continued to hang fire for two years. There was further correspondence between Whitehall and Simla. It transpired later that while the Government of India wanted a mere advisory commission, the Secretary of State could not see much utility in appointing such a body. By 1926, however, Whitehall yielded to Simla and in February of that year the Secretary of State-in-Council decided that a Public Service Commission consisting of a Chairman and four members would be constituted with only advisory powers. During the next few months the Chairman and members were actually appointed and they were required to take up their duties with effect from the 1st October, 1926.

Since then the Indian Public Service Commission remained at work until the 1st of April, 1937, on which date this Commission was replaced under the new Government of India Act by the Federal Public Service Commission. It should be noted in this connection that the Government of India Act, 1919, provided for the establishment of only "a public service commission in India." The authors of the Act were possibly convinced that one commission would be in a position to serve the purposes as much of the All-India and Central Services as of the Provincial Services. In any event the Act was silent as regards the establishment of any commission in an Indian province. So the provincial legislatures had the option of making necessary provisions for the establishment of such commissions. For nearly a decade, however, none of the provinces took any step in this direction. It was only in 1929 that the Madras Legislative Council passed an Act providing for the establishment of a public service commission in that province.

⁵ The Report, p. 14.

The Commission so provided for was established there in the same year with powers and functions analogous to those of the Indian Public Service Commission. Some time later, the Punjab Legislative Council followed the example of the Madras Legislature and passed an Act providing for the constitution of a provincial public service commission. This Act, however, was never given effect to because of financial stringency. As for the other provinces, it may be said that they did not show any interest in this subject.

That in the new constitution of India there should be a public service commission not only for India but also for the different provinces was first emphasised by the Indian Statutory Commission of which Sir John Simon was the Chairman. Submitting its Report in 1930 this Commission recommended that every provincial legislature in the new regime should provide for the establishment of a public service commission. In case two or more provinces wanted to collaborate with one another in this matter, they might also constitute a joint commission. If, however, a provincial legislature did not provide for either a separate or joint commission, whose constitution and functions would be acceptable to the Secretary of State-in-Council, the Central Public Service Commission would, after the expiry of a time-limit, automatically acquire jurisdiction in that province in respect of recruiting and hearing appeals from the civil servants. Sir John Simon and his colleagues were definitely of the view that the establishment of a public service commission was essential for the protection of the permanent civil servants from political influences and "the protection of the services from political influences is an essential condition of the constitutional advances we recommend." But although they regarded public service commissions as a basic factor of the suggested reforms, they did not make their establishment statutorily obligatory. They left it to the discretion of provincial legislatures. They, however, recommended that if the provincial legislature did not provide for such a commission the Central Commission would take up its functions.⁶

When the Round Table Conference first met in London in 1930, it entrusted the consideration of the services question to a sub-committee entitled the Services Sub-Committee which was presided over by Sir William Jowitt. In this body the necessity of establishing a public service commission in the provinces was stressed by many of the members and a resolution was adopted

⁶ Report, Vol. II, pp. 296-97.

to the effect that "in every province and in connection with the Central Government a Statutory Public Service Commission shall be appointed by the Governor or the Governor-General, as the case may be."⁷ The recommendation of the Services Sub-Committee was acted up to by His Majesty's Government when they chalked out their constitutional proposals in 1933 and embodied them in the White Papers.⁸ Later when the proposals as published in the White Paper were examined by the Joint Parliamentary Committee, no change was virtually made in the proposals regarding the provincial public service commissions. Only this was emphasised by the Committee that two or more provinces might and, wherever possible, should collaborate in constituting a joint commission and that alternatively they might also entrust the functions of a provincial commission to the Federal Public Service Commission.⁹

The Government of India Act, 1935, based as it was upon the recommendations of the Joint Parliamentary Committee, laid down in section 264 that "there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province." But it was also laid down in the same section that instead of every one of the provinces constituting a Commission of its own, there might be one joint commission for two or more provinces, that the commission constituted by one province might be entrusted with the requisite responsibilities in another province and that the Federal Public Service Commission might be required under certain conditions to undertake responsibilities for one or more provinces. In fact there was no departure in the Act from the recommendations of the Joint Parliamentary Committee.

As a matter of fact the Federal Public Service Commission was not entrusted with responsibilities in any one of the eleven provinces which became autonomous on the 1st of April, 1937. Some of the provinces, however, have collaborated with one another and have entrusted the requisite duties to Joint Public Service Commissions. There is for instance one Joint Commission now working for the Punjab, the North-Western Frontier Province and Sind and another such body has been at work for the Central Provinces, Bihar and Orissa. There was also a proposal that the neighbouring provinces of Bengal and

⁷ *Proceedings of the Sub-Committee*, p. 252.

⁸ Proposal 195.

⁹ Report, Para 314.

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Assam should co-operate in establishing a Joint Commission. But this proposal broke down on the rock of isolationist opinion, and each of the two provinces has now a Public Service Commission of its own.

Early in the history of discussion on the constitution and function of the public service commissions it was emphasised that their members should be appointed and removed by an authority independent of all party interests. "We think it essential, therefore," observed the Simon Commission, "that the appointing authority should be not the Government but the Governor, and that in making the appointment he should have power to act otherwise than in accordance with the advice of his Ministers."¹⁰ In the Services Sub-Committee of the Round Table Conference also, opinion was expressed on similar lines and a resolution was adopted on the same basis. Both Mr. (now Sir) C. Y. Chintamani and Sir Shafaat Ahmad Khan demanded an independent commission and wanted its members to be appointed by an authority independent of the Ministers.¹¹ The resolution adopted was to the effect that in the provinces the statutory public service commission "shall be appointed by the Governor."¹² A proposal on this line was incorporated in the White Paper and endorsed by the Joint Parliamentary Committee.¹³ It was therefore expected that the Government of India Act, 1935, would provide that "the Chairman and other members of the Public Service Commission shall be appointed . . . by the Governor of the Province in his discretion."¹⁴

In the United Kingdom, the Dominion of Canada and the United States of America appointments to the Civil Service Commissions are of course made by the regular executive of their respective countries. In the United Kingdom the Civil Service Commissioners are theoretically appointed directly by the Crown but in practice this amounts to appointment by the Cabinet. But although the Cabinet is as a rule a Party Committee, it makes its appointments to the Civil Service Commission in such an impartial manner as to avoid even whispering objection. In the Dominion of Canada also, the members of the Civil Service Commission are appointed by the Governor General-in-Council

¹⁰ Report, Vol. II, p. 297.

¹¹ Report, pp. 5, 14.

¹² *Ibid*, p. 252.

¹³ Report, p. 189.

¹⁴ Section 265(1) of the Government of India Act, 1935.

or in other words by the regular executive of the country. We cannot say exactly that appointment by the Ministry in Canada has proved to be as acceptable to public opinion as it has been in the mother country. It is true, as we shall have occasion to see later, that the Civil Service Commissioners in Canada hold their office during good behaviour and cannot be removed except by a joint address of the two houses of the Parliament. They are, therefore, absolutely independent, after their appointment, of the Ministry. Still their initial appointment by the chiefs of a party has not unoften constituted a handicap to them in the impartial discharge of their responsibilities. A writer in the twenties pointed out that not unoften members of the House of Commons were appointed to the Commission¹⁵ and as they could not shake off their party bias on appointment as Civil Service Commissioners their selection had a deleterious effect upon the work of the Commission.

In the United States of America the Civil Service Commissioners, like other functionaries, are appointed by the President with the advice and consent of the Senate. That appointment by this method would result in the Commission being constituted by active party men was fully known to the framers of the Civil Service Act. But as under the Constitution appointments had to be made according to this procedure, they had no alternative. It is, however, significant that they tried to mitigate the evil result of this arrangement by providing that of the three members of the Commission not more than two could be appointed from one political party.

The methods of constituting the Civil Service Commissions, as followed in other countries and as analysed above, definitely give us the impression that appointment by the regular executive of the country may only result in party men being appointed. It was therefore not unwise in theory to vest the appointment of the public service commissioners in an Indian province in the Governor in his discretion. It is however to be examined if this procedure has worked as successfully in practice as it was expected to do in theory. The experience that we have acquired in Bengal in this respect has been too short to allow any generalisation. We cannot very well say that it has worked absolutely to our satisfaction nor could we say that some other procedure would have worked better. We may only cite some facts and

¹⁵ R. M. Dawson: *The Principle of Official Independence*, Obviously they were so appointed because of services rendered to the Party in power.

refer to the principles of appointment so far followed. The observance of these principles has, it seems, stood in the way of first rate men being appointed to the Commission. But we are not certain if these principles would not have been adhered to by any other appointing authority.

It should be borne in mind that Bengal is one of the three provinces in which the Governor is appointed direct from the United Kingdom. When he first takes charge, he is unlikely to have any intimate knowledge of men and things in the province. He has to depend largely upon his advisers (his Secretary who is a senior civilian and the Ministers). Once the chairman of the Commission has been chosen, he may also be consulted in regard to his colleagues. It is true that when the Commission was first constituted in 1937, Sir John Anderson had already put in five years of service as the Governor of this province. He was well posted as to men and things in Bengal and it is likely that the first members of the Commission were his own nominees. This could not possibly be said of the new appointment made to the Commission two years later when a vacancy arose in this body. We are not in fact certain if in all circumstances the Governor in appointing public service commissioners may act really in his discretion. The temptation to consult the Ministers who are at his elbow "to aid and advise" him is too great to be always resisted and once the Ministers are consulted it may not become easy to reject the names they may suggest.

Apart from the Governor being a man without much experience of the province, there are several other factors which constitute a real handicap to him in appointing a truly impartial and efficient public service commission. In the first place there is a statutory obligation on his part to appoint at least one-half of the members of the commission from among those who have held office for at least ten years in India under the Crown.¹⁶ Secondly, the Governor has to observe a convention which has been practised in India since the establishment of the Indian Public Service Commission in 1926 and under which not merely the All-India Services but other services, *e.g.*, Central Services and Provincial Services, should also be duly represented in the Commission. Thirdly, there is the communal consideration which also the Governor is not expected to ignore. He is on the contrary expected to see to it that the different communities are as evenly represented in the Commission as possible. When all these factors are actually reckoned with, it is found that the field

¹⁶ Section 265(1) Proviso.

of choice left to the Governor is exceedingly limited, and inevitably men of mediocre standing have sometimes to be chosen to the exclusion of the most desirable persons.

When the Bengal Commission was first constituted in 1937 the Chairman was chosen from among the European members of the Indian Civil Service. One of the two members of the Commission again was a Mahomedan gentleman, chosen from the Indian Railways Service. It should be noted that he had also been the Vice-Chancellor of a University.¹⁷ The third member of the Commission was a Hindu gentleman who had been a prominent office-bearer of the Liberal Party, an active member of the Legislative Council, a practising barrister at the High Court and a professor of the Law College. In fact the qualifications demanded of the possible candidates had to be of an assorted character so as to enable the Governor to make the Commission a small body and at the same time to bring into it an All-India Service element, and other services element, a Moslem element, a Hindu element, an educational element and lastly a political element. Two years later when the Moslem gentleman resigned from the Commission, his place was filled by another Moslem gentleman who had been a member of the Provincial Civil Service but who had not been very directly and prominently associated with the conduct of higher education. It cannot be denied that there is some virtue in assorting different qualifications and affiliations as it was done in recruiting the chairman and members of the Public Service Commission in Bengal. But its defect also should not go unnoticed. When we seek in one person a combination of several affiliations, we have not unoften to choose a man of a lower status. In the case of the Bengal Public Service Commission, for instance, the assorting of qualifications resulted in the exclusion of all prominent and bona-fide educationists from this body.

Not only the appointment of members of the Commission is vested in the Governor in his discretion, but the number of these members, the tenure of their office and the conditions of their service are also to be determined by him in the same way. He is required by the Government of India Act¹⁸ to make regulations in his discretion in these matters. Such regulations in respect of the Bengal Public Service Commission were published in the Calcutta Gazette Extraordinary of April 1, 1937. They were

¹⁷ He had been at one time a member of the Legislative Council also.

¹⁸ Section 265(2).

announced as the Bengal Public Service Commission Regulations. One of them was to the effect that the Commission would consist of a Chairman and two other members, the Chairman receiving a salary of Rs. 3000 per month and the two members Rs. 2000 per month. Another regulation lays down that the members of the Commission are to hold office for five years. Their tenure may be extended for another term of five years by the Governor but not beyond the age of sixty-five. The question may arise if the regulation fixing the five-year term has been wise or not. In the United Kingdom the Civil Service Commissioners, though appointed to serve during the pleasure of the Crown, actually serve during good behaviour. In the Dominion of Canada also the Civil Service Commissioners hold office during good behaviour and cannot be removed except by a joint address of the two houses of the Parliament. It may be said that this principle may have been emulated in an Indian province. It is true that tenure of office during good behaviour makes for independence and a five-year term which may be renewed by the Governor in his discretion may open the Commissioners to weakness on occasions. But on other considerations it appears desirable that the members of the Commission instead of serving during good behaviour should hold their office for a limited period.

We have seen above that good appointments to the Commission cannot be uniformly guaranteed in the existing circumstances of the province. Nor is the public opinion in the province so strong and effective as to mitigate the evil of a wrong choice. So if a wrong appointment is once made and the incumbent remains in office on a permanent basis, the people of the province would suffer on this account for twenty years or more. But while we support the holding of office for a limited period, we find it difficult to support the principle of extending the term in the discretion of the Governor. The latter may have come new to the province or may not have shown sufficient interest in the kind of work that the different members have done during the past few years. He is not in these circumstances quite in a position to know as to who should get an extension of his tenure and who should not. He would be required to depend upon the advice of either the Ministers or the Chairman. To turn to either for advice and guidance may not be good for the independent working of the Commission. It will be a better arrangement if the Commissioners are appointed for a comparatively long term of seven years and are debarred from any extension of this term.

The powers conferred upon the Commission by the Government of India Act, 1935 are consultative and not executive except

in regard to the holding of the examinations which is an executive function assigned to the Commission.¹⁹ The Act provides that the Provincial Commission must be consulted "on all matters relating to methods of recruitment to civil services and civil posts; on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers; on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India." The Public Service Commission may also be consulted on other matters referred to it by the Governor in his discretion, and the Commission is required by the Act to offer its advice on all the matters referred to above.²⁰

It has been pointed out already that on all matters relating to methods of recruitment and actual recruitment to civil services and posts the Commission must be consulted. But sub-section (3) of Section 266 empowers the Governor in his discretion to make exceptions in certain circumstances in regard to certain services and posts, and in respect of the posts and services so exempted the Public Service Commission need not be consulted. We shall have occasion later to emphasise the implications of such a provision in the Constitution Act. It is also laid down in the Statute²¹ that in respect of the allocation of posts between different communities in the province and in respect of the subordinate ranks of the police forces the Public Service Commission need not be consulted.²²

We have emphasised the fact that the powers of the Commission are strictly advisory in character. For long it was a matter of controversy whether the Commission with such limited powers would be of any utility at all. The Government of India Act, 1919, which had provided for the establishment of the Indian Public Service Commission, was not explicit as to the character of the powers which this body would exercise. It

¹⁹ Section 266(1).

²⁰ Section 266(3).

²¹ Section 266(4).

²² Although the Services Sub-Committee of the Round Table Conference recommended, as we shall have occasion to see later, that the responsibility of allocating posts to different communities, should be vested in the Commission, it seems good that the British Government decided otherwise. It is too big a political question to be settled by the Commission. Such a responsibility would have brought the Commission into the vortex of political controversy.

merely laid down that in regard to recruitment and control of the public services it would exercise such powers as would be assigned to it by the Secretary of State-in-Council. We have referred already to the protracted correspondence which was carried on for years together between Whitehall and Simla regarding the nature of the powers which would be conferred upon the contemplated Commission. While Simla insisted on a Commission with only advisory powers, Whitehall did not see any utility in a Commission with such limited authority. At last, however, Simla triumphed and the Indian Public Service Commission constituted in 1926 was given only advisory powers.

This decision on the part of the Secretary of State-in-Council was taken in spite of the recommendations of the Lee Commission to the contrary. This latter body recommended²³ that the Public Service Commission, which should be established without further delay, "should be the final authority, so far as recruitment in India is concerned, for determining, in consultation with the Secretary of State, the Government of India or the Local Governments, as the case may be, the standards of qualification and the methods of examination for the Civil Services, whether the channel of entry be by examination or nomination." In other words while Lord Lee and his colleagues wanted the Public Service Commission to exercise the final authority after consulting the proper Government, the Secretary of State-in-Council established, on the insistence of the Government of India, a Commission, which would only offer advice and that advice would be accepted or rejected on the responsibility of the Government.

The Simon Commission in its report submitted in 1930 had much to say about public service commissions. But it did not touch upon the controversy regarding the character of the powers of the commissions. It silently endorsed the decision of the Secretary of State-in-Council in establishing a Commission with only advisory powers. It of course emphasised the practice that the Government uniformly acted up to the recommendations of the Commission. In quasi-judicial cases also it hoped that the recommendations of the Commission would be acted up to by the Government on most occasions. Except for this emphasis on establishing a convention by which the recommendations of the Commission might be ordinarily acted upon by the Government, the Simon Commission had nothing else to say about the powers of the Public Service Commission.²⁴ In taking up this attitude

²³ Report of the Lee Commission, p. 15.

²⁴ Report, Vol. II, p. 295.

Sir John Simon and his colleagues practically ignored the evidence of Sir Ross Barker, the Chairman of the Indian Public Service Commission, who pointed out that a Commission with such limited powers as given to it in the rules framed by the Secretary of State-in-Council in 1926 was without much utility.

The Services Sub-Committee of the Round Table Conference which discussed elaborately the nature of the powers which the public service commissions would exercise was not only definitely of the view that "recruitment to the public services shall be made through such commissions," but was also of opinion that, subject to periodical review by the Governor (in his discretion), these commissions would have the right of determining the rules of recruitment so as "to secure a fair and adequate representation to the various communities consistently with considerations of efficiency and the possessions of the necessary qualifications."²⁵ In other words all aspects of responsibility relating to recruitment to the public services were almost absolutely to attach to the commissions. The Government was to have nothing to do with them. It is interesting to remember in this connection that when in course of discussion in the Sub-Committee Raja Narendra Nath suggested that the Public Service Commissions should be required by the statute to make appointments to sixty-seven per cent of the posts absolutely on merit and to reserve the remaining thirty-three per cent only to redress communal inequalities, Mr. Fazlul Huq, the present Premier of Bengal, spoke against the suggestion and pointed out that this matter of detail should be left to the discretion of the commissions. "... it seems to me," he observed, "that we might have complete confidence in the members of the Public Service Commission Therefore I appeal to my friend not to press this, but to leave it as a matter of detail to be determined by the members of the Public Service Commission."²⁶

In spite of such opinion expressed by the Services Sub-Committee, the British Government in their proposals, as embodied in the White Paper, provided for commissions with only advisory powers. And the Joint Parliamentary Committee which noticed that "the functions proposed for all these Commissions are advisory in character and similar to those at present performed by the Central and Madras Commissions" did not recommend any change in these proposals. "Without accepting the proposals in the White Paper for the composition and working of these

²⁵ Report, p. 252.

²⁶ *Ibid*, p. 223

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Commissions in every detail, we regard them as generally satisfactory."²⁷ So observed this Committee over which presided Lord Linlithgow.

A commission with strictly advisory powers militates against the tradition which has been built up in Great Britain regarding the functions and powers of the Civil Service Commission. This Commission was first constituted, as we have seen, by an Order-in-Council in 1855 and its powers and functions were also laid down in this Order. With the change of circumstances subsequent Orders-in-Council were issued modifying the powers and responsibilities of the Commission. The Order-in-Council of 1920 provides that "the qualifications of all persons proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty's Civil Establishments shall, before they are appointed, be approved by the Commissioners and no person shall be appointed until a certificate of his qualifications has been issued by the Commissioners." Further it is laid down in this Order-in-Council that "the Commissioners may, subject to the approval of the Treasury, make regulations prescribing the manner in which persons are to be admitted to His Majesty's Civil Establishments or to any situation therein and the conditions on which the Commissioners may issue certificates of qualification." It should be noted that the Commission has to frame the rules subject to the approval of the Treasury. But in practice the decisions of the Commission "are never questioned."²⁸ So though the Commission has not the full right in law in every aspect of its work in practice, it is supreme in respect of all work regarding the recruitment of the public services. The Canadian Civil Service Commission also is an executive body with real control over the examinations of the candidates and over the appointment and promotion of the civil servants. "The Civil Service Commission of three members," observes an American author²⁹ in regard to Canada, "has been given complete control of the service, both with respect to regulation and with respect to recruitment, subject to the supervision of the Governor-in-Council." All appointments are to be made to the service by the Commission to which all vacancies have to be notified by the different Departments. In respect of promotion also the decision lies with the Commission which has to hold an examination for the purpose.

²⁷ Report, p. 189.

²⁸ Herman Finer: *The British Civil Service (1937)*, p. 63.

²⁹ L. D. White: *The Civil Service in the Modern State*, pp. 79-80.

It is unfortunate that in constituting public service commissions in India the traditions of Great Britain and the Dominions have been so much ignored. In respect of quasi-judicial matters, it is not inappropriate that the function of the Provincial Commission should be only advisory. The rules framed by the Governor in his discretion in 1937 do not appear to be unsatisfactory in this respect. They lay down that the Public Service Commission need not be consulted before any disciplinary action is taken against any officer by a competent authority subordinate to the Provincial Government. When, however, a petition is submitted to this Government by the officer concerned against the action taken against him by the subordinate authority, this Government has two alternatives before it. It may entertain the petition and set aside the order passed against him. In that case the Commission need not be consulted. But if the Provincial Government finds the petition unentertainable, it must consult the Commission and secure its opinion on the matter before rejecting the petition.³⁰ It does not seem that any objection can be taken to this arrangement.

In regard to other matters, however, it cannot be said that the position of the Commission is as satisfactory. In the first place, it has been weakened fundamentally by the fact that the Government of India Act provided only for advisory powers for this body to exercise. Secondly, its position has been weakened by the operation of some of the rules which the Governor framed in his discretion in 1937 for the working of the Commission. Thirdly, it has been weakened because no convention has so far grown in the province under which a recommendation of the Commission would be accepted ordinarily as conclusive and final by the Government although under the law the latter may have the final say. As regards the powers of the Commission being only advisory, we have already said a good deal. It should only be emphasised here that neither in choosing the methods of recruitment to civil services and posts nor in framing the syllabus and rules of the examinations when the method of examination is decided upon, nor again in making the actual appointments, the authority vests in the Commission. Wherever the rules permit, the Commission is consulted in these matters but the opinion which the Commission may tender and the advice it may offer are not binding upon the Government. The

³⁰ See Rules in *The Calcutta Gazette (Extraordinary)*, April 1, 1937.

latter may accept this advice entirely, may reject it completely or may act up to it in a modified form.

Once, of course, the method of examination is decided upon and its syllabus and rules are framed, it has to be conducted by the Commission. This duty of holding the examinations is assigned by the Government of India Act itself to the Commission and it cannot be divested of this function in any instance by the Provincial Government. But if the Government so decides, it may abolish the system of examination, where it does prevail today, in spite of the opinion and advice of the Commission to the contrary. As regards the rules and syllabus of the examinations also the final authority vests in the Government. The opinion of the Commission in this regard is of no account unless it is accepted by the Government. In September, 1939, the Bengal Public Service Commission issued a notice regarding the Bengal Civil Service Examination to be held in February, 1940. It stated "The standard of the examination shall be such as the Public Service Commission shall prescribe, and the Commission will, if they think it desirable, determine what shall be the qualifying marks to qualify a candidate for appointment." This was a departure from previous practice and was made and announced by the Commission on its own authority, and without the approval of the Government. The latter asked the Commission on these grounds to cancel this paragraph in the notice and it was accordingly expunged from it about a month later.³¹ This illustrates how the authority of the Government is exercised in these matters.

Where thus the examinations are held, their syllabus and standard are determined on the responsibility of the Government. In regard to those appointments where no examination is held, the Commission has to chalk out methods of selection again with the approval of the Government. It may, after considering the records of the candidates, call some of them for interview. It is, however, not open to the Commission to submit with its certificate only the name of the candidate who may have appeared to it to be the best. The Commission is required to submit to the Government several names in order of its preference. The Government has now three alternatives before it. It may appoint the candidate who has secured the first nomination at the hands

³¹ See the reply of the Home Minister Sir Nazimuddin to a question in the Legislative Assembly by Dr. Nalinakshya Sanyal on 29/2/40. It should be noted that in this reply Sir Nazimuddin actually said that "The standard of examination is not prescribed by the Public Service Commission but by Government."

of the Commission. It may pass him over and appoint another candidate who secured second or third nomination. It may even ignore all the nominations made by the Commission and appoint a candidate who has secured no nomination whatever from this body. It may not be true that in many instances the nominations made by the Commission are passed over completely and appointment is made from outside this list. But the fact that it sometimes happens shows how handicapped the Commission is.³² The instances of first nominations by the Commissions being passed over and second or third nominations being acted upon are more numerous.³³ Nothing has a greater demoralising effect upon the candidates and upon the public than the knowledge that the choice by the Commission, which should be regarded as an expert and impartial body, has no value as such and that it must stand the gauntlet of a fresh discussion and decision by the Ministry.

In the preceding paragraphs we have discussed the limited authority of the Commission in respect of those services and posts whose recruitment is made after consulting the Commission. We should now proceed to consider the services and posts about the appointments to which the Commission need not be consulted at all. We have seen already that under sub-section (3) of Section 266 of the Constitution Act the Governor in his discretion may, by regulation, specify the services and posts regarding which it will not be necessary for the Public Service Commission to be consulted. Now one of the regulations, framed by the Governor in his discretion in 1937 under the authority of this section of the Constitution Act, provides that it shall not be necessary to consult the Commission with respect to the methods of recruitment and principles of appointment to those services and posts "the appointing authority for which is an authority subordinate to the provincial Government." No regulation has proved to be a greater handicap to the Commission and none has had a more blighting effect upon the public services in Bengal than this regulation. In plain language it means that for appointment to any service or any post to which the head of a department, like the Director of Public Instruction or the Registrar of Co-operative

³² In 1937-38 the appointment of the Deputy Director of Industries was made against the recommendations of the Commission. In 1938-39 three special officers were appointed for debt settlement work although they had not been recommended by the commission. See *Bengal Ministry and Hindus of Bengal* (Government of Bengal Publicity Dept.), Part I, p. 5.

³³ *Ibid.*, p. 5.

Societies or a District Magistrate, can make recruitment, the Public Service Commission need not be consulted at all. It is unfortunate that a very high portion of posts under the Government of Bengal happens to be of this description. The Public Service Commission has nothing to do with the filling of these posts. So the little check to the patronage system, which the Commission might constitute, is also absent in these appointments, which, though theoretically at the disposal of some subordinate authority, are at least indirectly controlled by the Ministry. It is only needless to point out that the heads of departments and other officers of the Government who are the appointing authority cannot ignore the recommendations made by the Ministers in this regard.

Then again another regulation framed in 1937 provides that for making any officiating appointment or for making an appointment to a post which is of a temporary nature, the Public Service Commission need not be consulted. This regulation has been an excellent loophole for the exercise of patronage by the Government. A person may be appointed to a post in an officiating capacity and may be allowed to acquire sufficient experience in this field of work. Then some time later when the vacancy is declared to be a permanent one and the Public Service Commission is called upon to interview candidates, his claim can no longer be ignored. In the first place, he has served in that job for a sufficiently long time and that itself constitutes a claim and secondly, he has acquired experience which should be taken as an asset—an asset which possibly no other candidate possesses. So his name finds a place in the recommended list and he becomes permanent in the service or in the post to which he was appointed some time ago by favour. Similar effect has the regulation regarding the filling of posts of temporary character. A post may first be created only for a limited period not exceeding one year. A particular person may now be appointed to it by the favour of the Government. Later, however, this post is made a permanent one and the man who has filled the temporary job becomes the obvious person to be appointed to it.

The advisory character of the functions assigned to the Commission already limited its utility as the instrument for introducing purity in public life and justice and efficiency in the public services. The regulations which we have discussed in the preceding paragraphs have further undermined its utility in this regard. It has been calculated that less than three per cent of the posts under the Government of Bengal are now filled after consultation with the Public Service Commission. The remaining

posts are filled by the exercise of mere patronage. When we compare this state of things with the condition of things in Great Britain where no post, however temporary, can be filled and no appointment, however officiating, can be made except on the basis of a certificate from the Civil Service Commission, we cannot but feel that a drastic change in the position and powers of the Commission is called for.

THE SERVICES UNDER PROVINCIAL AUTONOMY

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Party government in the provinces began in April 1937 but it was effective in eight provinces only for about $2\frac{1}{4}$ years. In four other provinces it has had a longer but chequered career. The period is too short to bring about any radical change in the personnel and outlook of the services but it is of great interest to study how the services tried to adjust themselves to the changed conditions ushered in by Provincial Autonomy.

Party government found the services, at least the superior section of it, adequately protected by the Government of India Act of 1935. The Joint Select Committee had realised that "it was necessary that fair and just conditions should be secured to them (services)" and Section 240 of the Act provided in the case of members of the Civil Service or those who held any civil post under the Crown, that "no such person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed." Except under certain circumstances no such person should be dismissed or reduced in rank until he has been given ample opportunity of explaining his conduct. Section 248 gave persons appointed by the Secretary of State the right of appealing to the Governor or the Governor-General. In the case of certain services like the Indian Medical Service, their quota in the provinces was also fixed.

These safeguards did not imply that the Services were to become so powerful as to be able to sabotage the development of party government; the main object was to facilitate the process of adaptation by removing from the sphere of party politics, questions of their tenure of service and future prospects. In the case of the Provincial Services efforts were made to improve the personnel by placing the recruitment with an independent body like the Public Services Commission.

The parties which formed the Government in the different Provinces had included in their election manifestoes a more or less radical programme of all-round reform in which the improvement of the condition of the agriculturists occupied an important place. They had all pleaded for a new outlook and a new tone in the administration with service of the masses as their watch-

word. One of the earliest steps in all Provinces, Congress governed or not, was to impress on the Services that a new order had come and they must adjust themselves to it. In Madras, the Premier wanted "to enlist their loyal service and their great experience in the cause of the Poor." In the U.P., the Premier addressing the permanent Secretaries advised them "to realise that a change from the bureaucratic form of Government to a democratic form had taken place. People should be made to feel now that it was their own Government." Speaking at Berhampur on the 20th July, 1937, the Hon'ble Mr. V. V. Giri, Minister of Madras, urged that "a change of attitude must come among the officials of all Departments. All policemen must now feel that they were Congress volunteers and must help in the speedy advent of Swaraj." In a Communique addressed to the Judicial Officers of Orissa, the Hon'ble Mr. Bodh Ram Dube wanted that "they should bear in mind that they are not masters but the servants of the public and the salaries they draw come from the rents and taxes paid by the poor, hungry, ill-fed and ill-clad masses."

In Congress Provinces, members of the Congress due to the exigencies of their political life had little social contact with members of the services and in many cases there was an impression that these officers were unsympathetic and anti-national in their outlook and had no touch with the masses. It was, therefore, felt necessary that steps should be taken to remove this and establish greater contact between officials and non-officials. The Premier of Bihar in a statement dated the 26th July, 1937, said—"I wish they (the services) should realise that Government is not something super-imposed upon a people from above but is something arising from the inherent right of a people to govern themselves. I feel sure that once the services allow this change to come over them, much of the feeling of aloofness which people feel towards them will be gone and soon we shall find the public and the services engaged in the common noble task of building up a great and a prosperous people." Steps were taken for associating the leading party in the Provinces with measures for safeguarding the interests of the masses and for ventilating the grievances of the public. In Congress Provinces, office-bearers of District Congress Committees were made members of various Government and Semi-Government District Committees and Boards and they were appointed to local committees of enquiry. In the U.P. the Government issued Circulars in 1937 directing the officers to establish relations of mutual trust between the Administration and the Congress organisations and workers.

The U.P. Provincial Congress Committee also issued similar instructions to the District Congress Committees to co-operate with the Administration. In Madras close touch was established between members of the Legislature and the officials in the Districts by the holding of District Conferences at which local officials and legislators met and discussed local problems and formulated programmes of rural welfare. The C.P. Government issued orders to Deputy Commissioners to place at the disposal of members of the Legislature all information touching the welfare of the constituencies which they represented except confidential subjects, personal cases and matters pending or likely to be the subject of adjudication in a Court of Law. In their anxiety for checking corruption the Punjab Government issued a Circular that any complaint of corruption made by five disinterested persons against an official would be carefully investigated and if found to be correct the offender would be punished. In 1937 alone, 55 officers were dismissed for corruption.

While much progress in increasing the social contact between the official and the non-official workers was not made, the association of the latter was not confined to the discussion of problems and the formulation of schemes for their solution but in many areas it developed into a constant interference with the day-to-day administration of the District which resulted in demoralising many sections of the services. The local bosses of the Party in power in many cases exercised undue influence over the local officials with a view to increase the following of the Party. Criticisms against this were heard both in the Press and in the Legislature. In the U.P. Legislature the opposition criticised the circular issued by the Chief Secretary to the District Magistrates in which they were instructed to seek co-operation and help from Congress Organisations only. It was pointed out that this circular discriminated against the Muslim League and the Liberal Federation. In another legislature an adjournment motion was moved in which the Government was accused of employing the Police for party propaganda. In another Province, the officers in charge of the Irrigation Department were accused in the legislature of showing preference to members of the Party in power in the supply of water. Complaints against this abuse of influence by the members of local party committees became so insistent that the Congress Working Committee had to take official notice of it and on the 22nd September, 1938, it passed the following resolution—"It has come to the notice of the Working Committee that Congress Committees interfere with the

ordinary administration of the Country's affairs seeking to influence officers and members of the services. The Working Committee advises Congressmen not to interfere with the due course of administration. This does not mean that there should not be the utmost co-operation between Congressmen and members of services in matters of public concern."

During the past three years there has been a wide extension in the scope and range of Government activities. Efforts have been made to tackle basic problems of far-reaching importance and the Government has sought many of these. Prohibition, resuscitation of rural ways, expansion of Adult Literacy, stopping of *Begar*, Harijan uplift, Basic Education, restriction of Jute acreage, Organisation of Sugarcane growers, tackling of flood problems are some of the many measures which has brought the official in the closest contact with non-officials. Whole-hearted co-operation was sought and given in the public interest. Instances of District Magistrates taking the lead in excavating a dead river channel or clearing water or of Civil servants leading prohibition propaganda processions or Police officers assisting in the liquidation of adult literacy are some of the many instances which may be given to illustrate the new outlook. This gave officials an opportunity of acquiring more intimate knowledge of different aspects of the life of the people and it made them more responsive to public opinion.

The rôle which the civil servant was to play in the new order was defined by Mr. G. B. Pant, Premier of the U.P. who said that "the services were not primarily concerned with policy, they were concerned with administration." The U.P. Governor also said—"The Government lays down the policy and the services are to carry it out." This meant that the civil servant was merely to execute the policy laid down by the Cabinet. In actual practice, however, the long experience, specialised knowledge and mastery of facts possessed by the permanent civil servants enabled them to exercise not a small measure of influence in the actual formulation of the policy itself and the result was beneficial to the administration, and there were few instances of a marked break in the continuity of policy. It has been acknowledged by many Premiers that the Services have been loyal and have given them every support. Was it so because the new Policy did not mark any great divergence from the old?

Like the civil servant in many countries, the Indian official has all along tried to keep himself aloof from current politics. Under Party government the need of this is all the more great. In the course of a Rotary address in Calcutta, Sir John Anderson

emphasised that Ministers had a dual capacity, as Party leaders and as Ministers of the Crown. "With the former, the Civil servant has nothing to do but with Ministers, in their capacity as servants of the State, putting into force administrative policy for which they are responsible, the civil servant has everything to do." The Governor of the U.P. warned the services that they "are outside all party considerations. They must not identify themselves with any political party." It must be acknowledged that although political partisanship has not hesitated to accuse civil servants of interfering with elections, and adjournments have been moved in the Legislatures complaining against personal canvassing by Government servants which resulted in the fall of a Cabinet, it must be acknowledged that, on the whole, the officials have kept themselves free from political partisanship. Cases of violent disagreement with the policy of the Government and consequent resignations or premature retirements have occurred here and there and in a Congress Province, due to a misunderstanding, a Secretary issued Circulars over the head of the Cabinet but these cases were too few in comparison with the impartial attitude of the rank and file. Although retired Government servants were allowed to stand for election to the Legislature on Congress ticket, the rules governing the conduct of existing Government servants were not relaxed.

In the recruitment to services the Public Service Commission has been entrusted with the task of primary selection while the final appointment rests with the Government. Complaints have been made in some Provinces that the recommendations of the Commission were not always accepted. In a Congress Province the opposition has criticised the Government for recruiting only Congressmen for appointment in the Rural Development and the Government denied this charge and emphasised that the sole criteria in making appointments to this Department were missionary zeal and the spirit of service. In their efforts to give preference to backward communities and minorities many Governments have not always been able to hold to the merit basis in recruitment to the services. Communal and regional considerations have prevailed and quotas and percentages have been given greater importance than efficiency in recruitment to all services, including even the Educational Services. If this tendency is not checked in time and the recruitment to the Executive Services at least is not based on a system of public examination conducted by an independent body like the Public Service Commission, there is no doubt that the efficiency of public administration will suffer.

CIVIL LIBERTY IN THE BARODA STATE*

BY

PROFESSOR INDRA DATTA SHARMA,

D. A. V. College, Lahore.

The movement for responsible government in the States brought into bold relief the question of civil liberties. Today though the question has been shelved (though temporarily) due to the life or death struggle between the democratic and the totalitarian States, it may be safely said that with the return of normal times the question is bound to assume an importance of its own and may have far-reaching influence on the future structure and nature of the Indian Polity.

There are very few States in which the individual is left any freedom to enjoy any degree of civil liberty. Baroda State is one of these few States (others are Mysore, Travencore and Cochin) which allows its citizens the enjoyment of civil liberty. There seems to be some confusion among common people with regard to the meaning of term 'civil liberty.' Civil liberty in simple language means the liberty that an individual possesses as a member of a State. It can be said with Herbert Spencer that Civil Liberty exists in a State when "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man." Thus no State can allow unlimited rights and privileges to any man. But the elements of civil liberty are recognized and guaranteed by almost all civilized States and are enjoyed by their citizens. (Present period excepted.)

In the Baroda State, though there does not exist any character of fundamental rights of man, it can be said that the people of the State enjoy a comparatively greater degree of civil liberty than is enjoyed by the peoples of many other Indian States.

Let us now examine the major rights one by one and see how far they obtain in Baroda in each case:—

Right of life, which also includes the right of self-defence, is the most fundamental right, but it is not an absolute right. No person has a right to commit suicide which is

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

punishable under the laws of the State. Again, if a person is acting in self-defence he does not commit a murder in the eyes of the law. The State maintains an elaborate system of law and law-courts and an efficient police force to enable its citizens to enjoy the right of life.

Right of liberty and free movement.—The right of life, being a negative kind of right, cannot make a person happy, unless it is attended by the liberty of person. The enjoyment of this right means that a person cannot be enslaved. It implies the right of free movement and means also that a person cannot be imprisoned or restricted in his movement by anyone, not even by the State as long as he acts within the confines of law. The Barodians enjoy this right normally but in more recent times the enjoyment of this right has been restricted by the State and restrictions are placed on persons whose movements are considered dangerous by the Government. This is illustrated by the fact that in 1936 orders were issued by the Government against Mr. C. P. Shah, Pleader, Baroda High Court, against Vaman Rao Nigte, pleader, also against Magan Bhai Shankar Bhai Patel restricting the movements of these gentlemen, particularly those of C. P. Shah. The order restricted the movements of C. P. Shah because "he is moving among the agriculturists and the others for the reduction of land revenue." Therefore he should not go for twelve months to any village and should not talk about debts, the difficulties, reduction of the land revenue, either publicly or privately.

A long correspondence ensued between the Government and the Baroda State People's Conference of which Mr. Shah happens to be the Secretary. As a result of these negotiations the Government were prepared to withdraw their order if the Baroda State People's Conference agreed to sign the following document:

I. "The situation which arose following the prohibition orders issued by the Baroda District Magistrate in June last has come to an end.

II. The whole question arose out of objection taken by the Government to formal or informal talks or propaganda in villages on the question of reduction of land tax.

III. The Government would appear not to have any objection to all other legitimate activities and the Government has no objection to Prajamandal workers working as before, for the welfare of the people in accordance with their declared policy and in co-operation with Government.

IV. There will be no objection to the Prajamandal's conducting enquiries under conditions of a study circle, in their

district offices, in the headquarter towns of Prants (districts) regarding the question of land tax as settled and submitting to Government such conclusions as may emerge.

V. With this understanding the Prajamandal workers will continue to work as before, on behalf of the people."

This document is dated the 7th August, 1926.

The Prajamandal refused to sign such a document. At the time, due to excessive frost, crops were destroyed and Mr. Shah went to visit such areas to make enquiries about how much crop was left. The writer was told by Mr. Shah that the C.I.D. "was so impertinent as to stand near my car and was shadowing too much." Mr. Shah issued a statement on which the Government advised the C.I.D. to file a complaint of defamation against him. The case went on for 6 months as a result of which Mr. Shah was fined rupees one hundred, but he appealed to the High Court who sent the case back to the District Court which declared Mr. Shah not guilty. (The details of the whole case are published in *The Prajamandal*, the official organ of the Baroda State People's Conference, in its issue of 15th August, 1936.)

The importance of the case lies in the fact that in Baroda, unlike in many other States, civil liberty is curtailed more by the use of constitutional than unconstitutional methods.

Freedom of the Press.—The Baroda Press Act is more liberal in its provisions than the press law in British India. There have been no prosecutions in recent times under the State Press Act. The Baroda Government have shown better intelligence in the working of the Act. Whenever anything is published against the Government or disliked by them, the Magistrate sends for the editor of the newspaper concerned and gives him advice mostly over a cup of tea, or writes to him a demi-official letter which is more personal. The editor takes the hint and exercises greater care in the publication of any matter against the Government. But it must also be pointed out that it takes quite a long time for anyone to get permission to start a newspaper and intelligent persons prefer to start a paper from outside the State. Further, the Government ordinarily does not prosecute the person who writes against the Government but requires the press to be closed and perhaps this may explain why there have been no prosecutions under the Press Act.

Right against Government Officials.—It will not be an exaggeration to say that in some respects the rule of law obtains in Baroda. The people of that State are governed under law and not by caprice. The idea of legal equality, or of the universal subjection of all classes to one law administered by the

ordinary courts, has been pushed to great limits. Officials, as the individuals, are under the same responsibility for every act done without legal justification. The Reports abound with cases in which officials have been brought before the Courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. Individuals suffering so have a right to take legal proceedings against such officials. This was established in Baroda 47 (1936-1937).

The facts of the case are quite interesting. It arose out of an application filed by one Himat Pal on behalf of his minor son Manmohan Chunilal, before the Chandod Second Class Magistrate against a customs official under sections 363 and 364 of the local Fouzdani Nibandh. In the application it was alleged that as he (the complainant) wanted to bring ghee from his shop near the Chandod station to his shop in the town, he sent his son who is minor as well as deaf and dumb, with two annas to the customs Naka for a permit. The accused, who helped the customs clerk, received the amount of two annas but instead of issuing the permit assaulted the complainant's son, striking and abusing him. The accused claimed to be a Nakerdar and contended that under Rule 528 of the Government Servants' rules the prosecution against him cannot proceed without the sanction of the Suba.

The trial court held that the sanction was necessary. But the District Magistrate, Baroda, doubted the correctness of this order and the matter was sent to the High Court. Patkar J. held that sanction of the Suba was necessary.

The complainant filed the revision petition against this order before the Huzur.

After discussing law, the judgment proceeds to say:

Article (7) S. 528 of Government Servants' rules does not protect a public servant when he commits an offence while performing or purporting to perform his duty. It gives protection only if the offence is in relation to Government work. The fact constituting the offence must have some connection with Government work. The connection is not the accidental connection involved in the proximities of time, place of his Government work, and the Act constituting the offence. After discussing the details of the case the judgement concludes that the acts, of the accused in this case "by themselves have no connection with the Government work, and the protection offered by S. 528, of the Government Servants' rules cannot apply to the facts alleged."

Freedom of conscience and worship.—The State does not interfere in religious matters of any community. Everyone has

equal right to profess and practise any religion he likes. The State affords equal facilities to all communities in their religious ceremonies and festivals. The people of the State do not suffer any disability on account of their creed and enjoy religious liberty to the fullest extent.

Right of Association.—The need for this right has come to be felt more and more in recent times and to-day it is considered as one of the most important civil rights. In Baroda, as elsewhere, instances are not wanting when restrictions are placed on the right of free association. In restricting the enjoyment of this right, the Government depend more on constitutional methods than on any arbitrary order by the executive.

In conclusion it must be pointed out that, in spite of what goes on in Baroda in the matter of curtailment of liberty by constitutional methods, the State allows a far greater degree of civil liberty to its citizens than is obtained in many other Indian States. And after all the questions of the curtailment of liberty is a controversial one. The extent of civil liberty is not the same in every State. In democratic countries the extent of civil liberty is greater than it is in totalitarian States. No State in critical times, as the present, can afford to allow absolute or unrestrained liberty to its people for the sake of its own stability and the preservation of political, economic and social orders. But it must also be said at the same time that the peoples in the States have become so politically conscious that it is time for those States in which even rudimentary elements of civil liberty do not exist, will do well to follow the example of Baroda to grant their people, elements of civil liberty.

CONSTITUTIONAL LAW OF ENGLAND—by M. S. Shahani, (Dewan
worth & Co., India, 1939).

Mr. Shahani's book is meant to be 'an introductory manual' on the constitutional law of England for Indian students. It is an excellent manual, altogether an accurate and highly effective statement of the various broad features of the English constitutional law and custom.

In the detailed analysis of some of the factors, there are occasional shortcomings. Thus,

While it has been stated on page 13 that 'conventions arose in the eighteenth century,' no attempt has been made to explain that they arose because of the manner in which powers of government had been divided in 1689 between the King and Parliament, each having the power to hamper the other's activities, so that neither by itself could carry on the government legally. In such an intertwined system of separately inconclusive governmental authorities arose, on a conventional basis, the institution of the Cabinet in order to ensure the mutual co-operation of the two authorities without whose mutual co-operation the State in England could not possibly function; and that would incidentally help to explain why the conventions relating to the Cabinet system of government in England 'cannot be disobeyed without ultimately coming into conflict with the law of the land' (Dicey)—a proposition which a non-English student of English constitutional law does not normally find very easy to grasp.

Or again, the author has rightly sought to defend the *droit administratif* against the traditional English attacks on it (see page 36), but the defence has been so generally stated that to the average Indian student of law whose knowledge of the judicial administration of France is on the whole rather limited, it cannot be very convincing. Nothing would have been lost by a little more definite and precise statement of the reasons behind *droit administratif*. At least, a book or two on *droit administratif*, like J. Barthelemy—Government of France, 1924; L. Duguit—'French Administrative Courts' Pol. Sc. Quarterly, 1914; H. Barthelemy—'Conseil d'Etat in France', Journal of Comp. Legislation, 1930, could have been advantageously included in the bibliography, which anyhow suffers from being too short and unsuggestive.

Another suggestion, which ought to improve the utility of the book, may be the inclusion, in the large body of Appendices, of the text of the *Status of the Union Act*, 1934, by way of commentary on the Statute of Westminster.

It is, however, clear that Mr. Shahani has taken immense pains to produce this very fine book, and it ought long to remain one of the most useful text-books on the constitutional law of England available to Indian students.

BOOL CHAND.

1. MEIN KAMPF, by R. C. K. Ensor, No. 3.
2. 'RACE' IN EUROPE, by Julian Huxley, No. 5. (Oxford Pamphlets on World Affairs).

"Few great men of action," says Ensor "have ever disclosed beforehand so clearly as Adolf Hitler the principles and purposes that guide their acts." To the principles and purposes of Hitler's policy, domestic and foreign, MEIN KAMPF, his autobiography, forms the clue.

Mr. Ensor analyses in his pamphlet this book, which he calls a veritable "hotch-potch of varied ingredients, containing much autobiography, much doctrine, a good deal of history (often bad), and much polemic (often very abusive);" and his analysis reveals that Hitler is a strange combination of a cynic and an idealist, his idealism leading him on to 'fight' in order to bring to the German people the sole lordship over the earth.

Hitler's theory that mankind consists of many and varied races and that the whole of its higher life and progress, whether spiritual, artistic or economic, is due to only one of them, variously called Aryan or Nordic, to which belong the Germans, has been subjected to scientific scrutiny in the other pamphlet on RACE IN EUROPE by Julian Huxley. He establishes that it is wholly non-sensical to speak of actual physical kinship, such as is vaguely associated with the term 'race,' for the populations of our great complex modern social systems, that nationality depends on cultural rather than biological characteristics, and that even in the German population the pure Nordic type, if it ever existed, is quite irrecoverable, for the population as a whole is an inextricable mixture. It is clear that the theory has been used by the pseudo-scientists of present-day Germany as basis for a creed of passionate nationalism.

BOOL CHAND.

THE FASCIST STATE, by Dr. Bool Chand, Professor of Political Science, Hindu University, Benares. Pp. 27. Published by Beecham's Press, New Delhi. Price As. 4.

It is not an easy task to give within the compass of a short pamphlet the leading characteristics of a great political doctrine like Fascism. The task is all the more difficult as the doctrine is still in its formative stage. But in the pamphlet under review Dr. Bool Chand has brought all his scholarly talent to bear on the question and has succeeded in analysing the basic principles of Fascism, its connection with the teachings of Machiavelli, Trietsche and Nietzsche, its accomplishments and the main objections that may be levelled against it. The glorification of aggressive nationalism is its keynote and to-day the world has become familiar with its evil outcome. One cannot but agree with Dr. Bool Chand when he says that in spite of its worthlessness and invalidity as a suitable basis of state-organisation it serves a historical necessity in a world of anarchy as the world has become today in consequence of the conflict between the imperially dominant and the politically inferior states.

M. VENKATARAMAIA.

NOTICE

The Fourth Conference of the Association will be held at Bombay either at the end of December 1941, or early in January 1942 (the exact dates will be announced later) under the Presidentship of Dr. V. S. Ram, Professor of Political Science, Lucknow University.

The subjects for discussion shall be:—

- (a) Medieval Political Theories.
- (b) Constitutional Development and Constitutional Law of British India.
- (c) Economic Activities of the State.

Papers not exceeding 10 typed foolscap pages should reach Dr. V. S. Ram, Lucknow University, Lucknow, before November 10th, 1941. *A Brief synopsis should accompany the paper and both must reach Lucknow before the 10th November.* This is most important.

Members are requested to write papers and make it a point to attend. *It may be noted that papers which do not fall within the scope of the subjects selected and which do not reach Lucknow before November 10th, 1941, will not be accepted.* The Indian Economic Conference will also be meeting at Bombay and the dates and times will be so arranged that persons can attend both the Conferences if they so desire.

A member of the Association can attend the Conference without making any extra payment. Non-members can attend the Conference, read papers and participate in discussions on payment of a fee of Rs. 5. Bona-fide students can attend on payment of Rs. 2 only.

All those interested in the study and advancement of Political Science are requested to become members of the Association.

Yours Sincerely,

GURMUKH NIHAL SINGH,

Secretary & Treasurer,

Indian Political Science Association,

H. L. College of Commerce, Ahmedabad.

POLITICAL THEORIES OF CERTAIN EARLY ISLAMIC WRITERS

BY

PROF. H. K. SHERWANI,

Osmania University, Hyderabad (Deccan).

Although Orientalists of the West have paid great attention to Arabic and Persian works of early Islamic writers, very little has been done so far to systematize political thought contained in these works, and as writers on European political philosophy are generally unaware of the political thought contained in them, they have done little to bring this thought in a line with corresponding political thought of the West. No doubt Oriental political philosophers—or some of them—have found their way to general encyclopædias and books connected with Islam, still they are treated there mostly as *litterateurs*. And an average man not conversant with, or not sufficiently interested in, Oriental or Islamic literature has little inclination to turn to these references. The result is that although a wealth of political thought is found in the works of Muslim savants from the eighth till about the fourteenth century, writers on political theories, after dealing with the Classical epoch and the Christian Fathers, pass on to what little there was in European political philosophy in the thirteenth and fourteenth centuries.¹ It would, therefore, be in the fitness of things if a correct estimate is made of Islamic political thought during these centuries, an estimate which is bound to bridge the gulf which seems to exist between the Classical and the Medieval epochs, as well as to give the modern man an insight into a particular aspect of Oriental thought nearly a thousand years ago.

No doubt one or two giants of the Islamic world have been dealt with at some length in connection with earlier or later political thought. Professor Flint, for instance, has rightly given a fairly large place to Ibnī Khaldūn in his 'History of the

¹ This state of affairs is worth noting even in such fairly detailed works as Dunning, *Political Theories, Ancient and Medieval*, New York, 1930, and Janet, *Histoire de la Science Politique*, Paris, Alcan.

Philosophy of History"² calling him "the first writer to treat history as the proper object of a special science." But Flint deals with him only as a historiographer, and when he comes to his enunciation of political principles he says that, although "it is full of instruction and interest, . . . it does not properly concern us here." Latterly Māwerdī has been drawing some attention from the point of view of the analysis of the Khilāfat and the Imāmat.³ But there are others of equally great importance who might be dealt with as links of a universal rather than a purely sectional chain of thought. Instances are myriad, but among them may be mentioned Ghazzālī ('Algazel') and Fārābī, besides such Western Muslim savants as Ibnī Bājja ('Avempace'), Ibnī Rushd ('Averroes') and Ibnī Tufail ('Abubacer'), whose writings contain much that is of interest to a student of political philosophy. No doubt many of the Muslim authors of the first few centuries, after the rise of Islam, deal more with the science of government than with abstract political theories, and proceed to analyse the Islamic system of administration which had proved such a great success before their eyes, but we must remember that most of them have definite politico-philosophic ideas interspersed in their works and these are bound to prove interesting and instructive if we were to look for them.⁴

For the sake of convenience the theories of the political philosophers outlined in this paper have been divided according to the orthodox division generally adopted by writers of the subject, viz.,

- I. Theory of the State.
- II. Origin of the State.
- III. Sovereignty and the Sovereign Power.
- IV. Form of the State.

² Blackwood, 1893, Introduction, pp. 157—170. Ibnī Khaldūn lived, 1332—1406.

³ Thus Professor H. A. R. Gibbs's article on 'Al-Mawerdi's Theory of the Khilafah,' *Islamia Culture*, July, 1937.

⁴ Ibnī Bājja of Saragossa, died 1138; Ibnī Tufail of Guadix, died 1185; Ibnī Rushd of Cordova, died 1193. These and other philosophers have been dealt with as metaphysical philosophers in the learned compendium of De Boer, 'History of Philosophy in Islam' Eng. tr., London, 1893. What is required is a work of this type dealing with Islamic Political Philosophy.

⁵ Machiavelli himself can hardly be called a political theorist, as he was really an expert in government and diplomacy. Still he finds a prominent place in every history of political thought.

To these might be added Internationalism and Diplomacy and the theories of the interference of the State in the affairs of the individuals. I shall take each of these heads separately and briefly indicate the lines adopted by some of the Islamic writers who have made a direct contribution under these heads.

I. Theory of the State.

Fārābī⁶ says that man has certain powers prominent in his nature, such as powers of Speech, Contention and Thought. The power of contention is the one which makes a man desire to approach or recede from a certain point, and is the basis of all love and hate, friendship and enmity, war and peace; it is sensations like this which gives the urge to found human groupings ranging from a casual meeting on the roadway, permanent habitations in the City⁷ (or as we would call it, the State) and hypothetical International Brotherhood. As will be seen, it is this power of contention which forms really the whole basis of the State even as we know it, and one of the most important (according to some, the only)⁸ function of the State is that of settling differences which naturally arise between man and man owing to differences in the respective points of view and inherent dispositions.⁹

Māwardī¹⁰ says that Imāmat or headship in the State is concerned with the defence of the Faith as also with the administration of worldly affairs. He says that this central institution, by which the different sections of the community are held together, as well as the basic rules governing it, should have precedence over everything else, even over the day-to-day legislation, for without fixed basic laws "anarchy and licence

⁶ 870—950. The two treatises from which quotations have been given in this paper are *Siyāsatu'l-madanīyah*, ('Motive Forces in the City'), referred to as 'Siyas', Hyderabad Deccan, 1346 H. and *Arāu ahli 'l-Madinat' il-Fāḍilah*, ('Opinions of the Denizens of the Model City'), referred to as 'Arā', Nil Press, Cairo.

⁷ Political philosophers of this period use the term 'medīnah' or City to denote the State, after the fashion of the City States of the ancient Greeks. Even in our own times the words 'Politics' and 'Police' mean 'pertaining to the City'.

⁸ 'The Individualistic Minimum'.

⁹ *Siyās.*, 3, 4.

¹⁰ 974—1058. *Al-Ahkāmū's-Sultāniyah*, ('Orders pertaining to Government'), Enger's recension, Bonn, 1853; French translation by Fagnan, Algiers, 1915. In this paper the book is referred to as 'Ahkām'. Vide Sherwani, 'Some Precursors of *Nizāmu'l-Mulk Tūsi*', *Islamic Culture*, 1934, p. 525.

dire necessity, which arises when some try to overpower others, while others think that it is not possible for human beings to exist except when there is a continuous co-operation between them.¹⁶ He then alludes to the Patriarchal factor and says that many people regard the fact of birth as entailing the co-operation of the progeny as against everyone else, so that those descended from the same progenitor are more likely to co-operate with one another than aliens.¹⁷ He also gives a gist of the theory of Force when he says that people with physical power gather together others by force and utilise them to enslave their brethren according to their own wish.¹⁸ This is also the burden of what Ibnu'l-Jamā'ah calls the Force-State, when a man of authority forces a people by means of his arms and brings them under his personal control.¹⁹

Ibni Khaldūn does not deal so much with the patriarchal aspect of the State as with the natural need of human beings for co-ordinate action. He says that 'man is by nature a social being,'²⁰ that is to say, it is necessary for him to live in concert with his fellow-men forming "what the Ancients called 'the City' and we ourselves call 'human Society'." For God has created man in such a manner that life is impossible without co-operation, and man needs others' help and at the same time gives help to others. Ibni Khaldūn gives details of this aspect of human life and illustrates it from different professions followed by human beings.²¹

It is left to Ghazzālī to enunciate the Evolutionary Theory of the State. Ghazzālī, by his very nature, dislikes all that is mundane and discusses the evolution of the State-idea under the queer heading of 'the Abuse of the World.'²² In one of his works he gives the stages through which he passed before he

¹⁶ *Asā*, 108.

¹⁷ *Ibid.*, 109.

¹⁸ *Ibid.*

¹⁹ Ibnu'l-Jamā'ah, *Tahrir al-Ahkām* ('Précis of Orders'), edited by Hans Kofler, Islamica, Leipzig, 1934, Heft 4, pp. 335-415. The extract is from I, 3. The author lived. 1241-1333.

²⁰ This is the burden of Aristotle's argument; vide his 'Politics', Jowett's translation, Oxford, 1905, I, 2.

²¹ Ibni Khaldūn, *Prolog.*, p. 35. The edition I have used is that of Bahja Press, Cairo.

²² *Ihyā*, II, 6 v, iii. A large part of the quotation which follows is included in my paper on Ghazzālī in the 'Islamic Culture', op. cit.

finally began to regard the few days' sojourn in this world as being of no significance compared to the Eternity that is hereafter; still, in spite of these obvious prejudices against devoting too much attention to worldly affairs, he is very modern in the treatment of the political problem, and has probably given the lead to many others, perhaps including Ibni Khaldūn himself. Here it would be better to quote his words almost *in extenso* in order to make his meanings clear: "Man is created in such a manner that he cannot live all by himself but is in constant need of others' help, wishing at the same time that someone else, like himself, should always be with him. He needs this company, for two reasons, firstly for the sake of procreation, for this is impossible without sexual intercourse with a person of the opposite sex, and secondly so that he might be helped in the preparation of his effects, food, clothing and proper education and the bringing up of his children. . . It is, therefore, in the nature of things that there should be co-operation with a very large number of persons each of whom should belong to a certain trade or industry. Then again, these handicraftsmen cannot be independent of each other; for instance, it is impossible for the tiller to till his land without recourse to instruments of agriculture, entailing the services of carpenters and blacksmiths, while preparation of food would necessitate the work of the grinder and the cook. . . . All this goes to prove that man cannot live alone but wants others' help at every step."

Then again, it is necessary to build houses in order to withstand the elements of nature and erect walls round human habitations to protect men from external intruders. "This means the establishment of Cities,"²³ and it is in the nature of human conduct that when men live together and deal with one another a large amount of quabbles and quarrels would necessarily follow . . . and if they were left to their lot they would destroy themselves by continuous feuds and wars.²⁴ Under these circumstances it is necessary to establish a system of

²³ *Bilad*, from singular *beled*; Greek, polis, City, or State.

²⁴ Compare the theories of Hobbes and Rousseau about the warring elements in a condition of pre-state. Both agree that just before the establishment of the State the state of affairs had become unbearable owing to continuous wars between man and man. Ghazzālī does not describe any fantastic condition like that described by these philosophers or their protagonists, but is content with the enunciation of a truth. Vide, Gettel, *History of Political Thought*, London, 1932, chs. xii and xv.

arbitration and government so that quarrels and disputes might be properly dealt with."²⁵

III. Sovereignty and the Sovereign.

Early Muslim thinkers are full of theories about the ideal sovereign, theories which are interesting in that they delineate a sovereign who is not above, but definitely and deliberately below, the basic laws of the community. It should be borne in mind that this point goes directly counter to all European theories of Sovereignty.²⁶ The principles of Islamic Law are regarded as Divine in their origin, and the theocratic basis of the State entails the idea that State is held in trust for the people by the Emir or Sovereign under this law. Thus, Ibnu'l-Jamā'ah, after enumerating the rights of the Sultān or Khalifah as against the people, goes on to consider reciprocally, the rights of the people as against the Khalifah or Sultān. In this connection he regards as rights of the people not only such matters as justice, settlement of claims and legal punishment, but also the levying of legal taxes, superintendence of legal foundations, bridges and other buildings of public utility and distribution of the spoils of war, thus denoting the inherent trust in favour of the people with the Sovereign as a trustee.²⁷

Nizāmu'l-Mulk Tūsī, the famous minister of Sultān Malik Shāh Seljūqī, says in the introduction to his *Siyāsat-nāmeḥ*, or *Handbook of Politics*, that the sovereign has charge of the well-being of the people and the comfort and tranquility of his subjects as well as responsibility for the peace and security of the

²⁵ Here it would be well to give a résumé of the evolution of the State idea as described by the well-known American writer on Political Science, Professor J. W. Garner, who says in his *Introduction to Political Science*, ch. 4, sec. vii: "The State is not a mere artificial mechanical creation but an institution of natural growth, of historical evolution. The idea is well stated by a high authority as follows: 'The proposition that the State is the product of history means that it is the gradual and continuous development of human society, out of a grossly imperfect beginning. . . . It is the gradual realization, in legal institutions, of universal principles of human nature . . .'" The quotation is from Jellinek.

²⁶ The super-legal Sovereign as depicted by Austin is unknown in Islamic political philosophy. For a discussion of the Islamic concept, vide Sherwani, *The Origin of Islamic Policy*, Islamic Culture, 1936, p. 525.

²⁷ Ibnu'l-Jamā'ah, *op. cit.*, I, 4.

land.²⁸ His contemporary, Amir 'Unṣuru'l-Ma'ālī's work, the *Qābūs Nāmeḥ*, shows the democratic trend of his time in a remarkable way, for, while giving advice to his son, the author takes for granted the possibility of his son being raised to an exalted position, to be appointed a minister of State or a commander-in-chief, and even to be chosen King of the country. In the last contingency he admonishes his son to be god-fearing, clean of mind and free from immorality, and says that the sole difference between a king and his subjects is that the king issues orders while the people obey them.²⁹

IV. Form of the State.

Ibni Khaldūn, in his prolegomena, discusses at great length the effect of climatic conditions upon the life (and so upon the political conditions) of a people, and thus forestalls some of Montesquieu's theories by many centuries. He divides the earth into the traditional seven zones according to their temperature, and says that it is the temperate zone where man has excelled in learning as well as in the arts of building, clothing, alimentation and fruit-growing, and its inhabitants have been pioneers in sociological arts. He then goes on to co-ordinate climatic conditions with human professions and says, for instance, that in those parts of the world which are suitable for such occupations as rearing of sheep, camels, oxen and bee-keeping, men have to lead their lives in open fields rich in pasture, and fly away from closely inhabited cities.

²⁸ Nizāmu'l-Mulk Tūsī, *Siyāsat-nāmeḥ*, Persian text published by Homee, Sohrab & Co., Bombay, 1934 (based on Schefer's edition, Paris). Schefer has translated the book into French and has written copious notes on it. Ref. Ch. I. Vide Sherwani, *The Political Thought of Nizāmu'l-Mulk Tūsī*, Islamic Culture, 1934, p. 290.

²⁹ *Qābūs Nāmeḥ*, Teheran, 1312 Shāmsī. The work has been discussed in my paper on the *Precursors of Nizāmu'l-Mulk*, Islamic Culture, 1934, p. 15.

³⁰ Ibni Khaldūn, *Prolegomena*, Part I, ch. 1, secs. 3, 4, 5. Montesquieu's arguments are similar to some of the arguments brought forward by Ibni Khaldūn, and although the illustrations given by the latter are mostly from Western peoples while those given by Ibni Khaldūn are to a large extent from Oriental nations, still both draw their conclusions more or less in a similar way. Of course the treatment by the Frenchman is much more detailed. Vide, *Esprit des Lois*, Eng. Tr., by Dr. Nugent, London, 1773, Book XIV §.

He draws a clear line of demarcation between the citizens and the man of the country, and says that as the inhabitants of the open have to defend themselves with little external help they are braver and more alert than the denizens of the cities who are spoilt by ease, plenty and excessive comfort, and thus the problems which one has to face are quite different in either of these cases.³¹

Such, in short, is the enunciation of Ibnī Khaldūn. Going back to Fārābī, who flourished in point of date nearly four hundred years earlier, we see how he has a clear vision of the problems of the State, even as they are facing us today. He discusses, among other things, the motives which lead one State to overpower others' territories and the methods by which such a control is effected. He gives a special name to these imperialistic states, i.e., the 'medīnatu't-taghallub' or 'States of Control,' and says that the citizens of such States have different motives why they want to control vast areas for their own sake, others wish to have power over others' actions, while a third group desires to extract service from the inhabitants of the conquered nation.³² The controlling country should not rest, in any case, until it has acquired a permanent hegemony, and should regard all those who are not its subordinates as its possible enemies. This mastery might be acquired through sheer force, or through trade and commerce, or by persuasive means, even to the extent of the employment of women to capture the imagination of the weaker-minded people. It is also possible for a superior State to leave internal affairs to be regulated by the subordinate nation itself, while in reality it should not cease to have sufficient hold on the resources of the land.³³

Fārābī is cognizant of the existence of republics, which he calls 'States of Community.' He says that in such States everyone is allowed to do whatever he likes, all citizens are treated as equals and they have a tradition that there should be no control of any particular individual over the people of the community. No doubt there are chiefs in these States as well, but only such as are chosen by the people as proper persons for their headship. The best of these are those who have the capacity to promote the liberty of the people as well as keep them under their general supervision, and the best among these republics are those which

³¹ Ibnī Khaldūn, ch. 2.

³² Fārābī, *Siyās.*, 64.

³³ Fārābī, *Arā*, 117.

control the desire of the citizens to the extent of their real needs.³⁴

Besides his description of the principles underlying imperialism, Fārābī is thoroughly modern in another political field, i.e., that of colonization. While giving the reasons why people leave their motherland for seeking fortunes elsewhere, he says that this might be due to economic necessity, pressure from foreign powers or the fear of an epidemic. The colonists who seek home in other lands might bring the laws of their mother country with them and codify them, or else be inclined to frame their own laws if they feel that their ancestral laws are not suitable to their changed surroundings.³⁵ The latter contingency would naturally entail a large amount of freedom from the control of the mother country, and it shows that Fārābī contemplates the existence of what are called, in the parlance of the British Empire, Crown Colonies, as well as the Modern Dominions, and it redounds to his credit that he should be so much ahead of his time in his political conceptions.

In the same connection Fārābī gives the gist of communistic and individualistic theories. He says that the citizens of the Model City have things in common among them, but although he has the translation of Plato's Republic by his elbow, he does not fall in the Platonic impossibility of making everything, even women, the common property of the male citizens. As a matter of fact, it is quite clear that, apart from the common property to which everyone would have equal rights, each man and each class would also be allowed individual property apart from the opportunity to acquire individual knowledge and scope for individual action.³⁶ Moreover, he well knows the essence of the Individualistic Theory and recognizes that there are people who think that man is a natural hater of his own kin and what unity there might be between man and man is through dire necessity and, therefore, for distinct avowed objects.³⁷

V. Internationalism and Diplomacy.

Fārābī gives an account of the natural barriers to human unity. He says that the natures of various nations differ owing to a difference in the reactions of heavenly bodies on them, causing in turn variation in precipitation and food of the people which

³⁴ Fārābī, *Siyās.*, 69.

³⁵ Fārābī, *Siyās.*, 60.

³⁶ Fārābī, *Arā*, 93.

³⁷ Fārābī, *Arā*, 88.

react on their character. This he calls the natural barrier while one of the artificial factors which divide one nation from another consists in difference in languages which preclude people from freely communicating with each other.²⁸

Nizāmu'l-Mulk Tusi knows the hidden meaning of sending ambassadors and envoys to foreign lands, showing that he was aware of the principles which really frame the diplomatic policies of successful States. His ideas in this connection seem Machiavellian in their character, but it cannot be gainsaid that, different to the Florentine diplomat, he is not justifying the current underhand practices of politics but is only telling the reader the real motives underlying practically all diplomatic appointments. It will be well to give the gist of his own ideas here.

"We must remember that the real object of foreign ambassadorial appointments is not that they should convey the messages of their governments only, but if we were to look deeply into their purpose we would find a number of secret objects, such as the knowledge of the exact position and condition of the roads, paths, valleys, canals and tanks, whether they are fit for passage of troops and whether fodder is available anywhere near them. They also seek to know something about the ruler of the country and the exact state of the army and other equipment, . . . to penetrate into the working of government and to know whether the ministers are honest or otherwise, whether the generals are experienced or not. The real object of all these investigations is that, if it were the programme of their native country to fight the country to which they are accredited, . . . then all this information might prove useful."²⁹

Above are a few theories propounded by certain early Islamic writers. They have here been enumerated only by way of illustration, as any exhaustive criticism of any one of the theories or their sources would need a far larger space. I have purposely left out any mention of the Qur'anic concept of Politics as it would require a definite paper by itself, and differently to most theories, it cannot be regarded as a mere concept but was actually practised by the man who gave it to the world. It should be remembered as well that the authors I have mentioned here are but a few in the galaxy of thoughtful Muslims who enriched political philosophy by their writing, and it is their rightful due that greater attention were paid to them by us.

²⁸ Fārābī, *Siyās.*, 40.

²⁹ *Siyāsat-nāmah*, ch. 21.

WAS THE HINDU STATE PLURALISTIC?*

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One of the characteristic features of recent pluralistic thought, as expounded by Maitland in the nineteenth century, on the basis of Gierke's realistic theory of Corporate Personality, and further developed by writers like M. Duguit in France, and Harold Laski and C. D. H. Cole in our own age, has been a profound distrust of the State. Various attempts have been made to 'discredit' the State and expunge the concept of sovereignty from political theory. They seek to reduce the State to the position of only one among many associations. The pluralist doctrine holds that the other associations arise naturally and spontaneously and that their essential functions in society are independent of State determination.¹ Laski contemplates with equanimity the competing groups in which the State is but one among many, 'in a ceaseless striving of progressive expansion.' It is a revival of Hobbes' 'State of nature' on a social plane, and if, we may vary the phrase, there is a veritable '*associatio associati lupus*.'²

The problem has been clearly envisaged in general terms by Rousseau in his 'Discourse on Political Economy':—

"Every political society is composed of other smaller societies of various kinds, each of which has its interests and rules of conduct; but, these societies, which everybody perceives, because they have an external and authorised form, are not the only ones that actually exist in the State; all individuals who are united by a common interest compose as many others, either transitory or permanent, whose influence is none the less real, because it is less apparent . . .

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¹ G. H. Coker, *Pluralistic Theories and the Attack upon State-Sovereignty Political Theories*, p. 89.

² Cf. R. H. Murray, *Social and Political Thinkers of the XIXth century*, p. 390.

The will of these particular societies has always two relations; for the members of the association, it is a general will; for the great society, it is a particular will. . . ."³

Thus, as Rousseau clearly perceived, society is a complex of groups and associations, and presents a problem of perennial interest to political thinkers. Are these groups and associations independent of the State, or are they co-ordinate with it? Does the existence of these imply a limitation on the sphere of State-action and therefore on Sovereignty? We propose to raise this problem in regard to Hindu Political Thought and examine the nature of the relations of the various groups and associations to the State, as visualised by the Hindu thinkers. Here, we are confronted with the problem of Sovereignty in its sharpest form. How did the Hindu thinkers view the emergence of the groups, social and economic, in their relation to the State? Were these associations independent of, or co-ordinate with, the State? Was the State conceived by the Hindu thinkers, as one amongst many groups, 'in a ceaseless striving of progressive expansion' or rather, as an 'association of associations,' called upon to adjust, reconcile and synthesize the conflicting claims and obligations of the various groups and associations by reference to a general scheme of values?

That guilds and corporations, representing the manifold aspects and phases of Hindu social life, flourished in Ancient India is fully attested by the evidence available from the Epics, the Dharma-Sutras, the Artha-Śāstra and the Buddhist and Jain literatures. It is true that the caste-system did not fully develop in the Vedic age; yet it is apparent that with the growing complexity of civilisation, definite advance was made towards a spontaneous division of labour leading to differentiation of occupations. With the progressive advance in the specialisation of crafts and industries, there arose a number of associations for definite economic purposes. The 'associative spirit' manifested itself into territorial and communal groups, either for religious or social objectives.

It is clear that the terms, Śreni, Kula and Puga, indicate the variety of trade and craft-guilds, and kin-groups. 'Śreni' has been interpreted by Medhatithi as 'an association of traders,

³ Rousseau, *'Social Contract and Discourses'*, Translated by G. D. H. Cole, p. 253-54.

⁴ Refer to Majumdar, R. C., *'Corporate Life in Ancient India.'*

artisans or money-lenders or usurers and of men proficient in four sciences of learning."⁵ Kautilya uses the term in more than one sense. As pointed out by Fick, guilds had developed to a high degree in their organisation, along with local custom and usages.⁶

We further learn from Nārada and Brihaspati, that these guilds had an internal organisation with an assembly, a president, and important rules and regulations for apprenticeship.⁷ Kula was a group based on kinship, as pointed out by Mookerji. Puga and Vrata, further represent different types of guild organisation.⁸

Let us now examine the relations of these groups to the State, in the spheres of legislation and justice. This will enable us to understand the Hindu view of the relations of the social and economic groups to the State. Gautama,⁹ in dealing with the duties of the king and royal justice, lays down that, "the law of countries, castes and families, which are not opposed to the (sacred) texts, have also authority." In the same manner, he further observes, "the cultivators, traders, herdsmen, money-lenders and artisans" are authorised to lay down the necessary rules for their respective organisations. Vasiṣṭha,¹⁰ similarly remarks, that the king must know, "all the laws of the countries, castes and families and should "make the four castes (varṇas) fulfil their particular duties." The Mahābhārata, insists that the people should observe the laws of their castes or Śreni, country or family and requires the king to maintain the customs of the old families or countries.¹¹ The Manu-Smṛiti, observes that, "the king who knows the sacred law, must inquire into the laws of the caste (Jāti), of districts, of guilds and of families and (thus) settle the peculiar law of each." He further requires the king to

⁵ Manu, VIII, 41. Commentary in the foot-note.

⁶ *'Social Organisation in North-East India'*, pp. 283-84.

Cf. "Local divisions of different kinds of work, hereditary character of branches of profession, and existence of an elder, seem to me to indicate clearly an organisation of handicrafts, which can be composed in many respects, with our corporations in Middle Ages."

⁷ Nārada, X, 3; Brihaspati, XVII, 11-19.

Also cf. Hopkins, *'India Old and New'*, pp. 171, 174.

⁸ *'Local Government in Ancient India'*, pp. 313, 314.

⁹ Gautama, XI, 20-22.

¹⁰ Vasiṣṭha, XIX, 7.

¹¹ *Santi-Parva*, LXXVII, 19.

establish as law what may have been practised by the virtuous and such twice-born men as are devoted to the law, "if such usages are not opposed to the (customs of) countries, families and castes."¹² According to Kautilya, the king's officer must enter into his book the laws, the manners and customs of castes, families, guilds, and localities.¹³

Such statements as cited above have led writers like Mookerji to attribute, "the power of independent legislation," and on the strength of this an "independent political status" to the local groups and associations.¹⁴ It would thus imply that these social groups existed outside and independent of the State. Such an inference, in our opinion, involves a wrong conception of the sphere of State-action and the nature of Law and its relation to Sovereign authority.

The State, according to Hindu thinkers, arises out of the necessity to put an end to the ruthless struggle for existence which they picturesquely described by the category of *Mātsyanyāya*. It was the one instrument to put an end to the unchecked waste and set the individual free from the necessity of a perpetual struggle for mere existence, for the pursuit of a moral life, which alone would unfold his true being and allow him to develop the highest capacities, that he has in him. How deeply were the Hindu thinkers impressed with the necessity for a politically organised condition of life may be realised from the picture of life, which they envisaged in the 'state of nature.' In the absence of the State, "the creatures would soon be destroyed, the stronger preying on the weaker, the whole world would be enveloped in utter darkness, and all things would have confounded . . . nobody would have studied the Vedas . . . no maiden would have married . . . ravage and confusion would have set in on every side, and all barriers would have been swept away and the idea of property would have disappeared . . . no one would observe the duties of castes and orders and no one would have succeeded in acquiring knowledge."¹⁵ In short, the State alone was the sole guarantee for the pursuit of Dharma, the happiness of all the four orders, and for making them righteous.

Naturally enough, then, the State in Ancient India embraced the whole field of life, and sought to regulate the life of man both

¹² *Mānū*, VIII, 41, 46.

¹³ *Artha-Sāstra*, Bk. II, ch. 7.

¹⁴ 'Local Government in Ancient India', p. 124.

¹⁵ *Santi-Parva*,

in private and public matters. Its sole end, as visualised by the Hindu thinkers, was nothing short of the highest welfare of the individual and Humanity. They never betrayed any distrust of State-interference and never sought to delimit the sphere of State-activity. A reference to the functions of the State, in Epics and Kautilya, would at once reveal the wide range of social, religious, and economic obligations which the State had to discharge.¹⁶

The sphere of State-activity was not only confined to the negative task of 'hindering the hindrances,' but it extended to the ceaseless effort of fostering righteousness.¹⁷ No limits were set to the sphere of the State; and, no province was too sacred for its interference. The State exercised its authority over the whole field of social life and actively sought to promote the social, intellectual and economic interests of the people. In the light of this, it is not possible to agree to a view which represents 'the State and society co-existing apart from and in some degree of independence of each other.' Nor is it possible to subscribe to the view that, "a policy of non-interference was recognised as the ideal policy of the State, the functions of which were ordinarily restricted to 'the irreducible minimum,' viz., the protection of life and property and the realisation of revenue . . ."¹⁸ If the Hindu thinkers erred in any direction, it was in their excessive emphasis on the sphere of State-activity, which carried them to the other extreme of advocating governmental paternalism.

Thus, the State, whose 'raison d'être' was Dharma, stood for the unified and unifying central authority embracing the whole community, and provided the necessary basis for a system of local order. The chief duty of the king, as the supreme head of the State, was the maintenance of the scheme of social order as determined by the central concept of Dharma. In view of this, his supreme function was to see that the various individuals, groups and associations within the community performed their respective duties, according to law. The law, thus, had a positive sanction of the authority of the State. The king could exercise the coercive authority of the State to enforce the various customs which regulated the life of the family, castes, Śrenīs, Ganas and other groups. The State, by its acceptance to maintain these obligations, imparted a legal force to these customs.

¹⁶ Cf. Banerjee, 'Public Administration in Ancient India', p. 79. Bandyopadhyaya, *Kautilya*, p. 59.

¹⁷ Cf. Benoy Kumar Sarkar, *Sukra-Niti-Sara* (trs.), S. B. H. Beni Prasad, 'The State in Ancient India', p. 98.

¹⁸ See Radhakumud Mookerji, 'Local Government in Ancient India', pp. 3-4.

Much of the attack directed against the Austinian position is based on the confusion created by the word 'command,' and the ambiguous meaning of the phrase, 'source of law.' The idea of a command has frequently implied to the minds of many the notion, that "a law must somehow be an arbitrary expression of the sovereign's selfish will or caprice, that it is evolved in his consciousness out of nothing, and without any regard for the customary or ideal notions of right and wrong." If this is what is really implied by the 'orthodox' Austinian expositions, the word, as Dickinson suggests, may certainly be abandoned. "There is no reason, why these authoritative pronouncements of the sovereign should not be based on the prevailing notions of right and wrong."¹⁹ It is true, that questions of right and wrong 'lie so frequently within the twilight zone of rational differences of opinion.' But, it is for the very same reason that the need is felt for some recognised organ to exercise 'the sovereign prerogative of choice,' which is the characteristic function of Sovereignty.

In the early stages of life, custom has been everywhere the means of social regulation. With the growing complexity of life and the consequent interactions of the manifold human relations, custom soon proves inadequate. During this advanced stage of civilisation, the State appears as an interpreter and enforcer of tradition and customary rules. In this rôle, it not only acts as an arbitrator, but also modifies to a great extent the vague and indefinite customary rules.²⁰ The institution of sovereignty exists primarily because of the need for an organ to focuss and formulate the necessary rules in a precise and uniform manner. In this way, the prevailing customs, ideas and interests receive validity and the hall-mark of law by the act of the recognition from the sovereign. Herein lies the sound and valuable element in the juristic conception of sovereignty. It is not denied that custom, in a very large measure, is the source of law. Nor any historical priority is claimed for the positive law to the customary law. What is emphasised here is the fact that these vague customary rules do not become law, in the strictly positive sense, until they receive the *imprimatur* of the sovereign. The sovereign makes it law, not by mere description, but by the sanction with which he clothes it.²¹ It would be clear, thus, that the priority claimed for the sovereign is not historical but logical.

¹⁹ Political Science Quarterly, 'A Working Theory of Sovereignty', by John Dickinson, Vol. XLII-XLIII.

²⁰ Refer to Willoughby, 'The Nature of the State,' pp. 146-49.

²¹ Austin, 'Lectures on Jurisprudence', II, p. 567.

Viewed in this light, we may say that the Hindu State was supreme in the sphere of law. The rules governing the life of the family, castes, guilds and various other associations had to depend on the ultimate sanction of, and enforcement by, the sovereign authority. The sovereign thus represented the authoritative organ, with full legal powers to limit their respective jurisdictions, and when necessary, to enforce these laws and punish the breaches thereof.²² Thus, we may define law as, "those rules of conduct, as distinguished from other customary rules, that control courts of justice in the exercise of their jurisdictions; they are such as have for their ultimate enforcement, the entire power of the State."²³

Thus, the sovereign in the Hindu State, was the supreme judge, the final court of appeal, in case of a dispute. The law knew no higher authority than the king and no interpretation except that of the Royal Judges. The State stood as the final authority to pronounce what is law, and what is not, as between contending individuals, groups or interests. In the Kautilyan State, the sovereign not only exercised powers of administration of justice by adjudication of disputes and infliction of punishments, but also modified and developed the customary law.²⁴ Though, legislation, in the modern sense, was rare, it was not beyond the purview of the State. The numerous royal edicts had the force of law, and they undoubtedly fall within the range of the definition of law, referred to above. These laws embraced a wide field from the regulation of prices, wages and profits to the preservation of king's person and prerogatives. It would be more correct to say that the 'powers of independent legislation' attributed to guilds and other associations were circumscribed by the superior legislative authority of the State.²⁵

²² Manu, VIII, 335.

²³ *Apad-dharma-Parva*, 143.

²⁴ *Sukra-Niti*, ch. 1, 27-28, 50-51.

²⁵ Willoughby, 'The Nature of the State', p. 177.

²⁶ Kautilya accepts as law, 'the royal command enforced by sanction.' Cf. B. K. Sarkar, 'Political Theories and Institutions of the Hindus', p. 209.

²⁷ *Rajdharmamusasana-Parva*, 91.

Nārada, I, 2; XVII, 24.

Bṛhaspati, II, 27.

It is indeed true, that, historically speaking, the social institutions like the family, the *śrenī*, the *kula*, and other religious fraternities were prior to the State. We may further concede, "that these various societies, each representing a different principle or social force operating in society, grew up more or less independently or contemporaneously with the military organisation, or at any rate before the military organisation had grown into the homogeneous State."²⁶ But, a stage soon arrived in the social development, when it was important to know, as to who may authoritatively state the custom. The historical priority of certain associations, however, does not alter the nature of the relations of the State to the groups. The earliest *Smṛities* represent these groups, as an aggregate loosely organised, not yet properly integrated into the homogenous State. But, even here, we find the authority of the State, already largely consolidated. By the time of Manu and Yājñavalkya, the authority of the State appears fully developed, till we find that the sovereign is authorised to legislate. In short, "the subsequent history of the Indo-Aryan society, is the history of the integration of these various principles under a ruling one, and the subordination of all societies to the one, representing the ruling idea."²⁷ As Dr. Beni Prasad observes, "the implied logic of the situation is that whatever remains free of the control of the State, remains so by its permission."²⁸

That the Hindu State did not seek to crush the free initiative and spontaneous life of the various associations in society, is evident from the economic, social and religious freedom enjoyed by these bodies in their internal organisation. But, it does not follow that these groups and corporations were co-ordinate with the State. On the contrary, they appear to be under the definite control of the State. The king had the authority to inquire into the laws of the castes, of districts, of guilds, and of families and thus settle the peculiar law of each.²⁹ It was the supreme function of the king to see that the various groups within the community observed their respective laws and discharged the necessary obligations arising therefrom. The State, thus, by its acceptance to maintain those obligations of the family, castes, *śrenīs* and *ganas*, imparted to these customs a legal sanction.

²⁶ Sen Gupta, *"Sources of Law and Society in Ancient India,"* p. 19.

²⁷ *Ibid.*, p. 20.

²⁸ *Theory of Government in Ancient India*, p. 311.

²⁹ *Manu*, VIII, 41.

According to Yājñavalkya, the king should discipline and establish again on the path of duty, all groups which have strayed from their laws, whether they be families, castes, guilds, associations or groups in districts.³⁰ Nārada is equally emphatic and holds that guilds are not to misuse their power to violate the peace of the country and that the king should never tolerate resort to arms, on the part of the guilds.³¹

The *Artha-Śāstra* is more definite and clear on the point. The superintendent of accounts was required to keep a record of the history of customs, professions and transaction of countries, villages and corporations. The king had the authority to make these bodies conform to certain definite rules. The State had to maintain a strict vigilance on all corporations and see that the conflicting claims of these groups, did not divide the allegiance of the subjects.³²

This is further amply borne out by the consideration of the relations of the State to these groups, in matters pertaining to justice. The supreme executive power of the State was called upon to enforce these laws and punish the breaches thereof. Manu prescribes exile as a punishment for a member of a corporation, who through avarice breaks a sworn agreement.³³ If the members of Corporations combined to defraud the State of its dues, they should, according to Bṛihaspati, be compelled to pay eight times as much.³⁴ Not only this, but the State should rescind the resolutions of guilds, which were of a seditious, immoral or absurd character.³⁵ The sovereign, therefore, represented the authoritative organ, with full legal power to limit the respective jurisdictions of the various groups and associations within their proper spheres. It is true, that the Hindu State recognised the authority of the family, guild or corporation to try local cases and inflict punishments. But, even here, in case of a dispute or a difference of opinion, the sovereign represented final tribunal of justice. According to Bṛihaspati, the State was the supreme arbiter in the event of dissensions between the leaders and the members of the guilds. Cases of grave crimes were exclusively reserved for the king. For

³⁰ Yājñavalkya, I, 361.

³¹ Nārada, X, 2-3; 5-6.

³² *Artha-Śāstra*, Bk. II, ch. VII; Bk. III, ch. XIV; Bk. IX ch. I.

³³ *Manu*, VIII, 218-220.

³⁴ Bṛihaspati, XVII, 5-7; 19-21.

³⁵ Nārada, X, 5-6.

forest-dwellers, the court shall meet in the forest, for warriors in the camp and for merchants in the caravan.³⁶ As Jolly rightly points out, the whole title of law named, 'violation of agreements' has been often misunderstood. Its chief purpose was to bring the corporations, particularly the religious ones under a very great measure of state-control and protection.³⁷

We are, now, in a position to answer the questions raised in the beginning. The Hindu State was looked upon as the sole guarantee of the moral order, with all its ramifications in the social order, and as such, its sphere was co-extensive and co-terminus with the whole of life. It was called upon to safeguard contracts, prevent encroachment of one institution upon another, and resolve the conflicting claims and obligations. This function, evidently, committed it to the task of determining the legitimate sphere of each institutions with reference to their respective Svadharms. The State, thus, did not remain 'a mere external mechanism,' but, actively entered into a living relation with all these associations. It is further clear that the nature of the legislative power enjoyed by the local groups and associations was so circumscribed that they cannot be said to possess 'independent political status.' The State was supreme in the sphere of law, and it alone could give validity and stamp of law to the prevailing customs, ideas, and interests by the exercise of its 'sovereign prerogative of choice.' Again, if the various groups, social, religious or vocational, enjoyed some power of legislation, it was purely of the character of subordinate legislation, and, therefore, of a non-sovereign character. These associations were authorised to follow their 'Svadharma,' unhindered and unmolested, so long as they did not encroach upon other individuals and groups. The promotion of free, spontaneous life of the various social groups was a part of the 'raison d'être' of the State. At the same time, the Hindu State never degenerated into 'the amorphous State' of the Middle Ages. The sovereign represented in himself the various principles governing the social institutions. His authority was final, because he was the supreme upholder of Dharma, the sovereign principle.

It follows, therefore, from the nature of the relations of the State to the groups and associations examined above that the Hindu State was not 'pluralistic.' If we have to choose the opposite philosophic term, we may say that only a monistic

³⁶ *Bṛhaspati*, I, 28—30, 32.

³⁷ Jolly, *Hindu Law and Custom*, p. 294.

theory of sovereignty can explain the true nature and significance of the Hindu State, and that a pluralistic approach would fail to 'grasp the Indian phenomenon.'³⁸ It is true that the Hindu State recognised the diversity of various groups and associations, but this need not necessarily lead to 'Pluralism.' Indian theory favours neither anarchy, nor the unqualified pluralism of discrete and isolated groups.³⁹ The nexus or the unifying principle of integration and synthesis was supplied by the State, whose sole function was the preservation and maintenance of Dharma.

The end of the State being maintenance of Dharma, which meant Svadharma in its social implication, the State represented the ultimate source of pervading adjustments and of keeping the various groups and institutions within the bounds of their Svadharma. The various guilds, corporations, families and castes, the whole complex of institutions, embodying diverse purposes were subject to the supreme law of Dharma. As Law was to Pinder, the 'king,' and to Herodotus, 'the Master,'⁴⁰ Dharma was to the Hindu thinkers, 'the king of kings,' the sovereign principle. The State, as an embodiment of this principle, was the operative criticism of all the institutions that constituted the polity. It became 'an association of associations,' which set the perspective to other institutions in society. It sought to promote Dharma by adjusting, reconciling and synthesizing the conflicting claims and obligations of various groups and associations by reference to the general scheme of values implicit in the sovereign principle of Dharma.

The pluralists seek to attempt an impossible task, when they postulate a bare multiplicity and deny any ultimate authority in society. As Dr. Hsiao points out, "whatever may be the avenue of approach, the final outcome of the pluralist argument is in every instance, not multiplicity as such (as we naturally expect), but some unity that transcends and points beyond multiplicity."⁴¹ They hardly succeed in their attempt to 'expunge the notion of sovereignty from political theory.' It has reappeared in a more or less disguised form in

³⁸ Cf. *Theory of Government in Ancient India*, p. 9. "The monistic theory of sovereignty, as applied to the state or government, fails completely; only a pluralistic theory can grasp the Indian phenomenon."

³⁹ Radhakumud Mookerji, *Local Government in Ancient India*, p. xxiii.

⁴⁰ Barker, *Greek Political Theory*, p. 38.

⁴¹ *Political Pluralism*, p. 139.

Dr. Krabbe's 'Legal Community' ruled by a 'sense of right,' M. Duguit's monistic principle of 'social solidarity' and Mr. Cole's 'Democratic Supreme Court of functional equity.' The principle of unity has persistently asserted itself, and with the recognition of this principle, we must necessarily think of a definite channel of its expression. A sovereign State alone is the appropriate and inevitable expression of a genuine general will.⁴²

The sovereignty of the State, as Dr. Bosanquet would put it, is a feature inherent in the genuine whole, with its complex of social institutions, which make up the web of the social world. It is by its very definition, the ideality of all parts of the community, trade and religious corporations being the very stuff out of which the State is made.⁴³ The conception of a sovereign State is not incompatible with the recognition of the manifold activities of man in his diverse relationships. Each group may live its free spontaneous life, but it must be within the limits of its existence as a group, and as Figgis insists, it should foster loyalty to the great 'society of societies,' which we call the State. "The State, after all, is a single conception of life; it is a single conception which can blend and contain a number of other conceptions and a variety of other groups."⁴⁴ The true State must gather up and synthesize every interest within itself. It is sovereign inasmuch as it has the power of creating one in which all are. It is this collective Will, which in its fullest and most imperative form gives rise to sovereignty.⁴⁵ The real value of the pluralist's criticism lies in the insistence, that it will not suffice to say that the State is sovereign, but at the same time, it is essential that the State must objectify the totality of social purposes. It is, therefore, that writers like M. P. Follett emphasise the necessity for revivification of group life, which, with its rich experience, may form the real basis of a unified and unifying State.

⁴² Refer to Hetterington, 'The Conception of a Unitary Social Order,' the *Aristotelian Society Proceedings*, 1917-18.

⁴³ Refer to Dr. Bosanquet's note on Mr. Cole's Paper in the *Aristotelian Society Proceedings*, 1914-15.

⁴⁴ Barker, 'Political Thought from Spenser to To-day', p. 245.

⁴⁵ Follett, 'The New State', n. 271.

IS NAZISM PLATONIC?*

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The present age has witnessed changes so radical and revolutionary undreamt of before in human history. There has been a "transvaluation of all values," and the field of politics is no exception to the rule. Democracy, which was once hailed as the greatest political invention, is passing through a testing time. Great modern States have thrown democracy to the winds and are actually being ruled by dictators, and a definite ideology of dictatorship is deliberately put forward as a panacea for the ills of democracy. It is no longer possible to look upon the contemporary Nazi Absolutism as a temporary passing phase. Attempts are being made to find a justification for it in hoary antiquity—in the State Absolutism of Plato. It is said in Germany that the best elements of Plato's political theory are found in practice in the national Socialist State. Nazi thinkers like Theodor Von Der Pfordten, Hans F. K. Guenther and H. K. Grunsky have tried to relate their National Socialism to Platonic Motifs.¹ Even in England R. H. S. Crossman² has attempted to bring out the Nazi elements in Plato, though not with the intention of justifying Nazism.

An attempt is made in this paper to answer the question, Is Nazism Platonic? In order to gain a correct perspective of the problem it is necessary to understand the background from which emerged the two personalities—Plato and Hitler. Born of aristocratic parents, Plato had had perfect training in the arts and culture suited to his status in life. Greatly dissatisfied with the political and social evils of the times, he rejected a political career in preference to the life of a scholar. He had the vision of an

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† I am indebted to Dr. M. H. Gopal, Mysore University, for many valuable suggestions.

¹ *Philosophy*, Vol. 13, pp. 178—81.

² *Plato To-day*.

ideal State which was the visible embodiment of absolute justice and it was Plato's ambition to bring it into existence.

Hitler, on the other hand, born of humble parents, faced the stern realities of poverty and misery early in life. The deep disappointments, the disruption of personality, and the economic suffering and chaos, consequent on the great war culminating in the treaty of Versailles constitute the background from which emerged the mystical personality of Hitler. He typifies the deep stirrings of the unconscious and the burning desire of the German people to regain their lost self-confidence and self-respect. Hitler believes that only a dictatorship can achieve this object, and hence he constituted himself the Fuehrer—the leader of the German people. The theory of National Socialism emanates from the practical success of one man and definitely springs from actual practice. Plato failed in his attempt to establish an ideal state on earth, but Hitler hopes to succeed.

A *prima facie* study of the *Republic* and the *Mein Kampf* suggests striking similarities between the platonic vision of the ideal State and the Nazi dictatorship in practice. Both Plato and Hitler are revolutionaries, inspired by the love of their people and determined to raise them to a "higher level of humanity." Both hate democracy—the rule of the many.³ Democracy is, according to Plato, "Full of variety and disorder . . . dispensing a sort of equality to equals and unequals alike."⁴ Plato's ideal State is based on the essential inequality of men. Since "one man cannot practice many arts with success"⁵ and each individual should be put to the use for which nature intended him,⁶ everybody is not fit to rule. Only the few should rule and the many should follow. The few who rule the many should combine within themselves philosophic wisdom and absolute power. Plato defines temperance in the State as consisting in "the agreement of the naturally superior and inferior as to the right to rule of either."⁷

Hitler equally believes that the political leadership in his ideal State, viz., the National-Socialist State, must be "free from the principle of control by majorities, i.e., the multitude." "A majority," he adds, "can never be a substitute for man. It is

³ The modern conception of democracy is different in some respects from that of Plato.

⁴ Plato's *Republic* (Jowett's edition), p. 558.

⁵ Plato's *Republic* (Jowett's Edition), p. 373 d

⁶ *Ibid.*, p. 423 c.

⁷ *Ibid.*, p. 431 c.

⁸ *Mein Kampf*, p. 179.

always the advocate not only of stupidity but also of cowardly policies and just as a hundred fools do not make one wise man, a heroic decision is not likely to come from a hundred cowards."⁹ In company with Plato, Hitler regards the authoritarian or what has come to be called the totalitarian State, as the best form of government. Both are convinced that the State must raise the best brains of the community to the position of leadership and predominant influence. Even the best brains, however, can only advise and not form decisions which must originate only from the Fuehrer. As the people do not know what is good for themselves, it is the selfless and public-spirited leader that can lead his people to their own good.

This conviction that the basis of the political community is a superior-inferior relationship necessarily gives rise to the second point of resemblance between Platonism and Nazism. Both Plato and Hitler attach very great importance to education and firmly believe that it must be controlled at every stage by the State. They agree with the modern psychologist that a proper selection of the children must be made to determine the task for which each child is best fitted by nature. Education must be in harmony with ability. Thus Plato selects the children who are to become "Guardians." They must combine in themselves "a gentle nature" and a "great spirit." They must be trained to develop the qualities that make one a philosopher—truthfulness, temperance, and a true love of learning. They must possess "A well-proportioned and gracious mind which will move spontaneously towards the true being of everything."¹⁰ "He who is to be a really good and noble guardian of the State," writes Plato, "will require to unite in himself philosophy and spirit and swiftness and strength."¹¹ A "sound mind in a sound body" is the ideal of the education of the guardians in their early life. While advocating "Gymnastic for the body and music for the soul,"¹² Plato gives precedence to music, to the training of the mind. Those children who pass through successfully the rigour of early education should be taught according to the Greek Philosopher, Mathematics and the other abstract sciences followed by the highest of knowledge—The Idea of the Good—as revealed by "Dialectic."

⁹ *Ibid.*, p. 45.

¹⁰ *Republic*, p. 486 b.7.

¹¹ *Ibid.*, p. 375 c.

¹² *Ibid.*, p. 376 c.

With equal emphasis on the state control of education of the individual and a proper selection of the children, Hitler would look to the qualities that develop the national and the militant attitude in children. "Trustworthiness, readiness for self-sacrifice, silence, are virtues which a great nation needs."¹³ According to Hitler, secrecy is a virtue the lack of which partly accounts for the German defeat in the Great War. The Fuehrer extols the development of will-power and the capacity for forming quick decisions. In creating the requisite educational environment both Plato and Hitler would take all possible precautions to remove from the soil all 'corruptive' influences. Both believe in creating residential institutions in which children live together and work for the community.

Not only in education but in social life also, the State would effectively control the people both in the Platonic and in the Nazi State. In company with Plato, Hitler would change the social institutions of the State to make possible the harmonious development of the latent capacities of the citizens. Both the Greek and the German would have the State interfere even in such intimate concerns of life as marriage, family, and the procreation of children. The aim of Hitler is to preserve the purity of the German blood and to bring into existence a race of German citizens with qualities of militaristic virtue.

But these resemblances between the Platonic and the National-Socialist State are more apparent than real. It is no doubt true that neither has any faith in democracy, and that both demand implicit obedience from the masses. But while accepting the principle of leadership, Plato has no objection to the rule of 'a few' if philosophic wisdom is possessed by them. The obedience of the many to the few is due to the free choice of the individual as a result of the recognition of the absolutely good realized in the thought and action of the Guardians. Plato prefers the term 'Guardians' to 'Rulers' in order to remove every trace of force or compulsion. In the National-Socialist State, on the other hand, obedience to the Fuehrer springs from the fear, not merely of the possible curtailment of a measure of freedom, but the fear of actual extirpation of all recalcitrants. While the Platonic State persuades by reason and argument, the Nazi State demands obedience by violent force and compulsion. The Nazi State identifies the two fundamentally different concepts, viz., 'the right of force' and the 'force of right.'

The same wide divergence between Platonism and Hitlerism

¹³ *Mein Kampf*, p. 164.

may be noticed in their attitude to education. Although both accept the maxim of 'a sound mind in a sound body,' Plato gives precedence to the training of the mind, while the Nazi leader emphasizes the development of the body. A highly educated weakling is considered by Hitler as useless to the world. Schooling in pure knowledge is in the Nazi State of secondary importance compared with the development of will and emotion, and by 'pure knowledge' is meant that which subserves the dominance of the German State. Education, to the Nazis, is merely an instrument to achieve national unity with a view to fight other nations. Such a scheme of education results not only in the love of one's own country, which is a virtue, but also in the hatred of other nations, which is essentially a vice. The first condition in the selection of children is that it must be proved beyond doubt that they belong to the pure nordic race. The others are considered aliens.¹⁴ "The necessary condition for producing a higher humanity" observes Hitler, "is not the State but the race which possesses the essential qualities for it."¹⁵ In the eyes of Hitler, science, culture, and humanity, are subservient to the power of the German State. Thus scientific discoveries are wrong and pernicious if they happen to disprove the superiority of the German race. 'Culture' means to Hitler 'German culture' and the denotation of the term humanity does not extend beyond Germany inhabited by the nordic race. On the other hand, 'Science' means to Plato, any organization of knowledge which helps to realize the Good, and Culture and humanity, are the concrete embodiments of that Good.

The difference between Platonism and Hitlerism is more fundamental. Plato identified Ethics and Politics. For him the ideal of the individual was the same as the ideal of society. The State was nothing but the individual "writ large." Hence Politics could not have an interest other than the ethical. But now the two sciences have drifted apart. If Plato were alive to-day, he would never take political prescriptions for the formulation of a moral ideal and for a system of education to be in accord with it. Politics may aid the educational process but it can never lay

¹⁴ A passage in the *Republic* (p. 469) gives expression to the idea of race prejudice in so far as Plato says that only Hellenes are citizens and that Barbarians are aliens. But this is not to be made much of as it is against the entire spirit of Plato's teachings. In the *Laws* Plato actually laughs at the pride of the Hellenes. Cf. Ritter's *Essence of Plato's Philosophy*, and H. B. Acton on *Plato in Philosophy*, Vol. 13, p. 308.

¹⁵ *Mein Kampf*, p. 154.

down the end which is the task of ethics. Though Plato had the city states in mind when he wrote the *Republic*, his vision was universal. He was a "spectator of all time and all existence." The Platonic State is universal in character and is capable of application to an "order of humanity." It is the concrete expression of the vision of the Absolutely Good and Plato's entire educational scheme is inspired by the zeal for the realization of the Ideal. Hence it has no place for a narrow scheme of education based on an unintelligent emotional zeal for one's own country, right or wrong. Rabid racialism, narrow nationalism, and modern militarism were not the ideals of Plato's educational scheme. His idea was to formulate a scheme which would lead to the creation of a State which is the visible expression of the 'Absolutely Good.' Hitler would have nothing to do with such a 'fabled' ideal. For him the German State first, the German State second, and the German State last. Even in Germany itself, Hitler has no faith in the idea of the equality of the sexes. The one aim of women's education must be with a view to the future mother. Hitler's vision is purely political in character. But the purely political is emptied of all human values. By standing up for the equality of the sexes, Plato recognises the individuality of one-half of the human race. His political programme of abolishing the family and bringing about eugenic reform by allowing only the fit to procreate arise from motives inspired by universal ethics.

Further, Plato is concerned with founding a State in which the citizens can live happily with freedom and harmony. He has always in mind a peaceful State. Although he plans the education of a class of persons to defend the State in times of necessity, the soldiers occupy a position subordinate to the wise men. But Hitler always thinks of Germany as antagonistic to other nations and enjoins all Germans to "think with their blood." He subordinates the place of reason in life to will and emotion. He does not tolerate the idea of discovering truth by reason and speculation. He considers himself as having seized the truth once and for all. According to him intellectual training is a bar to national progress. "If the whole of our intellectual class," says Hitler, "had not been exclusively trained in high-class deportment and had thoroughly learned to Box instead there could have been no German revolution of bullies, deserters, and such like."¹⁶

This attitude is diametrically opposed to the very spirit of

¹⁶ *Mein Kampf*, p. 162.

Plato to whom reason is the central fact of the universe. The entire social world is governed by the *Idea of the Good* and is intelligible only in the light of that Idea. Moral action is action in accordance with ideas of right and good and the love of right and good is to be the sole motive of human will and action. The best life for man according to Plato is the rational life. "Realize the Good" simply means "Realise the reason in you." The Good is that which makes things intelligible, and the human mind intelligent. "It is that which imparts truth to the known and the power of knowing to the knower."¹⁷ By the side of this exalted vision of "the spectator of all time and all existence," the narrow nationalism of Hitler whose thoughts are limited to the span of a life and of one nation, pales into insignificance. Ethically, Platonism and Nazism are as far away from each other as they are separated in time.

LIBERTY OF THE INDIVIDUAL IN WAR TIME*

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1. Introduction.

Liberty of the individual even in peace time is not an absolute good. It is relative to (a) the true good of the individual and (b) the true good of society. Right against society is a contradiction in terms. The individual has rights only in relation to his place in society. Even over such an important right as the right to life, the individual has no absolute right. He has the right only in so far as he uses it in the interest of his own personal development as well as in the interest of society at large. In war time the liberty of the individual is relative to public safety and security.

Nobody expects the civil rights of the individual to be the same in war time as during peace. It is true that many of our civil liberties have been won bit by bit through long years of strenuous struggle. But our common instinct tells us that when the country is at war, our liberties have to be abridged if we are to survive. It is a matter of self-preservation. Even such a keen lover of individual liberty as Sir Norman Angell says: "Because we are all now in the firing line, martial law has become the civilian's law, the law of the land, and we accept it without demur. The right and common instinct of men prompts them to give unquestioning assent to this completely new order of things in which ancient and previous rights are put in cold storage."

All this does not mean that the civilian should keep his mouth shut and do exactly what the military authority or the executive bids him do. It has been rightly said that England's strength has been the preservation of the historic spirit of liberty, and that when this is gone, her glory vanishes. Therefore, while we freely grant that certain restrictions of civil liberties are inevitable in war time and that we cannot object to war legislation

and defence regulations on principle, we cannot surrender our rights altogether.

The easiest solution, but not the best, to the problem of individual liberty in war time is to hand ourselves over bodily to a dictator in the name of unity, discipline, and victory. But that way lies certain death. What we want is a combination of liberty and discipline. Liberty consists in obeying "a self-imposed imperative of duty." In the forcible words of Rousseau: "Obedience to a law which we prescribe to ourselves is liberty."

It is essential to preserve and protect our liberties in war time, just as much as during peace, for two main reasons: (1) for the sake of the individual and (2) for the sake of the State itself.

When individual liberty is gone, the mainspring to initiative, endeavour, and human progress is gone. Lord Farrington, the Treasurer of the National Council of Civil Liberties in England, is right when he says: "All governments, however well-intentioned, are prone, especially in war time, to trespass on our liberties. Once our liberties are lost we have lost all hopes of progress and political freedom."

Preservation of civil liberties in war time is even more essential for the sake of the State itself. It is often argued that a war cannot be conducted on democratic lines. This is simply not true. We are convinced that "the new and strange problems and difficulties brought about by war can best be solved by full and frank discussion through democratic organisations." This means that even in war time there should be a balanced and well-informed public opinion. Without it government is apt to become panicky and irresponsible, or altogether lethargic. Who knows that there may not have been a series of Norwegian fiascos, if not for the vigorous criticism in Parliament during last May resulting in a complete change of the British Government? Vigour and unity of command are no doubt essential for success in war. But these can only spring from effective consultation with the people and their elected representatives. The lack of this condition was undoubtedly one of the causes for the collapse of France in the present war. As soon as war began, socialists and communists were clapped in jail and there was no effective criticism of the policy of government. The Petain Government was suffering from a defeatist mentality and there was no one to bolster it up or provide an alternative government. There was at the same time a collapse of the civilian morale.

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In the last war grave errors were corrected and serious consequences were averted by means of vigorous public criticism. What we have a right to object to is mere carping or captious criticism. Prosecution of war to a successful issue renders necessary sober, well-informed, and constructive criticism. Even in war time government should hold its authority by the mandate of the people. Writing in February, 1940 H. G. Wells says: " . . . Let me underline one primary necessity for the most outspoken free discussion of the battling organisation and the crumbling institutions amidst which we lead our present uncomfortable and precarious lives. There must be no protection for leaders and organisations from the most searching criticism, on the plea that the country is at war. We must talk openly, widely, and plainly."

To this line of argument the executive in any country during a great emergency has a natural aversion. It hates trouble-makers and wants to get on with the job. It is so obsessed with the problems of the hour that it has not got the time or disposition to look at them dispassionately. Therefore, if the government is to save itself, it needs the refreshing criticism of the well-informed outsider who is not itching for a fight or is not anxious to make a martyr of himself.

Years ago, speaking in the House of Commons on the government's dislike of criticism in times of crisis, Sir Joseph Chamberlain spoke words of wisdom which have their force even to-day. He said: "Some honourable members have invented a convenient theory by which opposition is silenced in the presence of foreign complications. If we attempt discussion before war breaks out we are hampering the Government in negotiations and endangering peace. If we wait until the war is upon us, then it is said that in an unpatriotic way we are dividing the country in the presence of the enemy; while if we postpone discussion until the war is over we are told we are guilty of futile fault-finding and unnecessary retrospection. The thing in fact comes to this: that it is not the business of the House of Commons or the people to express an opinion on foreign affairs."

II. Acts and Regulations passed since the outbreak of the war.

Before the war broke out, the British Parliament passed the Emergency Powers (Defence) Act in August, 1939. It was rushed through in a single sitting. It gives the executive the power to ban public meetings, to prohibit propaganda, and to

suspend the *habeas corpus*. The Home Secretary is given power to make Regulations under this Act which have the force of law even before they undergo examination by Parliament. Members of either House may move the annulment of these Regulations within 28 parliamentary working days of their issue, but they cannot amend them. The most that they can do is to prevail upon the Home Secretary to re-draft particular regulations. This gives very wide powers to the executive and to the police working under its instructions. There is ample scope for the complete smothering of individual liberties. Any Act of Parliament may be amended, suspended, and applied with or without modification.

The powers under the Regulations are intended for use only in the interests of public safety, the defence of the realm, and the prosecution of the war. But the expressions used are so wide in their scope as to annul individual liberty altogether. They are too sweeping and have been abused by over-zealous officials. In the early months of the war police interference with meetings and legitimate propagandist activities increased considerably. The police resorted to methods of intimidation to suppress these activities by visits and warnings, by the confiscation of literature, and by imposing, without any authority, bans on meetings. There was a storm of protest in Parliament in a debate on October 31, 1939. Defence Regulation 89B, for instance, in its original form, made it an offence to spread any propaganda which might hinder the efficient prosecution of the war. This meant that any anti-government criticism was an offence. Under the fire of criticism this Regulation was redrafted to read that propaganda against the efficient prosecution of the war was an offence only if it was based on false statement, false document, or false report. Moreover, in its original form, the Regulation made no provision for the review of certain types of cases. But the House ruled that there ought to be a review in every case. Thus some of the objectionable features in the October Regulations were withdrawn.

In spite of these changes, the liberty of the individual is not altogether safe. It is contended by those who value their civil liberties that by a series of enactments a semi-Fascist machinery has been built up in England.

Further Regulations were laid down on May 9th which contain many objectionable features. According to the National Council of Civil Liberties, these Regulations penalise "the expression of political views and the conduct of political activities unknown since the days of Charles I and the Star Chamber." This is probably an exaggeration. Whatever that

may be, the three objectionable features of the May Regulations, as pointed out by the Council, are:

1. They penalise the expression of honest political opinion as distinct from the misstatement of facts.
2. They set up in effect a rigid control over printers and the press.
3. They are entirely contrary to the traditions and spirit of democracy in England.

These are said to be a fundamental attack on the whole structure of British civil liberties. It is no use pleading that they will be used with the utmost care and scrupulousness, because there are always over-zealous officials who lose their balance when drunk with power.

The conservative paper, "Evening Standard" has the following caustic criticism to offer of the way in which Defence Regulations are being administered. It writes: "What is this freedom that we fight to preserve? Defoe once said that in this England there were 40,000 stout fellows ready to fight to the death against Popery, without knowing whether Popery was a man or a horse. Are we in the same case fighting for freedom, yet without knowing whether freedom means a phrase in a peroration or a pint of beer in a pub? Our first war aim in this combat is to preserve these liberties in our own land. . . . Remember that Defence Regulations, stripping us of many of these rights, were introduced into the House of Commons on the plea of necessity, but were found under protest not to be necessary. That shows the kind of mind we have to fear for among our statesmen; there are people who know as little about freedom as some of Defoe's generation knew about Popery."

India. When war came neither the Central Assembly nor the Provinces were consulted. India was told that she was a belligerent. The same thing happened on June 11, 1940, when war with Italy was declared by Proclamation by the Viceroy. Such a keen student of Indian affairs as Edward Thompson, considers the non-consultation of India as the "worst blunder in imperial policy during this post-war era."

The Viceroy was given in advance at the outbreak of the war emergency powers. The Rules framed under the Defence of India Act go further than the English Regulations. In the judgment of the British National Council of Civil Liberties, the penalties provided under Indian Rules are, generally speaking,

higher than those for corresponding offences in England. The Governor-General's Ordinance allows sentence of death or of transportation for life for breaking any Defence Rule "with intent to wage war against His Majesty or to assist any State at war with His Majesty." The National Council of Civil Liberties fears that this power may be used to put down nationalist activity.

Certain other powers have been given to the Governor-General and the Governor of Burma. The House of Commons on June 26, 1940 passed all three readings of the bill introduced by Mr. Amery, the Secretary of State for India, delegating special emergency powers to the Governor-General to introduce compulsory service for military, and, in certain cases, for civil and industrial purposes, with the object of expanding India's war effort. The amendment gives the Governor-General the power to make appointments and amend Orders-in-Council and Rules without consulting authorities in Britain.

III. Where do our liberties stand to-day?

In spite of severe criticism of what some regard as repressive measures, the liberty of the individual is still respected both in England and India. This may not be because of the love of the executive for constitutional propriety, but because of a vigilant public opinion, ever watchful to see that there is no undue encroachment on individual liberty. Compared with repression in the enemy countries, repression in England is almost child's play. In Germany the usual remedies are summary execution and concentration camps. A German newspaper in 1936 wrote: "Concentration camps are no disgrace; on the contrary, they are an ornament to Kultur. Here neglected individuals are educated to real life with the firmest kindness!"

A. Conscientious Objectors. The way in which a government engaged in war treats conscientious objectors is an index to the degree of civilisation reached by it and its attachment or lack of attachment to the democratic principle. Many years ago J. S. Mill wrote: "If all mankind *minus* one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind." No country to-day can honestly claim that it follows J. S. Mill faithfully in war time. Yet the problem of the conscientious objectors has been handled more successfully in the present war than during the Great War. It is generally held

that the pacifist is entitled to hold his views, but not to undermine the nation's war effort. Due respect is shown to the rights of conscience. In Great Britain there are tribunals to consider applications from the conscientious objectors for exemption from military service. Upto the middle of February 1940, 7,544 applications were considered. Of these, 13 per cent were unconditionally exempted; 45 per cent exempted on condition that they fulfil a civilian function; 24 per cent given non-combatant military duties; and 18 per cent not accepted as conscientious objectors.

Some of the tribunals have been fair and broad-minded, but not all. There has been a growing intolerance towards the C.O.'s on the part of the public under the guise of patriotic sentiment. Local authorities and private firms have abused their powers by dismissing employees for opinions which in law they are entitled to hold. Bellicose members of town councils have made C.O.'s among their employees resign on the alleged ground of being negligent or unpunctual. Still more disquieting is the fact that groups of workers, disregarding the principles of freedom of opinion, have, in certain cases, raised an outcry leading to the victimisation of individuals.

Civil servants, as employees of the State, are in a particularly difficult position in war time. Those who have a conscientious objection to taking part in work connected with war are faced with dismissal. Others are penalised for their political opinion. Civil servants who joined the social and non-military departments have in some cases been transferred to the heavily expanded War departments. If they show an unwillingness to perform the new duties on account of conscientious objection, they have to resign. No appeal is allowed, as in the case of ordinary conscientious objectors. It is believed that by applying a policy of intelligent discrimination, these people could be used in other services.

At the Labour Conference in England in May last, Mr. D. N. Pritt, K. C., an executive member of the Conference, was given no chance to defend himself after the executive had expelled him for his advocacy of the Soviet case against Finland.

B. *Conscription* has been introduced in England and the allied countries. Although not a participant in the war, the U.S.A. has enacted conscription. There is conscription in England not only for military service, but also for industrial and technical services connected with the war.

Before August 30, 1939, the European Association of India opened a purely voluntary register, which was not comprehensive.

On August 30, Government introduced a compulsory registration scheme. Under the amendment to the Government of India Act passed on June 26, the Governor-General can enforce compulsory military service both on Indian and European British subjects, but so far there has been no need for compulsion. The enlistment has been voluntary. Under the amendment of June 26, the Governor-General can enforce compulsion for civil and industrial purposes. A certain number of skilled labourers and technicians have been drafted already. Their jobs are to be kept open for them when they return from war service, and there is to be no abridgement of all the privileges to which they are entitled—such as pension or provident fund, leave rules, etc.

The present war has witnessed not only conscription of men for the fighting services and for technical work, but also conscription of wealth. In May last an Act was passed by the British Parliament giving government complete control of all persons and property in the country. Under the Act the Government may

“Direct any person to perform any services required, the pay being ‘on the basis of the job’;

“Control all property, including land;

“Take over industrial establishments, controlling wages and profits, or ordering firms, if necessary, to continue at a loss;

“Control the finances of the country, including the banks.”

Commenting on this kind of conscription, competent observers have said that England has turned socialistic overnight. A question which may cause much trouble to politicians in the future is, if wealth can be conscripted for war purposes, why not also for peace purposes?

A further form of conscription in England to-day is the conscription of ordinary labour. Under the Emergency Powers Act a Labour Supply Board has been established. This Board is to work in close co-operation with the Trade Unions and Employers' Organisations. The Minister of Supply can compel firms to produce war material.

C. *Censorship*. Freedom of speech, writing, and publication constitute a group of rights which must be restricted in war time. Even unwittingly one may help the enemy or enemy agents, popularly known as the Fifth Columnists. In England people are warned against talking politics and military matters in public places or in public vehicles,

E. Trial according to due process of law. The suspension of the *Habeas Corpus* in both England and India is probably the biggest blow to the liberty of the individual. Under Regulation 18(B) prohibition, restriction, and detention orders may be made against suspected persons in regard to their employment and their connection with other persons, and in respect of their activities in disseminating news or propagating opinions. The Regulation may be applied on the mere suspicion of the Secretary of State, which in reality means the suspicion of the police. Advisory committees have been set up for hearing appeals, but the Secretary of State may disregard their advice. There is no appeal to a court of law against the arbitrary decision of the Secretary of State.

Search warrant may be issued if an offence against these Regulations is suspected. There is a provision for entering and searching premises, without a warrant, and the police are likely to take advantage of it. If the liberty of the individual is to be protected, it is necessary to insist that the police should have the order in writing from an officer not less than a superintendent in rank before doing it.

Captain Ramsay, Sir Oswald Mosley, etc., have been detained in England without trial on the ground that they were leading members of organisations which might be prejudicial to the security of the State. Their detention is for "custodial purposes only" and is made as little oppressive as possible. They are allowed to have money, supplement meals from outside, have liquor and smoke, and wear their own clothes.

Under the Defence of India Rules many are detained without any trial or even a definite charge being made against them. For sometime they were interned in their own villages, but afterwards in central jails. Several people in the Punjab, including members of the Legislature, have been kept under custody. S. C. Bose in Bengal was kept in custody for several weeks before he was tried. The kind of people interned, extermed, detained or imprisoned are labour leaders, trade unionists, kisans, Congressmen, national workers, etc.

F. Other Restrictive Measures. England has a Treachery Act which provides for death punishment for espionage, sabotage, etc. In a sensational spy case tried recently two were sentenced to ten and fourteen years penal servitude respectively. For obvious reasons there is rationing of different articles of food such as tea, butter, margarine, sugar, bacon, ham, and meat. From 1st October in England there has been a ban on sale of cream,

Government is allowed to billet both military and civil servants on the general public. Pacifists are not excluded from the application of a billeting order. A complaint of the Secretary of one of the civil service organisations in England is that 20,000 civil servants have been taken away from their homes and many of them billeted on people who may not want them and whose charges are rather high. It is significant that the complaint is not anything more serious. Another complaint is that these civil servants who have been taken away from their homes are allowed to visit their families at public expense only twice a year!

Trading with enemy firms is prohibited both in England and India. It is an offence punishable with imprisonment or fine. The "Navicert" system has been introduced, providing for a sort of commercial passport for the consignment so that there will be the least possible delay at the Contraband Control base itself.

To prevent profiteering an Excess Profits Bill has been enacted in India, which imposes a tax of 50 per cent of the excess of business profits made after the 1st of April 1939 over "standard profits." A similar measure is in operation in England too.

Voluntary organisations such as the Khaksars, Congress Civic Guards, and Muslim National Guard and Volunteer Corps have been prohibited from wearing military uniforms, practising military drill, possessing weapons of attack, etc. This is a wise precaution when it is remembered that it is on the backs of private armies that the Nazis rose to power in Germany.

In the districts and provinces of India Civic Guards have been formed, affiliated to the regular police. Their tasks are the maintenance of public order, air-raid precautions, anti-sabotage, and other important aspects of civil defence. It is feared by some that these Civic Guards might be used against nationalist activities and foment communal feelings.

In England ample provision has been made for air-raid shelter. Owners of commercial buildings are required to provide shelters for people working in them. Private individuals are not allowed to erect defence work without consulting military authorities.

The curfew order is in force in England with reference to aliens. In the early months of the war these strangers within the gate were indiscriminately detained. But later on the treatment has been more considerate. Genuine refugees have been released, but are not allowed to own bicycles, motor vehicles, sea-going craft or aircraft. Certain refugees are asked to report themselves

at the nearest police station. At the closing sitting of Parliament not long ago when Hitler was bombing London, the House was discussing the question of a more merciful treatment of aliens, prisoners of war, and the like, demonstrating thereby that in Great Britain even enemy citizens have rights.

Provision is made for the punishment of scaremongers, astrologers who spread alarming news, and money-lenders, brokers, and others who charge a commission for cashing a note. Those who hoard coins are punished.

Severe restrictions have been placed on lighting arrangements in seaport towns such as Madras so that they may not be easily visible from the sea or air.

Measures have been enacted against anti-war propaganda, and the claim of Mahatma Gandhi to conduct such propaganda has been refused.

Government has the right to exercise control over sale of articles. This it has not done to any great extent except, perhaps, as regards petrol.

IV. Conclusion.

A survey of recent events in England and India makes it clear that there have been serious restrictions on the liberty of the individual. Some of them are justifiable because of the kind of opponent we have to encounter, whose method is to sow discord and cause distmity in the country which he attacks so as to make it bring about its own destruction. Some of the Regulations, however, are too strict and have been drawn up rather clumsily. Recent Rules imposing severe censorship on the Press, which have happily been withdrawn under the protest of newspaper men, are a case in point. The Government overshot the mark in prohibiting the publication of news which may be interpreted in a round-about and indirect manner as interfering with war propaganda.

Notwithstanding such Rules and Regulations, it must be admitted that repression in England and India is nothing when compared with the situation in Germany and the enemy-occupied countries. All this does not mean that we can afford to be indifferent towards the inroads upon the civil rights of the individual.

As has been said repeatedly, the price of liberty is eternal vigilance. We in India cannot be too grateful to the publishers of responsible newspapers in India, who have succeeded in making the Government rescind its order by their manly and

reasonable protest. It is only to the extent to which citizens demand the right to sober, well-informed, and constructive criticism that the war can be won and the liberties of the citizens kept intact. Even if the war is won by a systematic policy of repression, we shall lose the peace. We shall lose our very souls in the undertaking even as Germany has lost her soul.

In the preservation and protection of civil liberties, bodies such as the Civil Liberties Unions, Trade Unions, Businessmen's Organisations, Citizens' Clubs, Universities, Bar Councils, and Courts of Law have a vital and urgent part to play.

CUMULATIVE VOTING AND THE POONA PACT*¹

BY

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The Poona Pact is a compromise arrived at between the advocates of joint electorates, and the advocates of separate electorates. Under the Poona Pact scheme, the system of primary elections is introduced in order to ensure that the persons chosen to fill the reserved Depressed Class seats at the final elections do really command the confidence of a good section of their community. It is a concession made to the advocates of separate electorates. Any measure which hampers the expression of the representative character of the candidates returned by the primary electors is against the spirit of the Pact. The object of introducing joint electorates, at the general elections, whereby the Depressed Class and the Caste Hindu electors vote together, is to bring about a closer association between the two communities. It is a concession made to the believers in joint electorates. Any measure which tends to encourage separatist feelings and which is inimical to the expression of the spirit of "combination and mutual exchange" is, again, opposed to the spirit of the Pact. The purpose of this paper is to inquire whether cumulative voting, which is introduced into all multi-member constituencies of the Provincial Legislatures,² is in consonance with the spirit of the Pact, and to suggest remedies to carry out better the object which the authors of the Pact had in view.

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

¹ In Madras, cumulative voting is recently abolished, and the distributive system of voting is introduced. Voting in two constituencies is by the method of single non-transferable vote.

² *The Indian Delimitation Committee Report*, Vol. I, pp. 19-20.

Why Cumulative Voting was Introduced: Arguments Advanced in its Favour by the Indian Delimitation Committee.

The Indian Delimitation Committee considered three alternative methods:

- (1) the distributive vote, free or compulsory;
- (2) the single non-transferable vote; and
- (3) the cumulative vote.

The distributive system of voting in its compulsory form, they thought, would in practice emphasise the separate character of the representation accorded to the Caste Hindus and the Depressed Classes; for, the votes would be divided according to the caste of the elector between the Caste Hindu and the Scheduled Caste candidates. Although it would permit the distribution of votes among the Scheduled Caste candidates or the Caste Hindu candidates, where there was a multiplicity of candidates belonging to the same community, they did not regard it as probable that there would be a multiplicity of Scheduled Class candidates, except possibly in Bengal. They thought that, under Indian conditions, voting could not be on any line other than that suggested by them. Regarding the distributive vote in its non-compulsory form, which was in force in Madras under the Montagu-Chelmsford Reforms, they merely observed that in their opinion any advantage it might have was more than outweighed by the very definite advantages they saw in the adoption of the cumulative system of voting.³ In respect of the method of single non-transferable vote, they observed that although it was the simplest form of voting, particularly suited to an illiterate electorate, they could not recommend it; for, it was not compatible with the spirit of the Poona Pact.⁴ Under the system, voters could only vote for one candidate, Caste Hindu or Scheduled Caste; and there would be no room for the expression of the spirit of "combination and mutual exchange" which constituted the very essence of the Pact.⁵ The Committee, after rejecting the method of distributive vote and single non-transferable vote, recommended that in the case of multi-member

³ *Idem.*

⁴ *Idem.* pp. 102 and 106.

⁵ *Idem.* pp. 20-21. The Indian Franchise Committee, also expressed a preference to the cumulative system of voting than to any form of limited vote. *The Indian Franchise Committee Report*, Vol. I, p. 146.

Province.	Total No. of voters who polled in the constituencies.	No. of votes polled by the successful Caste Hindu candidates.	Ratio of 3 to 2.	No. of votes polled by the successful Scheduled Caste candidates.	Ratio of 5 to 2.
1	2	3	4	5	6
Madras (23 out of 30 reserved constituencies).	731,056	789,737	54.0%	228,414	15.6%
Bihar (4 out of 15 reserved constituencies).	76,312	110,093	62.1%	16,639	10.9%
C. P. (6 out of 20 reserved constituencies).	100,263	124,930	62.2%	21,878	10.9%
Orissa. (4 out of 6 reserved constituencies.)	39,488	53,520	67.7%	7,398	9.3%

Note.—Each voter has two votes. In arriving at the percentage of votes polled by the successful Caste Hindu and the Scheduled Caste candidates to the total votes cast (columns 4 and 6) it has been assumed that both the votes were actually cast. The error, if any, would be negligible.

The Indian Delimitation Committee objected to the distributive system of voting in its compulsory form on the ground that, under Indian conditions of voting, the electors would be compelled to distribute their votes between the Caste Hindu and the Depressed Class candidates. This enforced co-operation between the two castes would, they were afraid, emphasise the communal character of the elections. But is it any better under the cumulative system of voting? It must be noted that cumulative voting has encouraged communal politics; even the political parties are compelled to indulge in activities which tend to emphasise in a vicious form the communal character of the elections. Thus, it is clear that the cumulative system of voting in no way helps the development of the spirit of co-operation between the two castes. On the other hand, in recommending the

system for adoption, the Indian Delimitation Committee could not have done worse if they had set themselves to the task of countering the Poona Pact instead of trying to give effect to it.

Adoption of Distributive Vote Suggested.

In view of these drawbacks, the cumulative system of voting might be given up in constituencies with reserved seats, and the distributive system, in its free or compulsory form, introduced. The change would bring the Caste Hindus and the Scheduled Classes closer. The elections of purely communal-minded candidates would be difficult, and the organisation of parties on Caste lines would not be so easy. The way in which the distributive system of voting brings about the closer association of the two castes, and induces the electors to shed their communal outlook, is of very great importance. Under this system, the parties contesting both the general and the reserved seats must see that both their nominees, Caste Hindu and Scheduled Caste, receive equal support from their party men. For instance, an elector is given two votes, and he cannot give more than one vote to any candidate. A caste Hindu elector can give only one vote to the Caste Hindu candidate who represents the party he favours. He has another vote in his power to give. He can give it either to the Scheduled Caste candidate nominated by the party he favours, or, if his communal sympathies are more powerful than his attachment to the party, to a Caste Hindu candidate not belonging to his party. The leaders of the party, however, would use all their influence with him to give up his communal outlook and vote for the Scheduled Caste candidate and not go outside the party.

Certain Possible Objections Answered.

A change to the distributive system of voting may be objected to on the ground that it deprives the Depressed Class community of the protection that the cumulative system of voting offers. The constitution, it may be pointed out, has provided not only reserved seats for the Depressed Classes, but has also instituted a system of primary elections to ensure the representative character of the members returned on their behalf. There is no justification whatsoever for providing an additional safeguard in the form of the cumulative vote. A further objection that may be raised against the distributive system of voting is that it unduly favours the winning party and gives it an exaggerated

majority; that it is more inimical to the interests of minority parties than even the system of single-member constituencies. This defect can, however, be overlooked. Separate electorates, reserved seats, weightage and primary elections form so many hurdles; and parties in India have no easy time of it in jumping over them and securing a working majority in the Chambers. There is no room for the fear that in India the distributive system of voting will lead to the domination of a single party.

NEUTRALITY AND THE LAW OF NEUTRALITY IN RECENT TIMES

BY

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I. Struggle for the Legal Status of Neutrality Prior to 1914.

The Origin of Neutrality.

Recourse to arms as the final arbiter in disputes between groups of men is, perhaps, as old as the history of mankind. The reason for seeking settlement by war was not the supposed innate love of fighting in man, but the want of recognised judicial authority as a referee in inter-communal disputes. If any two groups must settle their differences by war, there were others geographically not far from them who would have nothing to do with their fight and would remain 'neuter' or 'intermediaries' as was the word used in early records. Obviously the 'neuter' was a nuisance. In the internal affairs of any particular group no tolerance could be shown to the 'neuter.' "Alaya, a military man, seems to have had little consideration for the neutral attitude in any case." He refers approvingly to the ancient Greek law, according to which "whenever a sedition occurred and the people were split into two opposed factions anyone who stood neutral should be deprived of home and fatherland and fortune and be banished from the country, an exile."¹ But in the conflict between two group-communities or nations, the neutral group could, possibly, even by reference to reason or principle, claim abstention from involvement in the struggle on the plea that there was neither a recognised code of inter-communal conduct nor an international judge to give guidance and award in the dispute. The wrong or right, the just or unjust cause in the dispute was not a point the neutral group could easily determine: therefore its own 'interest' might well be its best guide. In this state of things the 'neutral' must struggle for the status of *being let alone* by the contending belligerents, when either or both of them would make exactions from him which, if complied with, would mean no abstention from the conflict. On the other hand, in the orderly

¹ *Neutrality—The Origins*—by Jessup and Deak, p. 9.

world of the ancient Roman Empire, Pax Romana made no allowance for a neutral group within the fold of the Empire, as there was little chance for inter-group conflict by arms going unchallenged by the supreme power. Thus, in its origin, neutrality sought a status for itself only in a state of war or anticipation of war. It was contingent on war. Neutrality is not, as some writers make out, a state of peace *per se*. Eliminate war and Neutrality vanishes. As the idea or operation of Neutrality is linked with all that War implies, the status of Neutrality is simply the product of *compromise* between those who must have war and those who would rather abstain from war and not be dragged into participation in the war. "It is halfway between war and peace."² The belligerent could not afford to admit any impediment to crush his enemy; and the neutral would not surrender his old ways of peaceful give-and-take with both the belligerents, if possible. Finally the relative strength of the neutral and belligerent determined the relationship between the two, at first expressed in *treaties* and in due course, aided by the learning of the jurists, philosophers and theologians, this compromise was elevated to a legal status of Neutrality embodied in the Law of Neutrality as a sequel of the Law of War in the International Code of Laws. "The development of these 'laws of war' as between the belligerents themselves was, moreover, greatly furthered by the more effective assertion by third parties of their rights of neutrality."³ "Through the influence of such treaties, the difference between real and feigned impartiality of third States during war became recognised; and neutrality, as an institution of International Law, gradually developed during the 16th century."⁴ If war in itself mere brutal slaughter—gets elevated to a recognised juridical position in international relations, Neutrality, *i.e.*, abstention from war, possibly due to weakness, at best due to selfish interest—, was not slow to assert and win for itself a juridical status in international conduct. That is why neutrality may be considered as the product of international anarchy. "Neutrality was born and was developed as a product of international anarchy, in a world where States pretended to exercise, without the slightest control, an unlimited sovereign power; where they had the absolute right of making war; where they knew no regular system of justice; where the inter-dependence of their interests could only be conceived as an

² *Politis*, p. 3.

³ *International Law*—by C. G. Fenwick, p. 444.

⁴ *International Law*—by L. Oppenheim, Vol. II, p. 493.

academic question; and where, the community composed of States was devoid of all organization."⁵ Ordinarily, force would be stopped by the joining of all the rest against the violent aggressor. With that idea in view Pierre Dubois's plan for perpetual peace has no room for neutrality even so early as in the 14th century. As stated above, war forced itself on mankind as the final arbiter in inter-group disputes for want of an international judicial tribunal and an international code of law enforced by a supreme body. War carried with itself the sovereign right to be a judge in one's own cause: war implied 'no third party judgement': the party out for war is 'law unto itself'—is 'sovereign.' Sovereignty, thus conveys the idea of the right of war and the idea of the right of the neutrality for third party.

How the Law of Neutrality was established in the International Code of Laws.

In Europe the 16th and 17th centuries saw the formation of modern States based on the practice of unlimited sovereignty. The sovereign-state knew no power above it: warfare among States was a frequent phenomenon: and any two belligerents would fight anywhere they met without regard for the inviolability of the territory of the third party who had no concern with their war. In the 17th century these violations occurred frequently. "Thus in 1604 James I of England proclaimed the inviolability of the seas bordering upon his kingdom which were called the 'King's Chambers.' Nevertheless the belligerents continued to engage in hostilities there. They even continued to carry them on within the port of Dover."⁶ "On March 1, 1605, James I of England issued a proclamation which would today be styled a proclamation of neutrality. England was then at peace while Spain and the United Provinces were at war. The King forbade hostilities in any of his ports or harbours or other maritime areas "as may bee reasonable construed to bee within" his dominion. He expressly includes conflicts between rival warships, between warships and merchantmen and between two merchantmen. Further, belligerent warships were to be prevented from hovering off the coasts for the purpose of making prizes."⁷ "February 8, 1668, Charles II of England issued his proclamation of Neutrality which followed closely the earlier proclamation of James I for protecting English waters against the belligerent action. This

⁵ *Neutrality and Peace*—by Nicolas Politis, p. xii.

⁶ *Neutrality and Peace*—N. Politis, p. 22.

⁷ *Neutrality—The Origins*—by Jessup and Deak, p. 250.

was in accordance with the usual British theory.”⁸ The only way that the third party, the neutral, could be sure of freedom from this kind of encroachment was by treaty with possible belligerents. In Central Europe the very word for neutrality was synonymous with security. Vattel, writing in the latter part of the 18th century, recommended the use of treaties to ensure security against the violability of one’s territory. The passage of troops on land through the neutral territory was a more difficult matter to control,—particularly in the peculiar political condition of Germany in the 17th and 18th centuries. In that connection, the following two quotations may be noted:—Tilly said to Maurice of Hesse in 1623, “No Neutrality; this is a question of obedience,” or as Gustavus Adolphus to the Elector of Brandenburg William Frederick, “But what is Neutrality? I don’t understand it. It means nothing.”⁹ The concept of neutrality, however, had found even in the middle ages a most useful ally in the growth of international commerce on the sea. The Mediterranean Sea and the Baltics were the chief centres for maritime trade which the belligerents could not afford to go without, and which could not be secured without the co-operation and good-will of neutrals. Both the belligerents would offer to the neutrals easy terms for fear of the opponent having the best of it. Neutral maritime trade thus earned a distinct juridical place in international relations. Three landmarks may be noticed in that connection:—

- (a) *Consolato del Mare* issued from Barcelona in the 14th century admitting neutral private property completely immune from confiscation by a belligerent, even though it may be found in the vessel belonging to the enemy.
- (b) The Treaty of Utrecht accords recognition of the principle that a neutral flag covers (protects) enemy merchandise.
- (c) The Declaration of Paris in 1856 not only admits the principle of ‘free ships make free goods’ but also guarantees immunity to neutral cargo and neutral passengers though found in enemy bottoms captured or attacked by the successful belligerent. Obviously nothing could be better for neutral commerce; and the Hague Conferences of 1897

⁸ *Neutrality—the Origins*—by Jessup and Deak, p. 255.

⁹ *Neutrality and Peace*—by N. Politis, p. 13.

and 1907 gave to the neutral maritime rights a definite juridical position in the conventions passed at those conferences. Of the thirteen conventions drawn up in 1907 by the Second Hague Peace Conference, one (5th) treated of land neutrality, and four others (the 8th, 11th, 12th and 13th) of maritime neutrality. Further in the 8th convention it laid down a new rule that the laying of mines ‘for the sole object of intercepting commercial shipping’ off the coasts and ports of the enemy was forbidden; and in the 12th convention, provided for the establishment of an international prize court to decide on appeals from the decisions of the courts of belligerent captors of neutral vessels. There was, of course, a fly in the ointment. The neutrals were not supposed to carry contrabands of war (i.e., prohibited articles the import of which would add to the fighting strength of the belligerent) except at the risk of seizure of those goods, if the vessels carrying those goods were captured on the sea by the belligerent who would not let the enemy have the benefit of those goods: and the list of contrabands of war, at no stage of international relations, reached finality. Again the *laws of belligerency* had also, in due course, recognised the right of *blockade* allowed to the belligerent with a view to prevent egress and ingress of the port or the coastline blockaded, the Declaration of Paris (1856) however entering a caveat that that blockade alone was legally binding on the neutrals which could really be considered effective, i.e., the naval power of the blockading belligerent was such as to prevent communications by sea of the blockaded area with the rest of the world. This would imply real strong navy operating against a reasonably limited area for the purpose of what may truly become an effective blockade of the enemy coastline. We shall see how both these elusive factors of contraband and blockade rendered extremely elastic in the hands of belligerents aided by new weapons of war made the position of neutrals uncomfortable in the World War of 1914—18. Attempts at clarifying and to

some extent limiting the operation of the law of Contrabands and Blockade were made at the London Conference of 1908: but the Declaration of London (1908-9) accepted by the Conference was opposed by the British House of Lords itself and did not receive the necessary ratification of various governments to enable it to rank among the juridical documents incorporated in International Law. With all that, Neutrality and Law of Neutrality had reached their apogee by the beginning of the 20th century. Like all juridical acts, Neutrality had its rights and duties clearly defined in law: and among others, the inviolability of the neutrals' territory while recognised as a right of neutral which the belligerent was expected to respect was also emphasised as a duty of the neutral which he was required to fulfil even by using force against the belligerent; and the trespass of the belligerent for hostile purposes directed against his enemy in neutral territory or territorial waters was expected to result normally in the internment of the fighting units of the belligerent. The Law of Neutrality thus acquired its own legal status side by side with the Law of War,—total and unimpeachable impartiality of the neutral to both parties involved in belligerency, being the *sine qua non* of the Neutrality status achieved by the beginning of the 20th century. This is what most writers on International Law call traditional or Classical neutrality.

The struggle for this juridical status was long and arduous. The belligerent was on the offensive and the neutral was on the defensive. European and American History of the 18th century bristles with incidents relating to this struggle. Every now and then the neutral, though pacific, had to stand up with his vigorous protest against the high-handed behaviour of the belligerent. The maritime field offered innumerable instances of this frequent rule (b) and the belligerent, if strong on the sea, gave ceaseless provocation, perhaps justifiable from his point of view that he must make the fullest use of his strong weapon to bring about the surrender of his enemy by drying up his sources of supply from the outside world. Thus England at war with France in the early part of the 18th century impressed the cargo and the boats of neutral Prussia—a sore-point with William I and Frederick the

Great—, which would not for a long time let Prussia entertain the idea of alliance with England. The famous Rule of 1756 was imposed by England, preventing France from getting supplies from the French Colonies in the West Indies through the agency of neutral Holland on the plea that neutrals could not claim the right of carrying that trade during war which had been forbidden them in peace-time. (According to the mercantilist idea of that age, France had rigidly retained in her own hands the monopoly of trade with her Colonies, and Holland had no share in it.) George III hired mercenaries from the neutral German State of Hesse to fight against his own subjects in America during the war of American Independence: it shocked the conscience of the world: and the ruler of Hesse goes down in history as the broker in human flesh. When in 1793 the French Revolutionary war started, the French ambassador Genet taking advantage of the sympathy prevailing in the United States of America on behalf of Republican France attempted enlistment of privateers in America to work for France against England, Austria and Prussia. President Washington forthwith put down this activity of the agents of France in neutral United States of America and had Genet removed from America. By the Act of 1794 no American citizen could be enlisted in the army or a privateer engaged in a foreign war. The Foreign Enlistment Act of 1819 passed by England forbidding recruitment of armies for purposes of wars in which the Government of England had remained neutral is supposed to be based on president Washington's honest upholding of neutrals' duties. When again in the course of the prolonged Anglo-French War (1793—1815) the legitimate trade of the United States of America with France and the Northern Countries of Europe was interfered with by the arbitrary maritime policy of England, the settlement of the claims of both sides against each other was done by Jay's Treaty of 1794. "Great Britain offered compensation for damage done to American shipping under the harsh Orders in Council of 1793." "Contraband was more closely defined. It was agreed that enemy property, but enemy property only, might be taken from neutral ships in time of war: the United States hereby abandoning the principle of "free ships, free goods." There were other more detailed clauses dealing with the problems of neutrality, capture and the exercise of sea power. Finally in the event of war between the Contracting Parties the property of individuals was not to be confiscated."¹⁰

¹⁰ *The Cambridge History of British Foreign Policy*, Vol. I (1783—1815), pp. 156-157.

But when British high-handedness was carried even to the length of forcibly impressing United States sailors for service in British Navy, the United States had to express its indignation by declaring war against England in 1812. The United States' contribution to the upholding of the *rights* of Neutrals accompanying its rigid enforcement of the *duties* of Neutrals went a long way towards elevating the status of neutrality and earning for it a respectable juridical place in International Law. The armed neutrality of the North (1780 and again 1801) led by Russia as a protest against England's interference with the trade of the Neutrals is a further illustration of the struggle that Neutrals had to put forth from time to time to vindicate the right of legitimate peaceful trade unaffected by the belligerency of a number of States.

While this 'classical,' 'traditional' Neutrality took its stand on 'impartiality' and equal treatment to both parties in the war as something incumbent on *governments* of neutral powers, the position of citizens of neutral States was not affected by commitments of neutrality issued by their governments which declined to interfere with the liberty of their subjects in forming and expressing opinions about the wrong or right, just or unjust, cause of one or other of the belligerents. The legal status achieved by Neutrality up to the beginning of the 20th century imposed two restrictions on neutrals:—(a) Repressing war was no concern of neutrals, (b) to deliver judgment on the just or unjust cause was also not their business. This legal status was thus secured at a considerable sacrifice of the cause of civilization. This stands in marked contrast to the thought of three leading figures of medieval and early modern times. Vitoria of the 14th century, Gentilis of the 16th century and Grotius of the 17th century expressly advocated departures from rigid 'impartiality' in favour of the 'just' belligerent and against the violence of the aggressor whose crime was considered 'unjust.' The moral side as contrasted with the material carried weight with them as may be seen from the following extracts¹¹:—"Vitoria insisted not only that "the laws and constitutions of princes are binding in such a way as to render transgressors guilty in the court of conscience," but also that king and legislators are bound by the laws.

It is possible, perhaps unfortunately, for the human mind to conceive of a particular State as an entity isolated from other States. But such a fanciful conception found no place among

¹¹ *Law, the State, and the International Community*, by J. B. Scott, pp. 322-23, Vol. I. (These extracts are taken from this book.)

Vitoria's political and international doctrines. It was obvious to him that nations, large and small, must have relations one with another, and he therefore thought of them as constituting a society of States, an international community which existed because of the existence of the States. And just as a State possessed the power to make laws for the government and well-being of its citizens, so this international commonwealth possessed, in Vitoria's opinion, a right to legislate for the good of society as a whole. His views on this subject, which is as important in our day as it was in his, are expressed with clearness and power:

International law has not only the force of a pact and agreement among men, but also the force of a law; for the world as a whole, being in a way one single State, has the power to create laws that are just and fitting for all persons, as are the rules of international law. Consequently it is clear that they who violate these international rules, whether in peace or in war, commit a mortal sin; moreover, in the gravest matters, such as the violability of ambassadors it is not permissible for one country to refuse to be bound by international law, the latter having been established by the authority of the whole world.

This is Vitoria's view of an organized world. It is the view of many today whose ideal may be termed the organic conception of the international community which looks towards a federation of nations.

It should be said in conclusion that Vitoria, a man of peace, admitted and faced squarely the fact of war. With him, however, as with the schoolmen generally, war was permissible only because there was no court of the nations to which resort could be had for the redress of a violation of a rule of international law. St. Augustine's definition of a just cause of war was adopted by Vitoria and thus stated by him: "There is a single and only just cause for commencing a war, namely, a wrong received."

Gentili declares that "the philosophy of war belongs to that great community formed by the entire world and the whole human race." And if a war against pirates justly calls all men to arms because of love for our neighbour and desire to live in peace, so also do the general violation of the common law of humanity and a wrong done to mankind. Piracy is contrary to the law of nations and the league of human society. This statement might be termed as anticipation as well as a prophecy of an international community unified by the bonds of law. "War should be made against pirates by all men," Gentili concludes, "because in the violation of that law we are all injured, and individuals in turn can find their personal rights violated."

Grotius, as an internationally minded man—for at an early age he was already an internationalist and thoroughly grounded in the rules and practice of international law—looked to an international settlement if national agencies and diplomatic procedure should fail in the adjustment of controversies between States. Invoking the practices of the past in support of this view, he declares:—

“In ancient times among the more civilized peoples it was held to be the greatest of all crimes to make war upon those who were willing to submit to arbitration the settlement of their difficulties; but against those who declined so fair an offer of all others turned, and with their combined resources overwhelmed them, not as enemies of any one nation, but as enemies of them all alike. So for this very object we see that treaties are made and arbiters appointed.”

Here Grotius reveals to us his conception of the neighbourly standard which should prevail between nations, and of the sanction to be applied against aggressors.¹²

Vattel at the end of the 18th century pronounced in favour of ‘impartiality’; but, again, the jurists of the 19th century, notably Lorimer and Westlake of England, could not endorse that view.

II. Neutrality Under Severe Trial: Neutrals Must Organise for Peace.

About the end of the 19th and beginning of the 20th century Neutrality had attained a triumphant position in International Law. It looked as if War itself would be reduced almost to nullity. Bluntschli expressed this idea by saying that “the dangers of war are limited to the extent that the rights of neutrals are increased. When neutral commerce came to be safeguarded by Law and could never be hampered by belligerent necessity, it might well be that the belligerents must fight only in a battle of their warships.”¹³ Actually the American Institution of International Law started making an attempt at the codification of the law of maritime Neutrality fully providing for the fullest ‘freedom of the seas’ for the neutrals. That, of course, was a purely academic pursuit which ended in the academy of legal studies. But the Hague Conventions supplemented by the Declaration of London (1908-9) had, in the eye of the internationalist

¹² *Law, the State and the International Community*—Scott, pp. 370 and 380 and p. 530, Vol. I.

¹³ *Neutrality and Peace*, by N. Politis, p. 30.

—whether jurist or statesman, accorded to neutrality quite an unchallenged position. New developments as regards the necessities of war were, however, already clearly discernible after the Franco-Prussian War of 1870-71. War was coming to be an intensely national affair concerning the whole population of the country and demanding the absorption of the entire energy of the nation. This might mean any cataclysm for the world if great powers came to be involved in belligerency. What had neutrality achieved for its juridical status? Just a negative aspect,—not as a symbol of peace. It must simply abstain from war and carry out its obligations by a rigid observance of impartiality and holding its tongue as regards the justice or otherwise of the cause of any belligerent. While the economic interdependence of the world was making everybody aware of the havoc a general war backed by intense nationalism would cause which even the neutrals could not escape, the old canonistic view about the just and unjust war so ably expressed by Vitoria, Gentilis and Grotius three or four centuries ago now gathered a fresh momentum. To face the unjust aggressor, the united action of the rest was suggested. As war was intolerable plague, and peace the normal order of the day, the Neutrals’ position was not that of simple abstention, but co-operation in bringing the disturber of order to book and helping the victim of the aggressor. Vitoria, Gentilis and Grotius had, in the state of the world of those days, no means for enforcing this healthy remedy or for even determining who the aggressor was. Secretary Bryan of the United States of America put forth his plan for conciliation in 1913 and gave a handy clue to finding the aggressor: ‘He who did not come to the Conciliation Commission.’ In July 1914 a Dutch Commission started work on the same basis and the savants of Paris got busily engaged in unearthing the work of old medieval authors who had made valuable contribution towards the creation of world order based on justice. J. B. Scott of United States of America supported by Carnegie Endowment undertook to bring out the collection of the Classics of international law,—all translated in English with a view to push forward the ideal of *Justice* as an essential point qualifying Neutrality. Neutrality must be transformed: and the Neutral’s duty of *mediation* as indicated in Hague Conventions (articles 3 and 27 of 1899 Hague Conference, and articles 3 and 48 of 1907 Hague Conference) came in for deep cogitation at the hands of jurists and statesmen as a necessary step towards international solidarity and co-operation. “In 1904, Professor Pillet of France recommended that Neutrals organise in order

that their collective judgment might act as a check upon wars of aggression." The neutrals by uniting might block an unjust war. In his message of December 2, 1902, the President of the United States, Theodore Roosevelt, was able to declare that "More and more the increasing interdependence and complexity of international political and economical relations render it incumbent on all civilized and orderly powers to insist on the proper policing of the world."

Some years later in 1910, in an address before the Nobel Committee of the Norwegian Parliament, Theodore Roosevelt, who had received the Nobel Peace Prize in 1906, further developed his thought by saying that "it would be a master stroke if those great powers honestly bent on peace would form a League of Peace, not only to keep the peace among themselves, but to prevent, by force if necessary, its being broken by others."¹⁴ In the same spirit Mr. Carnegie remarked in 1907 that "if the nations would only agree to cut off all their business relations with a power which had violated the peace, this sanction would probably be as effective for the establishment of order as an international police force."

At the time of the dedication of the Hague Peace Palace in 1913, Mr. Carnegie asked that a league be formed to take action against every State which might seek to break the peace as a result of ambition.¹⁵ Referring to the obligations of the neutral states, the Swiss author Nippold makes the following weighty observation:—

"To the aid of party initiative comes the initiative of the neutrals or of the international community. It can be shown by the present law of the Hague Convention that neutral States already have a legal title to this method. The first Hague Convention recognizes the principle that neutral powers have a right to work to the end that use be made of international procedure. Attention need only be called to articles 1 and 3, as well as article 48 of the Convention. In the last article mentioned, this principle has even come to be regarded as a 'moral duty.' It goes without saying that the recognition of this principle is already of the greatest significance for the future formative possibilities of international law. I have called the creation of such a general legal duty—the remodelling of articles 1 and 3 into a real legal obligation—the greatest legal progress that the Hague Convention could bring about in a long time. Inter-

¹⁴ *Neutrality and Peace*—by N. Politis, p. 38.

¹⁵ *Neutrality and Peace*—by N. Politis, p. 39.

national solidarity could scarcely better authenticate itself than in such peace-bringing activity on the part of neutrals; and in the more decided accentuation of solidarity, in international disputes as well lies the way that the development of the international legal order has to take. Also it may be said that thus far there is legally no reason why such a progress should be not attainable, since neutrals by such reference only remind the opposing parties of a duty which already exists. In many a case of procedure it might be decidedly necessary to place the centre of gravity on the initiative of neutrals and not in the party initiative; this is especially so in mediation. One can therefore say that a more extensive development of the initiative of neutral states in the peaceful settlement of international disputes is likewise one of the main problems in the future progress of international law."¹⁶

III. The World War "Reduced Neutral Rights to Crumbs."

The accumulated treasure of the Juridical rights neutrals gathered in the structure of international law was, in no time, broken into by the World War of 1914. The very fundamental basis of the neutral rights—the inviolability of neutral territory and the sanctity of neutral flag on the seas—were ruthlessly disregarded by the belligerents. These two had been the accepted rules governing neutrality till that war broke out. If these fundamental rules were frequently violated, to what lengths may not the exceptions to these rules, viz., the laws of contraband, blockade, continuous voyage, angary etc., etc., be also carried? Both parties in the war in their attempt to crush the opponents by cutting them off from world supply of essential commodities suffocated, nay strangled, the economic life of the neutrals. It will not be out of place to give a few details to illustrate this point. (a) Contrabands:—The unratified Declaration of London (1908-9) had imposed restrictions and limitations on the belligerents' rights of blockade and contraband. The greatest neutral power—the United States of America—asked for the acceptance of this Declaration as soon as the war was declared. The Central Powers expressed willingness, provided their opponents did the same. England refused: and so France. The Entente powers forthwith enlarged the list of articles coming under contraband raising the number to 170 (British memorandum of

¹⁶ *Development of International Law after the World War*—by O. Nippold, pp. 19-20.

April 24, 1916).¹⁷ Under the international law as known up to 1914, commodities had been divided into three classes (1) Contrabands, *i.e.*, absolutely prohibited, *e.g.*, arms, ammunition and all materials for the use of the fighting forces; (2) conditional contrabands, *i.e.*, articles used both for war and peace purposes, and therefore subject to scrutiny by the belligerent whether or not to be made contraband according to changing methods of war; (3) non-contraband, *i.e.*, mostly articles of luxury or confined to the peaceful pursuit of any nation. Raw cotton, for instance, was never a contraband: but it became a subject of acrimonious diplomatic correspondence between the United States of America and England when the latter proposed to make it contraband: for the export of raw cotton to the Central Powers was a matter of sheer existence for the United States cotton cultivators. Though for some time England yielded to the remonstrance of the United States, in 1915 England did finally include raw cotton in the list of contrabands of war. From time to time the lists were revised: and at any stage of war, according to the exigency of the moment, the belligerents announced the transference of commodities from the list of conditional to absolute contraband or even of non-contraband to the contraband list. Even food was not made an exception when the whole nation was supposed to be enrolled in the fighting forces. (b) Blockade:—International Law allowed the belligerents' right of blockade, provided it was effective. This point has been referred to in a preceding paragraph. Blockade as a right was recognisable only if it was a practical measure of bringing the enemy down by successfully closing his port or ports, the validity of action depending on the naval strength of the blockading power. In the world war 1914—18, vast areas of open seas, *i.e.*, the oceanic routes came to be declared as 'Combat Zones,' 'danger zones,' *e.g.*, England announcing the whole of the North Sea as a blockaded area against Germany to which no neutral vessel could go except at the risk of being captured by England if the neutral was so defiant as to run the blockade, *i.e.*, to disregard the blockade injunction issued by England. Germany, on the other hand, came to declare all the waters round about the British Isles and far beyond as under a state of siege to warn off neutrals from trading with England. This was very much on the lines of what had happened in the course of Napoleonic Wars, under what was known as the Continental system of Napoleon, pitted against the British Orders in Council, in which, of course,

¹⁷ *Neutrality*, Vol. II. *The World War Period*—by Turlington.

the superior strength of the British Navy had the last word to say. (c) Doctrine of continuous voyage:—The very elastic use of the laws of contraband and blockade was made still more disagreeable to the neutrals by imposing on them the necessity to prove (whenever their vessels were caught by the belligerent) that the trade they carried had, *for their ultimate destination*, a neutral territory and none of the territories of the belligerents. Under this doctrine of continuous voyage England had interfered with neutral trade in the Seven Years' War and also during the Napoleonic War period: and the North in America had in his own turn used this doctrine against England in the Civil War of 1860—63, to prevent British supplies from reaching their opponents—the Confederates of the South. In the world war of 1914 again and again did the United States of America protest against England's excessive use of this doctrine: but England would not budge an inch from her determination to see that, by no possible loophole, goods of any kind reached Germany through the neutral trade. The United States of America could even prove by reference to figures that exports from Britain to Scandinavian countries (neutrals) were, during the war period, very much in excess of the pre-war exports. Would not that excess be finding its destination in Germany? How had Britain stopped that excess? Out of the copious correspondence of that period between England and the United States of America only the following few extracts need be given to illustrate the position created by the belligerents' emphasis on the doctrine of continuous voyage, contraband and blockade rights:—"By way of summary of the note, the ambassador said, under instruction from Mr. Lansing (Secretary of State, U. S. A.): "I believe it has been conclusively shown that the methods sought to be employed by Great Britain to obtain and use evidence of enemy destination of cargoes bound for neutral ports and to impose a contraband character upon such cargoes are without justification: that the blockade, upon which such methods are partly founded, is ineffective, illegal, and indefensible; that the judicial procedure offered as a means of reparation for an international injury is inherently defective for the purpose; and that in many cases jurisdiction is asserted in violation of the law of nations. The United States, therefore, cannot submit to the curtailment of its neutral rights by these measures, which are admittedly retaliatory, and therefore illegal, in conception and in nature, and intended to punish the enemies of Great Britain for alleged illegalities on their part. The United States might not be in a position to object to them if its interests and the interests

of all neutrals were unaffected by them, but, being affected, it cannot with complacency suffer further subordination of its rights and interests to the plea that the exceptional geographic positions of the enemies of Great Britain require or justify oppressive and illegal practices."¹⁸ "In May, 1916, President Wilson wrote: "We are plainly face to face with this alternative, therefore. The United States must either make a decided move for peace (upon a basis that promises to be permanent) or, if she postpones that, must insist to the limit upon her rights of trade and upon such freedom of the seas as international law already justifies her in insisting on as against Great Britain, with the same plain speaking and firmness that she has used against Germany. And the choice must be made immediately. Which does Great Britain prefer? She cannot escape both Sir Edward should understand all this and that the crisis cannot be postponed." In November 1915, Grey wrote to Colonel House as follows:—"We must either continue the difference of opinion with your Government (U.S.A.) or give up definitely and openly any attempt to stop goods going to and from Germany through neutral ports that would go near abdicating all chance of preventing Germany from being successful I am convinced that the real question is not one of legal niceties about contraband and other things, but whether we are to do what we are doing, or nothing at all (with our seapower). The contentions of your Government (U.S.A.) would restrict our operations in such a way that Germany could evade them wholesale."¹⁹ The British met such protests finally by issuing the following Order in Council dated February, 16, 1917:—(1) "A vessel which is encountered at sea on her way to or from a port in any neutral country affording means of access to the enemy territory without calling at a port in British or Allied Territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin, and shall be brought in for examination, and, if necessary, for adjudication before the Prize Court. (2) Any vessel carrying goods with an enemy destination, or of enemy origin, shall be liable to capture and condemnation in respect of the carriage of such goods; provided that, in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo, no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy

¹⁸ *Neutrality*—Vol. III, by Turlington, pp. 59-60.

¹⁹ Charles Seymore: *American Diplomacy During the World War*, pp. 74-75 and 72.

origin or destination, and no such presumption as is laid down in article 1 shall arise. (3) Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation."²⁰ Neutral losses of vessels through blockades and analogous measures adopted by the belligerents may be summarized as follows:—

	No. of Vessels.	Tonnage	Value, in dollars
Condemned for violation of blockades of traditional type	4	400	\$40,000-00
Sunk by mines ...	325	39,848	110,178,959-00
Sunk by Submarines in War zones ...	1,483	1,816,336	467,477,870-00

(d) As if these three handicaps for neutral commerce were not enough, there came in force a very large and undefined field of restrictions exercised by the belligerents in virtue of their *sovereign rights*. The neutrals could be put on the black list if suspected of having dealings with the enemy; they could be refused the supply of coal for refueling their vessels in belligerent ports. "In interfering with neutral commerce by virtue of rights recognized in international law the belligerents were subject to a measure of restraint imposed by the same law. Even when acting by way of retaliation, the belligerents observed to some extent the rule of international law that genuine neutral commerce should be subjected to the minimum of interference consistent with the interception of the commerce of the enemy. . . . In interfering with neutral commerce by virtue of sovereign rights the belligerents were subject to no such restraint. There was no system of law which a neutral could invoke against the action of any or all of the belligerents in prohibiting the exportation of specified goods from their territory; in refusing bunker supplies or ships' stores to neutral vessels; in forbidding their nationals to have commercial or financial dealings with the enemy or with neutral nationals suspected of trading with the enemy; or in requisitioning, subject to compensation, ships within their ports. Against such action the neutrals had no defense except their own economic and potential military strength."²¹

(e) Embargo on Exports and Imports were also fully resorted to by the belligerents.

²⁰ *Neutrality*, Vol. III, by Turlington, pp. 62-63. The figures of losses quoted above are taken from Turlington's *Neutrality*, Vol. III.

²¹ *Neutrality*, Vol. III by Turlington, pp. 67.

(f) By the recognized and accepted code of International Law every belligerent has an arrangement of Prize Courts that determines cases when seizure of vessels takes place on the sea. The case of neutrals would be carefully heard by those Courts and damages awarded where the action of the neutrals was not condemned under either of the heading mentioned above. During the World War, however, the credit of these Prize Courts did not stand very high. After all, the Courts were not an International institution manned by an impartial judiciary uninfluenced by national interest.

(g) The belligerents' right of angary was freely resorted to. The neutral vessel carrying 'innocent goods' with nothing in its papers to indicate any malafide move in the matter of ultimate destination could still be seized and taken to the belligerents' ports to deliver its goods to the belligerent and receive a fair price—more or less as determined by the belligerent. This right of pre-emption, of course, affected the neutral's profits. Prof. Jessup in his volumes on Neutrality, especially Vol. III (World War) and Vol. IV, Neutrality—Today and To-morrow, has dwelt at length on the huge profits made by neutral trade in the World War. From that data he comes to the conclusion that Neutrality as a symbol of peace might well refrain from trade with belligerents to avoid points of friction with belligerents and confine its trade to the group of neutrals (inter-neutral trade).

(h) The sowing of mines was freely resorted to: and

(i) On top of all came the submarine,—Germany's unrestricted use of submarines against the enemy as well as the neutral.

World War Neutrality was Abandoned to Save Humanity.

The cup was full to the brim: and the last, viz., the unrestricted use of German submarines which resulted in a ruthless slaughter of human beings engaged in the peaceful pursuit of commerce brought the United States in the war against Germany, in the interest of neutral rights no less than in the interest of Humanity and Rule of Law among nations which must hold the murderer to account. Woodrow Wilson observed the duties of the neutral state scrupulously. He exhorted Americans to 'remain impartial in thought,' 'put a curb on our sentiments.'²² After two years of war he would still ask his friends 'Have you ever heard what started the war?' He protested fearlessly against England in the matter of contraband, blockade, etc., as affecting

²² Baker's *Life of Woodrow Wilson—Neutrality*, Vol. 5, p. 67.

neutral trade which at worst was some loss of money to the United States merchants; for which, ultimately, every claim for compensation could be pressed with reasonable success (recall Jay's Treaty of 1794). But the German submarine was a war against innocent human life, an irreparable loss against which Woodrow Wilson had repeatedly warned Germany. United States' entry into the war in 1917 on the side of Entente against Germany was a vindication of the very best that was in the mind of the President and the people of America. Referring to the Lansing papers, 2 volumes published in 1939-40, Mr. Charles Seymore writes in the January 1941 number of *Foreign Affairs* "No one can read these volumes without appreciating the intense desire of both President Wilson and Secretary Lansing to avoid American participation in the European War. But rightly or wrongly, they placed the protection of what they regarded as essential national interests above the maintenance of peace. From the early spring of 1915 both were convinced that Germany's unrestricted submarine warfare involved "rights" that could not be surrendered, though they did not agree as to exactly what constituted these rights. The President was impressed primarily by humanitarian factors. He was willing to negotiate endlessly with the British over interference with cargoes: but the German submarine campaign involved human lives. As he wrote to Bryan on June 2, 1915, "It is interesting and significant how often the German Foreign Office goes over the same ground in different words, and always misses the essential point involved, that England's violation of neutral rights is different from Germany's violation of the rights of humanity." German Ex-ambassador Bernstoff felt that there in Washington, more really, perhaps, than on the battlefields of France, the ultimate decision of the war had been determined. It was that long duel between Great Britain, mainly, and the other allies on one side, and Germany on the other, arising out of the question of neutral rights and the German insistence on submarine warfare, that ultimately brought America into the conflict and decided the event."²³

IV. Neutrality Transformed.

Woodrow Wilson's name goes down to history as that of a divinely-gifted soul who while faithfully responding to the call of his office as President to keep the country neutral and while straining every nerve to discharge the duties of a neutral and

²³ *Proceedings of the Academy of Political Science*, Jan., 1935, p. 42. (Speech delivered by Mr. Conderat.)

press for the recognition of the rights of the neutral (very difficult, though it all was), never, for one single moment, lost sight of the higher call on the first citizen of the most civilized and humane nation to help restore Peace in the world based on World Co-operation and World Order. "The Idea of America," he had told the graduating class at the Naval Academy in June, only a few weeks before the outbreak of the war, "is to serve humanity." A little later in his address on July 4th, he had asked, "What are we going to do with the influence and power of this great nation?" And he answered his own query with a fervid vision of that service: "My dream is that as the years go on . . . the world . . . will turn to America for those moral inspirations which lie at the basis of all freedom; that the world will never fear America unless it feels that it is engaged in some enterprise which is inconsistent with the rights of humanity; and that America will come into the full light of the day when all shall know that she puts human rights above all other rights and that her flag is not only of America but of Humanity." The crisis had now appeared. It was not merely a question of immediate action; the President had already been balked in his attempts in that direction: but what could be done in the future? The war could not last forever; what of the settlement? What would the "new world" require? What was America to advise? Four things will be essential to the re-establishment in the world after peace is made. (1) "No nation shall ever again be permitted to acquire an inch of land by conquest. (2) There must be a recognition of the reality of equal rights between small nations and great. (3) Munitions of war must hereafter be manufactured entirely by the nations and not by private enterprise. (4) There must be an association of the nations, all bound together for the protection of the integrity of each, so that any one nation breaking from this bond will bring upon herself war; that is to say, punishment automatically."²³ The result was the League of Nations and the Covenant. During the period of the World War, the slogan of the opponents of Germany was, 'War to End War' (for ever)! World conscience had been shocked at the enormities of the war period and among other events—the grievances as well as the gains of neutrals. Hereafter, if any war at all, it must be the joint concern of all the nations who become members of the League to stand up together against the law-breaker who did not accept or abide by arbitration. Under that arrangement, there

²³ Woodrow Wilson—*Life and Letters*, by R. S. Baker, pp. 73-74.

could be no room for Neutrality which would lack all moral justification. The Swiss government pointed out, "For it (Neutrality) proceeds from the idea that the States are not subject to the moral law of good and evil, and that the conflicts arising among them are exclusively a question of force—every notion of justice and of equity having been excluded from them—or from the idea that the attitude of absolute impartiality adopted in regard to both parties would be only the expression of weakness and fear."²⁴ Wilson took a leading part in supporting this view. He had said, "Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples . . ."²⁵ Articles 10, 11 and 16 of the Covenant made war practically the concern of the entire family of nations that came within the League. During the war-time, Woodrow Wilson had fought strenuously for the neutral's right to "freedom of the seas." It was an article of faith with him—the basis of the neutral's existence in a warring world. He had given it prominence as point No. 2 in his famous 14 points for peace settlement. So early as 1914 he had prophesied, "I am afraid something will happen on the high seas which will make it impossible for us to keep out of the war."²⁶ In the League Covenant, he very rightly dropped all reference to this "Freedom of the Seas." In the new world which was to be born with the Covenant, if war against the law-breaker was the common concern of all other nations, presumably there was no neutral,—therefore no neutrality rights survived including the 'Freedom of the Seas.' World Order was now to be safeguarded by the joint effort of all to prevent the outbreak of war; and if at all war had to be fought against the recalcitrant member and the unjust violence—seeker who was declared 'unjust' by the international judge (League Council), the use of force employed against him would be more in the nature of world police force and not merely the concern of the victim of the aggressor. If the Covenant was really to bind the nations of the world, war was thenceforth not an absolute, unconditional right of any Sovereign State: and if War was now to be shorn of its old legal status in International Law, its contingent *viz.*, Neutrality too could have no legs to stand upon. "The Covenant as a legal document expanded the duty of pacific co-operation which the Hague Conventions had only timidly advocaed."²⁷ To be a little more precise it may be stated that the

^{24, 25} *Neutrality and Peace*—by N. Politis, p. 42.

²⁶ Baker, *Woodrow Wilson*, Vol. 5, p. 74.

²⁷ *Politis*, p. 45.

Covenant did not, once for all, taboo all war, but made a distinction between legal and illegal war. The legal war concerned non-members of the League. They may settle their disputes by recourse to arms, though even in that state of affairs, the League as a body making for world peace, would offer conciliation and arbitration to them: but if war was finally resorted to by the non-members, the members of the League would remain neutral with a bias towards that State which the League, in the course of its efforts to bring about conciliation, had adjudged as the victim of the violent aggressor. Here Neutrality still survived but limited by the League view which the member might respect. On the other hand, there was the illegal war where a member of the League had broken all the articles of the Covenant and waged war against another member in defiance of the Law of Covenant she had accepted. Here article 16 indicated sanctions—economic and financial, finally military in which all were expected to co-operate against the 'unjust' law-breaker. The doctrine of State Sovereignty not yet abandoned by the framers of the Covenant still left the final decision of falling in line with League sanctions to each individual state. This would mean that any member-state of the League may still prefer to remain 'Neutral' except under those binding clauses of the Covenant according to which certain facilities, e.g., passage of troops had to be given by them to the victim of aggression. Thus even under this 'illegal' war—, supposed to be against the League, there was some room for Neutrality on the part of the very members of the League: but it was not the old 'classical' 'traditional' neutrality of pre-war period. A member may not join in sanctions: but, in the face of the united moral injunction of the League against the law-breaker, there was little chance of the neutral continuing his old economic and financial relations with the aggressor. However mild might be the effect of that restraint on the neutral power, assuredly it was a departure from the old duty of 'impartiality' under the old classical view of neutrality in International Law. All told, neutrality, if not abolished, was at least modified by the Covenant. At best, it must look small in the eye of the world and must remain on the defensive, and possibly find itself hard put to it to have to explain its bonafides. Finally, if the League saw no occasion to apply any article of the Covenant in any point at issue, Neutrality subsisted in its entirety. To sum up: The League of Nations, under article 16 had first to declare the conduct of an aggressor as 'an act of war:' but 'the state of war' between that aggressor and the members of the League one or many or all could exist only after each individual member-state

made its own independent decision on the point. This was in deference to the inexorable 'Sovereignty' right of each state. Besides, the rights of non-members under old International Law had not been abrogated: whenever they were at war, the legal status of neutrality was extended to the member-states of the League, subject to the morally binding attitude of the League against the unjust aggressor (even in the war of non-members) which no member-state would completely ignore. That is where Neutrality stood in the eye of the International Law in 1919-20 when the League and the Covenant heralded a new era of world order. The League was not a super-state: and it had not assumed the place the Roman Empire with its Pax Romana held in the ancient times. Its weakness was patent to all. To isolate the aggressor and to marshal world forces of moral condemnations against him would be its main achievement. For the rest, it all depended whether the aggressor was a great power like Japan or Italy, or a tiny state in South America. As regards the third states, i.e., those neutrals (e.g., U. S. A. that had professed to remain outside the League from its very start) that were neither member-states nor involved in any war between non-member states, while, doubtless, their Neutrality Rights as known to International Law were not affected, it was inconceivable they could ignore the weight of the collective action of the League against aggressor and be indifferent to international crime. It is true their trade rights were in no way legally affected: but the moral binding to segregate the aggressor as a plague-spot was not, as a rule, ignored. In the early restoration of the healthful condition of the world resided their own interest: and the United States of America though neutral, without fail, fell in line with the League action. "Professor Shotwell had recommended the reformation of the American policy of neutrality as an urgent necessity "when the world organises for peace." The formula proposed by him, and soon accepted by a large number of American societies, was that the President of the United States ought to declare as a principle of general policy that in case of a war between states which have accepted among themselves certain methods for determining the aggressor, the United States would not interpret their neutral rights in such a way as to give aid to a country convicted of having provoked the war."²⁸

Once again, one may recall with grateful appreciation, the work of Grotius in urging that no impartial attitude need be shown by a neutral to one whose cause was unjust. "As regards

²⁸ *Neutrality and Peace*, by N. Politis, p. 54.

these nations not participating in a war the merits of which are doubtful, Grotius advises strict impartiality. In a case in which one side is clearly in the wrong, he has this to say . . . 'it is the duty of those who keep out of a war to do nothing whereby he who supports a wicked cause may be rendered more powerful, or whereby the movements of him who wages a just war may be hampered'²⁹ Grotius had no international tribunal for determining the just or the unjust. The League and the Covenant in the 20th century filled that gap.³⁰

War not having been outright eliminated from the institutions of the world, neutrality qualified or modified followed in the train, as may be illustrated by the fact that a number of non-aggression pacts guaranteeing neutrality were formed even by the members of the League, just to make their position against a potential aggressor doubly secure. These agreements were not, in any way, intended to impair the Covenant rights and duties of the member-states.

Lastly, Neutrality remained in its worst form if the League Council was not unanimous upon the determination of the aggressor. This would be anarchy over again with no guiding hand given to anybody.

V. Neutrality in the Pact of Paris.

One of the greatest tragedies of the world was Woodrow Wilson's failure to get the United States' consent to be a member-state of the League of Nations. President Washington's last bequest to the nations was fully acted up to and the United States adopted Neutrality as its policy in European affairs. But the United States loved peace which was equivalent to the enforcement of Law and Justice. How to reconcile Neutrality with peace, i.e., with World Order! Every day that passed brought the interdependence of the world in commerce, finance and culture more and more into prominence: and the United States had its best share in the promotion of this interdependence. According to the creeds of the political parties in the United States, the Republicans were mostly isolationists and the Democrats were for co-operation in world affairs. Whether by luck or by accident, during the chiefship of President Hoover—A Republican,—the famous Pact of Paris was initiated by his

²⁹ *Theories of International Relations*, by F. M. Russell, p. 157.

³⁰ *De Jure Belli*, Bk. III, Ch. XVII, Section III, p. 1.

Secretary of State Mr. Kellogg and given to the world as the Kellogg-Briand Treaty in 1928 by which, in a very short time, no less than 60 nations put their signatures on this Pact for Renunciation of War as an instrument of national policy. In this memorable achievement the United States with one stroke made amends for its sins of stand-alooofish attitude to the League and World Affairs. The individual State's right of war was abolished. The terms of this pact are the strongest possible expression of an international obligation to denounce an unjust war, not merely in a series of unilateral statements expressing pious desire and then leaving each signatory to be the free and sole judge of its action. It is a solemn Treaty that condemns War and condemns Neutrality. The Pact says that "The High Contracting Parties solemnly declare in the name of their respective peoples that they condemn war—and they renounce it as an instrument of national policy." Any aid given to an unjust aggressor condemns that State as an accomplice in law-breaking. In connection with this great achievement, the famous British publicist Wickam Steed made himself useful by impressing on the mind of President Hoover, the utmost necessity of the United States taking the lead. In his book *Vital Peace* he emphasises the point that Neutrality after the pact of Paris should be considered as abolished, for he asks, "Can nations organise the world against war while they cling to neutral rights? I think they cannot." The British Common Law considered it a crime of which a citizen was liable to be held guilty if he did not respond to the "Hue and Cry" raised to catch a robber, a burglar or any law-breaker. The citizen's neutrality in this civic duty was not known to the law of Britain. So, argued Wickam Steed, the Pact of Paris now made it obligatory on all the signatories of the Pact to see that recourse to arms by an aggressor was prevented. As a criticism against the Pact of Paris it was argued that it had no sanctions behind it and that it did make allowance for a just war: therefore war as an institution was not altogether abolished. This criticism was unjust. No penal code of any Sovereign State can possibly serve the purpose of rooting out all crime from the land once for all: Law-breakers will be there within a state. In the World Order too a frenzied nation may, in spite of every possible restraint from outside, burst into belligerency against a weak state: but there it must be restrained and brought to book. Sanctions! Yes, the most powerful sanction was the mobilization of world public opinion against the aggressor under the influence of which as Senator Borah said 'the violator was virtually an out-law towards whom no state

could possibly show an attitude of neutrality.' Mr. Secretary Stimson upheld this view in a famous speech in which he emphasised the point that the Pact of Paris though without sanctions, was none the less under the powerful sanction of public opinion: The robbery of Manchukuo by Japan gained no recognition from the United States. Under the old traditional law of neutrality demanding abstention from the neutrals, the disgraceful incident of 1931 relating to the law-breaking of Japan may well have passed unnoticed. The new idea—the result of the Pact of Paris—according to Mr. Stimson implied abandonment of neutral rights. In the United States there was a regular campaign "to put teeth" in the Pact. When again in 1933 Mr. Franklin Roosevelt was elected as the President of the United States he sent a cordial message to the Disarmament Conference in favour of international co-operation: and the American representative at the Disarmament Conference Mr. Norman Davis made it clear that strict regard for the law of neutrality must be modified, that the aggressor may well be defined as one 'whose armed forces are found on alien soil in violation of treaties,' that the United States would respect its obligations under the Pact of Paris and co-operate in the organisation of peace, reserving to its own government the judgement as to who is the law-breaker and what measures may be adopted against him. Here the United States was reconciling its traditional policy of isolation with the new developments associated with the obligations which the Pact of Paris imposed upon her. The opinion in the United States was, however, divided. A very distinguished jurist Mr. J. B. Moore led the opposition. In a powerful article entitled "An appeal to Reason" (Foreign Affairs 1933) he controverted Mr. Stimson's views, supported neutrality as something beneficent because its object was to prevent war. This Jurist's agitation on behalf of neutrality soon took a tangible form in the shape of 'Johnson amendment' followed by the United States Neutrality Act of August, 1935, enjoining embargo on the export of arms, ammunition, etc., from the United States applied *impartially* to all the parties in the dispute in a state of war. Neutrality was upheld and the Congress was given the power to determine who the aggressor in that dispute was. This act was supposed to give to the United States escape from war which was not easy if great powers came to be involved. On two successive occasions the Act was revised and amended. The United States, was, in a way, avoiding "the risk of peace," i.e., co-operating with other powers against the aggressor—that 'risk of peace' being infinitely less costly than war or preparation of war that the United States

might have to face. Isolationism was still the prevailing view of a majority in that country.

VI. The League Rendered Weak: Neutrality a Refuge from War (1931—1939).

Japan's unchallenged aggression in China gave a set-back to the League organisation. England practically gave a free hand to Japan in the Manchukuo incident. The obligations that great powers must undertake if world order is to be a fact were disregarded: the small powers felt uneasy: regional pacts for mutual protection, for non-aggression, etc., among small powers, though still within the framework of the League and the Covenant became more and more visible. The Imperialist Conservative government of England coming in possession of unbroken power since 1931 showed no great enthusiasm in the proceedings of the Disarmament Conference particularly in the matter of internationalising aerial operations. Germany was arming in spite of the restrictions imposed on it by the Treaty of Versailles. Italy convulsed the world by attacking Ethiopia in defiance of the League—both states being members of the League: and the exceedingly mild sanctions put in force against Italy proved ineffective. Ethiopia was conquered by Italy; and England and France stood discredited in the eye of the world by the Hoare-Laval Pact which shame-facedly attempted to appease the outlaw and the robber that Italy had been declared to be by the League. The Civil War in Spain—flagrantly a part of the programme of the Dictators and their Axis—evoked no protest worth the name from the League. The Non-Intervention Committee became the laughing-stock of the world. In quick succession ensued measures of defiance from Germany which, far from being opposed by a united, co-operative front from the League, became ceaseless occasions for *appeasement* offered by England and France to the Law-breakers. The Munich 'armistice' as Armstrong called it created consternation all round. The League tottered and finally collapsed with this Munich episode. In this period of insecurity when war was once again threatening to shake the fabric of civilization, what were the small powers to do? They found little hope of safety in 'collective security.' There was a growing belief among them that war could not be prevented—that there was no hope for outlawry of war or of bringing the war culprit to book. They went back to neutrality, regional pacts of non-aggression, mutual assistance, etc., whatever that be,—but they preferred, at any cost, not to get involved in

risk accompanying co-operation in the League. The path of Neutrality exceedingly narrow as the World War of 1914—18 had shown it to be, must be trod over again. A number of ideas and schemes were put forth to rehabilitate Neutrality. There was the Swedish Scheme. There was the Pact of Rio de Janeiro sponsored by Lamas which made a great noise for some time. Twenty countries signed it. An International Conference held at Montevideo in 1933, December blessed it. The substance of it was to prevent war if possible,—but to have nothing to do with the repression of war: Members were enjoined to practise abstention and impartiality, and offer no judgment as regards aggression or the unjust cause of a belligerent. The Rio Pact would recommend to its members no dealings with both sides in belligerency, the Pact not binding League members or the signatories of the Pact of Paris. Then who remained for giving any effect to the Rio Pact? It just illustrates the atmosphere of fear that was growing in the world. The 7th Pan-American Conference defined aggression and provided for its repression—with the help of public opinion well utilized, the use of force being not excluded from its programme. The Permanent Conference of International Studies at Paris started its discussions in 1935. A very valuable contribution to it came from Bourquin upholding discrimination in favour of the victim of aggressions by supporting 'just' cause, without forcing any nation to get into war against the aggressor; and finally the Danish group made its appearance with its *Neo-Neutrality* which Mr. Cohn has expounded in a recent book bearing this name. Juridical and economic sanctions are upheld by this group—but with no military sanction behind it, as Neutrals, it is argued in that book must remain pacific,—consistently pacific: their joint work on a well organised co-operative basis must result in rendering belligerency helpless if all supplies relating to commerce and finance were withheld from them. This same idea of inter-neutral co-operation or a League of Neutrals was supported by Nippold (Swiss author in his book *Recent Developments*) which appeared shortly after the last war: and again Jessup in his book on *Neutrality: To-day and To-morrow* goes back to the League of Neutrals. Desperately attempting to escape war, these schemes frankly accept increase in the duties of Neutrals and surrender of Neutral rights in excess of the International Law, not fully visualising that the precarious neutrality that they run after is more costly than the risk they take in holding their place in any scheme of collective security. Denmark, Norway, Sweden, Belgium, Holland, Switzerland—one after another actually contrived to get out of what they took to

be the clutches of collective security to realise in the present war (1939) that neutrality did not help them when great powers came to be involved in a world conflagration.

VII. What of the United States of America?

In a preceding paragraph reference has been made to the activities of some jurists to see the United States strictly adhering to Neutrality and the agreeable response they had from the Congress in the Neutrality Acts duly passed. The United States is well known for intellectual activity in the domain of International Law. Copious and valuable literature on Neutrality and the Law of Neutrality has come out from there in recent times. Was Neutrality-cum-Isolationism of the United States really the safest policy? Charles Warren contributed an article to *Foreign Affairs* April, 1934 on "Troubles of a Neutral" in which after fully discussing the difficulties of reconciling International trade of the country with all sorts of self-denying measures that will have to be imposed on the country if Neutrality, i.e., escape from war was to be achieved, he finally came to the following conclusion:—"The question then arises, however, whether, under such circumstances, the price of neutrality may not be too high: and whether neutrality, with such added burdens and concessions or surrender of rights, will not be too disagreeable a status for this country to assume. And thus the further question is at once presented: Should not the people of this country be led to give more serious, intense and continuous consideration to joining with other nations in all practicable movements to prevent the occurrence of any war which would involve us in so difficult, so burdensome, and so disagreeable (even if not impossible) neutrality?"⁸¹ Allen Dulles contributed to the same magazine another article on "The Cost of Peace" in July issue of 1934, and again in collaboration with Fish Armstrong he elaborated his ideas in a very readable book "Can America Stay Neutral?" (1939). The learned authors say: "We feel it was not prudent for Congress to put the strait-jacket of mandatory neutrality legislation on our course of action in unforeseen situations. Isolation is not a lasting and sufficient shield for American interests. And it was reckless to think that it could be made so by legislation. Americans do not seem to us to be in a moral position to blame the present chaos in the world on everybody but themselves. Those who fought every specific course of action

⁸¹ *Foreign Affairs*, April, 1934. "Troubles of a Neutral", by Charles Warren.
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which aimed to establish a new world order, arguing that the United States should play no part, carry their share of the blame. Overlooking our country's influence and power, they were unwilling to take the slightest risks for peace. Today the greater part of the world is at war again, and it would be a brave man who said we were not more entangled than ever. No neutrality legislation can give us the advantages of an isolation which does not in fact exist, and those who preach the contrary are not, we believe, the realists they call themselves. We have said that the country should be slow to anger and should judge the acts of foreign governments in the light of our own national interests. This does not mean that Americans count the preservation of liberty here and the survival of human liberties in other countries as of only trifling importance in a world largely given to Machtpolitik. It would be stupid foreign ruler indeed who thought so."³² The Academy of Political Science of Columbia University held two memorable sessions—one in January 1935 and another in May 1937 to discuss, among other subjects relating to the Stabilization of Peace (1935) and the Foreign Policy of the United States (1937)—, the problem of Neutrality. In the session of 1935 Mr. Coudert of the International Bar put forth a very powerful plea against the Neutrality policy of United States by recalling the most sincere and heroic efforts made by Woodrow Wilson to stick to the duties and rights of a Neutral—resulting in the inevitability of war. The lot of Jefferson and Madison had not been any the better. If another war between great powers broke out, the United States could not escape it: therefore Neutrality and shelter under the law of neutrality whether International or municipal (national) was not the policy of the United States but co-operation with other powers to prevent war. "No, the United States certainly cannot escape war by mere neutrality. The only possibility of avoiding war is by co-operation. I do not believe for a moment we can live as the lotus-eaters of old, 'like Gods upon the hills together, careless of mankind.' I have no doubt that one way of co-operation might be possible and might lead to a measure of safety greater than we can now foresee in the event of general war. That co-operation might be a co-operation between England and America which might render all sustained belligerent operations on the high seas impossible."³³ In the session of 1937, the main speaker

³² *Can America Stay Neutral*, A. W. Dulles and H. F. Armstrong, pp. 153-154.

³³ *Proceedings of the Academy of Political Science*, Jan., 1936, p. 48.

on the question of Neutrality was Senator Pittman—a staunch advocate of Isolationism at any cost. He belittled the cost of neutrality as compared to the loss of life and property that the United States must suffer by entering another world War. He was largely responsible for the Neutrality Acts passed by the United States.

The United States did pass the Neutrality Act of 1935 and again that of 1937, further amended in 1939. Its central idea was the surrender of the neutral's right of free access to the sea for his legitimate trade as summed up in the United States' cherished right of 'the freedom of the seas.' The Americans were not to trade with the belligerent except on the basis of 'cash and carry,' i.e., the belligerent must pay for the goods bought from the United States and carry them home in his own bottoms. Thereby, argued the isolationists no occasion would arise for the United States to have to repeat the misery experienced in the last war—e.g., Contraband, blockade, continuous voyage, enemy mines sown on the high ways of the seas, and last but not the least, the submarine! No matter what happened to the world order, what injustice a weak nation suffered at the hands of a violent aggressor, no matter what became of the Pact of Paris or the Rule of Law among nations, the United States must remain "ensconced within the shell" (Shotwell), as if she was not of this world or in this World. Economic Nationalism in peace and war came to be frankly accepted by the isolationist: and right through, he carried the day. Allen and Armstrong have conclusively proved by reference to the United States export figures how the embargoes imposed by the United States Government in the Italy-Ethiopia war "impartially" against both belligerents really helped Italy and adversely affected Ethiopia. The United States Administration had at this time practically abdicated its right to give a lead to the country, because public opinion—wrong or right—was pronouncedly hostile to any foreign complications which might drag the United States into another war: but the jurists and publicists who, after all, are the real leaders did not hold their tongue or break their quills. In an exceedingly refreshing article entitled "Rough-Hew them as we will," contributed to *Foreign Affairs* (July, 1937), Walter Lippman with his usual far-sightedness emphasised the idea of closest co-operation with Britain whose strength on the sea had made the benefits of isolation possible for the United States. What would become of the United States if the British Navy vanished and the wall of protection the United States enjoyed gave way? Lippman's words must be quoted in full:—"The

invisible, the unexamined and unrecognized premise of American isolation has always been an international system in which naval power in British hands is predominant over all other military power. The whole conception of isolation, the inner meaning of self-determination among peoples, presupposes an international power so great that it can restrain all military conquerors. Such an international system existed in the century between Waterloo and the Marne, and all our preconceptions about world politics implicitly assume the continuation of some such system. A fatal blow struck at the heart of the British power would not merely destroy the unity of the British Empire: it would mean the destruction of all international order as we have known it . . . We have only to imagine our own position if the British supremacy were to collapse under an attack by Germany in the North Atlantic, by Italy in the Mediterranean, by Japan in the Western Pacific. Could we conceivably be indifferent to such a world-shaking catastrophe as that? The great question is whether a nation placed as we are, and desiring above all else to live and let live, can preserve its isolation if there is no power in the world which preserves the order of the world. The answer to that question is, I am convinced, that we can and we will stand aside only as long as we feel that there is no fatal challenge to the central power which makes for order in our world. Our unconscious wisdom is the deposit of a century of experience. In that century of American isolation an organic and inseparable connection was formed between the life of the American nation and an international order held together through supreme authority exercised by men who in great matters think as we do. We cannot break that connection. We could not break it in 1917. We have declared that we cannot break it in 1937. We shall not break it. In the final test no matter what we wish now or now believe, though collaboration with Britain and her allies is difficult and often irritating, we shall protect that connection because in no other way can we fulfil our destiny."⁸⁴ Prophetic utterance indeed!

VIII. Neutrality Acts of the United States and the Present War.

The Neutrality Act of 1939 October is generally associated with the name of Senator Pittman,—by him called 'Peace Act of 1939' (but according to Fenwick, 'National Security Act,' better

⁸⁴ *Foreign Affairs*, Vol. 15, No. 4, July, 1937, pp. 593-94.

still 'Keep out of war act')⁸⁵ expressed the following three points, among others, as soon as the President has proclaimed a "state of war existing between any two parties":—

- (1) It is unlawful for American vessels to carry passengers or articles or materials to any port of the belligerents.
- (2) It is unlawful for any American to sell goods of any nature (arms, ammunition) or other materials except by giving outright delivery of the same in America and obtaining 'cash' in America—i.e., not having any interest in or responsibility for the safe delivery of the same, outside America. This is known as 'cash and carry' principle applicable to all goods.
- (3) The President shall declare 'combat zones,' i.e., certain areas in which because of the operations of the belligerents and the consequent chance of friction with them, American vessels are forbidden for travelling.

These restrictions, said the act, were "a voluntary imposition on the nationals of the United States without the country's waiving any of its rights and privileges or those of its nationals under International Law." This Municipal Law of the United States surrendered the rights of neutrals allowed them by International Law. Thereby, it did something in excess of the International Law as applicable to neutrals. To this excess the International Law does not object. If a neutral country did less than what the International Law required, International Law would take exception. But, argued Quincey Wright in an article contributed to a recent number of the *American Journal of International Law*, (1940) in the performance of this self-imposed excessive duty it was not unlikely that the United States came to be accused by either of the belligerents of being less 'impartial' to the one than to the other. This, if proved, would be a failure of duty on the part of a neutral and therefore a violation of the Law of Neutrality under the accepted notions of rigid and absolute impartiality as required by International Law, and therefore affording no escape from embroilment with one belligerent or the other.

⁸⁵ Fenwick, *American Neutrality, Trial and Failure*, p. 47.

Franklin Roosevelt, the President of the United States Republic, had consistently stood for co-operation in the restoration of world order. The isolationists who were in a majority in the country intensely disliked any fresh involvement in another European war. Roosevelt had several times indicated to the Congress that discrimination may be exercised in favour of the victim of aggression in an unjust war. This would be possible only if embargo on the sale of arms and ammunition was lifted. The last Neutrality Act which allowed the sale of arms on 'cash and carry' basis was passed in November 1939 after Germany had launched an unjust war against Poland. This was just one indication that the United States was not softening towards the violent law-breaker. If the victim of aggression had not enough arms, he could buy them from the United States but carry them from the United States at his own risk and by his own arrangement. Between November 1939 and June 1940, Germany had done all possible havoc against international order by a complete defiance of International Law of Neutrality. Norway, Denmark, Holland and Belgium—all neutral countries with which Germany had only very recently entered into solemn treaties respecting the inviolability of these neutral countries had been overrun and mastered in most cases with ruthless slaughter. In June France gave way: and the English Channel alone barred the way to Nazi onslaught against England. The sea power of England was known to be not only a wall of protection for England but also for the Western Hemisphere. Could the United States still remain in the blissful repose of 'impartiality' as a neutral against the Axis powers that had most flagrantly and in the spirit of bravadoes thrown to winds every shred of International Law,—and set at naught the Kellog-Briand Pact for the Renunciation of War—to which Pact all the three—Germany, Italy and Japan—had been signatories along with the United States? Could 'impartiality' be really any more binding on the United States in face of the requirements of the Pact of Paris which solemnly adjured all signatories to restrain the law-breaker? And could the law-breakers themselves, having defied all law, accuse the United States of a breach in 'impartiality' as required from a neutral according to the International Law of Neutrality? Had they any ground for an appeal to Law when they had completely set aside all law? 'He who comes to equity must come with clean hands.' The United States after June, 1940 could no more take her stand on 'impartiality' as the basis of her neutrality, either self-imposed or international,—moreso, when her own Defence was in danger, if Britain and British naval

strength collapsed. The Destroyer Deal was the first measure in this policy of departure from impartiality. Fifty age-worn Destroyers belonging to the United States were given to England in exchange for some islands in the Caribbean Sea which England gave to the United States on 99 years' lease. The President by the terms of the United States constitution had the power to dispose of this war material, but International Law did not permit a neutral to give away this war material to a belligerent. The President had the approval of this Deal from the Attorney General of the United States Mr. Jackson. Whatever the legal subtlety behind it, the measure was a departure from strict 'impartiality': but it was a departure in favour of a cause which might restrain the law-breaker, and the sanction for that departure was to be found in another part of International Code, viz., the Pact of Paris. In the same strain the United States passed the Defence Act of March, 1941, popularly known as the "Lend-Lease Bill." "It has been held that the President has authority to direct the armed forces in time of Peace and war" 'to recognise the existence of foreign war: and to dispose of military and naval material in the interest of the American defence' (the last according to the opinion of the Attorney General Jackson in connection with the Destroyer Deal).³⁶ "The constitutional powers of the President thus entitle him to safeguard the defence of the United States by giving the use of military and naval material to any other country whose use of that material contributes to the defence of the United States: but this material costs money—and very huge sum too. The power of appropriations (sanction of money grant) rests with the Congress. Further while the President has the power to direct the forces and the diplomacy of the country, the Congress can determine the instruments which the President shall have to direct, and the objects for the defence of which they (the instruments) shall be directed.' By this Act the resources of the President have been very vastly increased (7,000,000,000 dollars appropriation bill to implement the Act was introduced on March 12, 1941 and approved on March 27.) By this Lend-Lease Act, the non-belligerent United States asserts its freedom to discriminate between the participants engaged in foreign hostilities. The President has been authorised to give various forms of aid to "the Government of any country whose defence the President deems vital to the defence of the United States." The reports

³⁶ Q. Wright, *American Journal of International Law*, 1941, p. 306 footnote.

of the House Foreign Affairs Committee and the Senator Foreign Affairs Committee justify this departure from impartiality by taking their stand on the fact that "the Kellog-Briand Pact gives any signatory the power where the Pacts 'provisions are violated by another nation to cease to abide by the Neutrality Laws' and to supply the state attacked with financial or material assistance including munitions of war" (Senate F.R.C. Report). The House Foreign Affairs Committee report upholds the Kellog-Briand Pact as a part of international law which allows a signatory "to decline to observe toward the state violating the Pact the duties prescribed by International Law, apart from the Pact, for a neutral in relation to a belligerent (and to) supply the State attacked with financial or material assistance, including munitions of War." Says Q. Wright, "The Lend-Lease Act constitutes the first legislative endorsement since the Napoleonic period of measures other than war openly against belligerents and in favour of others. It authorizes abandonment of impartiality in the interest of American defence, but, according to the Congressional reports, only in case of international hostilities initiated in breach of obligations. It, therefore, draws away from neutrality and toward responsibility for world order. The history of the past 25 years in which the principles of isolation, neutrality and impartiality have repeatedly failed to prevent war, to avoid war, or to keep war from spreading would seem to justify a departure from those principles."³⁷ Thus the United States comes to be the 'arsenal of democracy' without which the 'Atlantic Charter' would be a pious hope! That this material should really be in possession of other countries in defiance of Axis raiders and submarines, the Neutrality Act of 1939 had to be shorn of the obstructive clauses of the Act—: and the present position (November, 1941) is that the United States vessels can carry those materials even to the ports of the belligerents that the United States wants to aid (England, Russia and China), that those vessels be armed and allowed by the President to travel in "the Combat Zones." Hereafter if the law of Nations does really mean law, order and justice, the present Law of Neutrality must come in for that overhauling in which one scarcely sees any trace of 'impartiality' still left. Immortal Grotius!

³⁷ *American Journal of International Law*, Vol. 35, No. 2, April, 1941, p. 313.

AFFAIRS IN CHINA*

RUNNING JAPANESE BLOCKADE

With much fanfare and gusto, the Japanese Navy in August 1937 declared the China Coast blockaded. Each Japanese admiral, when appointed to some command along the China Coast, issues a solemn proclamation telling the world that he is responsible for the throttling of Chinese trade along the coast. These announcements are taken seriously by foreign shipping firms which are usually molested by Mikado's sailors under this blockade proclamation. But they sound more like a joke to Chinese coastal populace; they are doing a thriving business running the blockade.

Take Kwangtung for instance. For patrol duties, the Japanese Navy stations a flotilla of gunboats and destroyers in the Pearl River estuary, and employs motor boats on the numerous channels, especially the East and the West Rivers. The 100-kilometer stretch from Yehmen between Macao and Toishan to Samsui is known to the Japanese Navy as one of its blockade lines. The area within effective gunfire along this line is known as "No Man's Land." Every village, forest, and inhabitant in "No Man's Land" has been cleared out by the Island sailors. Along the channel, cities and towns are garrisoned by puppet troops under Japanese command. Nevertheless, cities on the upper West River and in the interior have ample supplies of salt, gasoline, kerosene, yarn, paper, hardware, and hundred and one other items for daily as well as military use.

Thousands of native farmers and merchants are making extra money by running this blockade line and "No Man's Land." The work usually starts after seven o'clock in the evening when men and women gather around ferry points which look like busy fairs. Coolies carry goods to the ferry. They are then loaded on all sorts of boats—sampan, fishing boats, row boats, junks, and three-motored junks, with a loading capacity of 100,000 pounds. The last-mentioned vessels are mostly used for the transportation of salt, gasoline, and other essential materials needed by Chinese government offices and troops.

* This information has been kindly supplied by *The China Information Committee*, Chungking, China.

—Editor.

The blockade runners get their supplies from Hong Kong and Macao and anchor off some small island or coastal bay waiting for night to start their activities. They have their own scouts watching the movements of Japanese naval vessels and troops. As to puppet troops, they get paid for unmolested passage, an arrangement most welcome to the mercenaries. After the blockade runners have crossed the West River, carrying coolies transport the commodities to territories under Chinese control. They make good money for taking the risk.

For the job is risky. Japanese patrol boats are constantly canvassing the Pearl River estuary, especially the area outside Macao and Hong Kong, to intercept blockade runners. They machine-gun or ram any junk on sight. Junk crews then have to jump into the sea to avoid certain death. This means some 12 hours or more of swimming to reach shore. Many sailors have perished under machine-gun fire or been drowned. Others have been kidnapped and are unaccounted for. Still others, while crossing the West River or passing Japanese garrisons, have been captured and killed. In one village near Chungshan city alone, 113 blockade runners who "specialized" in salt smuggling died under Japanese gun fire in running battles. Adding up the villages and towns on the coast, the total casualties can well be imagined. Nevertheless, thousands of men keep on crowding ferry points, bringing with them goods from beyond the blockade to keep interior cities supplied. Those who get by, get rich and make a joke of the Japanese naval blockade of the China Coast.

CHINESE ADMINISTRATION BEHIND JAPANESE LINES

In spite of Japanese bayonets on all sides, threatening constant "mopping up" operations, the southern Kiangsu counties progress steadily under free Chinese administration. Connected only by a thin line of communications with Chungking and a radio station with the Kiangsu Provincial Government in northern Kiangsu, the Southern Kiangsu Provisional Headquarters retains a corner of the former "Paradise on Earth" amidst the Japanese and puppet controlled badlands.

The 26 southern Kiangsu counties have since 1939 restored their political structure. A special wartime *pao* and *chia* (mutual guarantee) system, with 27 articles, was promulgated and organizers were sent out to areas behind Japanese lines to organize the people. A number of them have fallen victim to Japanese and puppet agents, but more have gone to villages and

towns to fight for free Chinese administration in the southern Kiangsu "Paradise."

Education under free Chinese administration shows the most outstanding progress. The provisional headquarters has established one middle and five primary schools experimenting with wartime education. The middle school has ten classes and 400 students, with 90 girls. Many of them had to run the Japanese blockade in order to receive free education in Free China. The five primary schools in southwestern Kiangsu have about 1,500 students.

The counties also have schools. Twelve middle schools, with 42 classes and 1,800 students, are found in seven of the 26 counties. The entire southern Kiangsu area has 2,745 primary schools under Chinese control, with 152,300 students. Changchow on the Nanking-Shanghai Railway alone has 354 primary schools with 26,000 students in villages not reached by the Japanese.

A private middle school was established in 1940 to supplement the provincial and county institutions. It has four classes and 200 students. The school was founded by General Leng Hsin, Director of the provisional headquarters, in remembrance of his mother.

Very few of Shanghai and Hongkong text-books can reach the area. Therefore, a compilation and editing office has been set up in the headquarters to edit and compile primary and middle school textbooks. The office has also published 28 kinds of reading matter for the general public. A newspaper of tabloid size is published with a daily circulation of 3,500 copies. Besides supplying news to the people living under free Chinese administration, it is smuggled daily to Japanese controlled areas for distribution.

The headquarters has established a hospital with two branch clinics and a circuit medical corps. It has departments of medicine, surgery, children, obstetrics, skin, eye, ear, nose, throat, and dentistry. The hospital treated 600 in-patients and 18,700 out-patients in 1940. Vaccinations were given free to villagers, and X-ray equipment, imported from Shanghai, was recently installed.

The administration is financed by local taxes and appropriations from the provincial government. The title deeds tax, amounting to \$500,000 in the headquarters' estimate, may double the estimate in 1941.

The southern Kiangsu people live under constant threat from Japanese bayonets, but life goes merrily on. When fighting

breaks out, the people of the area go to the hills for several days, and then return to their homes, if they still stand, to continue living, or to rebuild, if the homes are gone. Commodity prices in this area are comparatively stable. Rice sold at \$60 per picul in May this year.

CHINA'S WARTIME JUDICIAL SYSTEM

Major development in China's judicial system will be the adoption of a five-year plan which calls for the establishment of 1,354 courts of first instance in an equal number of counties (*hsien*) throughout China by the end of 1946, according to Mr. Chu Cheng, President of the Judicial Yuan.

The plan is to be effective from 1942 when 135 courts, or one-tenth of the total number required, will be established. Two-tenths will be set up in each of the ensuing three years while the remaining three-tenths will be brought into existence during the fifth and last year.

Courts already established in 1941 numbered 135. Of these 20 are located in Szechwan, 15 each in Kwangsi and Shensi, ten each in Kweichow, Yunnan, Kansu, Hunan, Kiangsi, Fukien and Chekiang and five each in Hupeh, Anhwei and Honan.

The big increase in the number of courts is planned by the Judicial Yuan to meet the wartime and postwar judicial needs in China, especially in view of anticipated abolition of extraterritoriality and consular jurisdiction after the restoration of peace.

The finances for the maintenance of courts in the nine Free China provinces of Szechwan, Sikang, Yunnan, Kweichow, Kwangsi, Shensi, Kansu, Ningsia and Chinghai were to be drawn from the National Treasury. This system was extended to entire China including all provinces in the war areas, beginning from 1941.

CONSULAR JURISDICTION IN CHINA

The National Government is prepared to open negotiations through peaceful and regular channels with the treaty powers, except Japan, for the abolition of consular jurisdiction, declared Mr. Chu Cheng, President of the Judicial Yuan, in his fourth war anniversary message. The judicial chief predicts that extraterritoriality in China will end when she emerges victorious from the war.

Welcoming American Secretary of State Hull's statement that the American government is ready to discuss with the

National Government for the abolition of American consular jurisdiction in China after the restoration of peace, and British Under-Secretary Butler's reaffirmation in the House of Commons to the same effect, Mr. Chu believes that these gestures will give China both encouragement and inspiration. This recognition of China's position in the family of nations is a result of the blood and sweat in the last four years.

Reviewing the history of extraterritoriality in China, the Judicial Yuan President reported that 19 powers had secured such concessions from China till 1918, when China concluded the Treaty of Amity and Consular Jurisdiction with Switzerland. They were Great Britain, the United States, France, Norway, Russia, Germany, Portugal, Denmark, the Netherlands, Spain, Belgium, Italy, Austria, Japan, Peru, Brazil, Mexico, Sweden, and Switzerland.

The 90-year old system is harmful both to China and other powers, according to Mr. Chu. It violates Chinese sovereignty; rouses bad-will; hinders the development of the interior; brings about diverted courts and laws and codes, difficulties in appeals and counter-charges, the lack of proper law knowledge on the part of judges, prejudice on the part of consuls, the lack of control over witnesses of another nationality, and difficulties in gathering proofs and witnesses against offenses committed by foreigners in the interior. It also provides a loophole for foreigners to evade Chinese national taxes. It has been the root of many misunderstandings between China and other powers and it is the common wish of all progressive people that the system be abolished at the earliest possible time.

China's efforts in securing the abolition of this system dated back to 1902 when the British government agreed in principle to abolish extraterritoriality. When China declared war on Germany and Austria in 1917, the Peking government declared the abolition of German and Austrian consular jurisdiction rights. Russian extraterritoriality was abolished in 1920 after the establishment of the U. S. S. R.

The first national congress of the Kuomintang held in 1924 listed the abolition of extraterritoriality as one of the leading items in foreign policy. Accordingly, when the amity and trade treaties between the Chinese and the Belgian, Italian, Danish, Dutch, Portugese, and Spanish governments were signed in 1928, it was agreed that citizens of the contracting parties should be subjected to the jurisdiction of local courts. A special committee was established by the Judicial Yuan in 1929 to make necessary preparations for the abolition of extraterritoriality in China.

The Chinese Ministry of Foreign Affairs opened negotiations with Great Britain, the United States, and other powers for the conclusion of new treaties and the abolition of consular jurisdiction. A draft treaty between China and Great Britain was completed in May of that year, and the Sino-American draft treaty was ready to be signed in September. It was provided in the treaties that extraterritoriality would be abolished beginning New Year's Day, 1932. The Mukden Incident in 1931, however, frustrated all the good work done.

When civil war broke out in Spain in 1937, all law-suits involving Spanish citizens in China were placed under the jurisdiction of Chinese courts.

At present, only eight nations, including Great Britain, the United States, Japan, Peru, Sweden, France, Brazil, and Switzerland still hold such right; while that of Belgium, Italy, Denmark, Portugal, the Netherlands, and Norway, although not yet taken over, has been agreed in principle for abolition. Of the eight countries, both Sweden and Switzerland have agreed to follow suit, when other powers give up their consular jurisdiction right. With Great Britain and the United States ready to open negotiations for its abolition after the war, Mr. Chu believes that the prospect for abolishing extraterritoriality in China is very good, and the long-cherished hope will be realized with the winning of the final victory.

CHUNGKING'S FOREIGN EXPORTS

In the half-year period from January 1 to June 30 this year, 54,465 quintals of wood oil were exported from Chungking for foreign markets, making an average of 9,077.50 quintals per month. Compared with the first six months of 1940, this is an increase of over 4,000 quintals.

The export of hog bristles and yellow and white raw silk also registered increases over the corresponding period of last year.

Export of raw silk, mostly white silk, this year more than doubled that of the corresponding period of last year—1,447.03 quintals for 1941 and 611.74 quintals for 1940. The increase in the quantity of bristles exported was more than 20 per cent, as 5,097.56 quintals of bristles were exported between January and June this year against only 4,114.25 quintals during the first half of last year.

While the relative amounts of pig casings are practically identical, sheep skins and untreated rabbit skins showed a sharp

drop in exports. A new item of export this year is white native raw silk of which 115.26 quintals were sent to British Burma.

The total value of export from or through Chungking during the first half of 1940 was estimated by the Bureau of Inspection and Testing at \$20,300,467.92.

CONCERTED EFFORT TO INCREASE EXPORTS

A concerted government effort to increase the production of export goods such as wool, *tung* oil, silk, tea and bristles is being made by the Foreign Trade Commission of the Ministry of Finance in co-operation with various organizations. This measure is combined with an increase in the prices of nationalized goods having an export value.

The production of wool in the Northwest, for example, can meet only half of the annual national demand of 400,000 piculs (440,000,000 pounds). The authorities plan to double the production both in the Northwest and the Southwest after five years of promotion when 20,000,000 sheep will be raised. The increased output of raw wool will stimulate exports as well as reduce China's annual import of \$20,000,000 worth of woollen goods.

The acreage of *tung* tree cultivation is expected to be increased from its present 800,000 *mow* (150,000 acres) to 1,500,000 *mow* (250,000 acres). This help will raise the oil production from 50,000 tons to 150,000 tons a year. In addition to technical aid, the farmers will be given facilities by credit co-operatives in the *tung* tree-growing districts. Furthermore, extracting of *tung* oil entirely by machinery will also increase production besides improving quality.

Despite the competition of rayon and other synthetic products, Chinese silk still has distinct uses in the world market. It is expected that in the next five years the silk output from Western China will be increased from the present 17,000 piculs (1,870,000 pounds) to 50,000 piculs (5,500,000 pounds) a year. Next to Szechwan, Yunnan has high hopes of becoming a prosperous silk-producing region according to a survey by experts.

The map of China's tea production has been shifted by the hostilities. Although China exported \$100,000,000 worth of tea last year, Chinese tea has not made an impressive record in the international market. Attention will be directed to the pressing of tea leaves by modern processes. The nation's tea districts have been divided into two, Southeast and Southwest. The

intention is to make the southeastern district produce tea for export and the southwestern district primarily for domestic consumption. Later, with the growing of better tea leaves and the perfection of processing, tea from the Southwest will also be sent abroad.

The export of bristles has jumped from the eighth to fourth place in China's foreign trade since 1939, next only to raw silk, egg products and tungsten. Szechwan being the largest producer of bristles, the authorities endeavour to improve the quality through raising better breeds of hogs.

The increasing production costs of minerals in interior China has caused a rise in their prices. The price of 1,000 catties (1,100 lbs.) of tin slabs not less than 94 per cent fine from the Kochiu mines in Southern Yunnan has been increased since last August. In Kwangsi, government purchasing prices of the nationalized metals have been similarly raised.

NANKAI ECONOMIC RESEARCH INSTITUTE

Although circumstances forced it to evacuate from Tientsin, the Nankai Economic Research Institute, now in its 15th year of existence, has continued its laudable services of conducting studies and researches in Chinese economics as well as offering advanced training to students of economics. It is now carrying on on the campus of the Nankai Middle School on the outskirts of Chungking.

Founded in 1927, the Nankai Economic Research Institute is an integral part of the independent Nankai University. It has as its main objective the preparation of concrete solutions of China's social and economic problems and the promotion and development of social sciences in this country. The chief points of this institute's working program are to study the intensity and effects of industrialization in China, to compile and analyze data and statistics on Chinese economics, and to train research workers. This last phase of the work is relatively new as it was not started until the autumn of 1931 when the Nankai School of Economics was formed.

In charge of the economic research institute is Dr. Franklin Ho, economist and professor. He is assisted by Dr. Fang Hsien-ting, research head of the institute.

In addition to allotments from the university, the Nankai institute's research projects are partly financed by Chinese and foreign cultural organizations and institutions including the China Foundation for the Advancement of Culture and Education, the

British Indemnity Fund Administration, the Ministry of Education, the Kincheng Bank, the Institute of Pacific Relations, and the Social Science Research Institute.

For the current year, on top of the financial support from the Rockefeller Foundation, the Executive Yuan has granted special funds to the institute.

Wartime research work of the Nankai institute has assumed somewhat different characteristics as emphasis is laid on the immediate national and social needs of both the present and the postwar periods. In co-operation with central and local government organizations, the institute, by making use of available official documents, papers and reports, engages in researches and drafts plans for agricultural, industrial, mining, finance, money and banking, trade and transportation undertakings.

YUNNAN'S THREE-YEAR PROGRAM STRESSES ECONOMIC RECONSTRUCTION

Economic reconstruction forms the keynote of Yunnan's three-year program to make the province modern and progressive. The program calls for an allround development of industry and agriculture which have thus far made only initial progress. The economic projects are to be supported by similar promotion of education and finance.

The three-year program is built around a large scheme of productive enterprises. Farm irrigation works, mulberry tree planting, silkworm rearing, cotton cultivation, growing of *tung* trees and tea groves, and other fields of rural production will receive foremost attention of the authorities.

One phase of the program stresses the organization of rural co-operative banks. The provincial bank has been ordered to make as many loans to farm communities as possible.

In addition to expanding secondary and elementary education in Yunnan in the three years, frontier education will be intensified. At least five schools will be established in every frontier *hsien* (district).

The program for modernizing the local government calls for the training of civil servants, a health station network, reforestation and land reclamation. *Hsien* highways will be increased and improved along with the provincial roads. The rebuilding of the municipality of Kunming, which is also the provincial capital, is also part of the program. The city is expected to become a model to guide the reconstruction of the entire province.

ENGINEERS' PART IN WAR AND RECONSTRUCTION

It is no coincidence that two engineers are members of China's wartime "cabinet." Under the leadership of Economic Affairs Minister Dr. Wong Wen-hao, famous geologist and metallurgist, 10,000 Chinese engineers are engaged in war and other types of industry, in communications, mining and metallurgy and general construction in Free China. Thousands of youths are studying to be engineers in universities and colleges under Education Minister Chen Li-fu, who holds a master's degree in engineering from Pittsburg University, Pennsylvania. The nation is aware of the important rôle played by engineers in war and reconstruction, and the engineers have lived up to the trust.

Throughout China's 5,000 years of history, engineers have played an important part in the life of the agricultural country. Legendary Emperor Yu of the second millennium B. C. is called China's outstanding hydraulic engineer. Today, hydraulic engineers are still indispensable in the construction of irrigation canals and dikes, dredging and canalization of rivers and survey of waterways.

China's first modern engineers were mostly experts in munition manufacture, a result of the Manchu Dynasty's belated efforts at making firearms as part of its army modernization program. The armament engineers, in the last few years have been reinforced by a host of engineering, chemistry and physics graduates. These go through advanced training in the Ordnance School of the Ministry of War before entering active service.

There was little aviation industry to speak of before the war. Four years of combined efforts of several kinds of engineers, besides a handful of experts in government aircraft plants, achieved during the war many times the results gained in previous years. Chemical and civil engineers also play an important part in air precaution measures.

Besides those working in arsenals and aircraft plants, a number of military, civil and telecommunication engineers are in active war service. Those serving with Chinese mechanized units as instructors and senior mechanics are China's hope for a modern army.

The dismantling, packing, shipping and reassembling of coastal factory machinery in their Odysseys to West China proved the ability of Chinese engineers to meet war emergencies. Engineers in charge of machine shops command perhaps the greatest respect as—thanks to their efforts—the shops were able to reopen within two or three months after reaching their destina-

tions. Besides manufacturing parts of arms, they make agricultural and industrial tools, generators, and other machines. The manufacture of generators and machines for chemical industries was undertaken under wartime conditions and with simple tools. The success gave justified confidence to the Chinese engineers.

Automobile engineers have succeeded in converting gasoline using motors into charcoal, alcohol, *tung* oil, and other vegetable oil burners. Working in collaboration, chemists succeeded in manufacturing alcohol, cracking vegetable oils, distilling soft coal and mineral oil and compressing natural gas. Most of these enterprises owe their existence of wartime demands and to the ingenuity of Chinese engineers.

Mining engineers, using machinery brought inland from the east as well as improved native methods, exploit coal, iron, gold, tungsten, tin, antimony, mercury, silver, copper, and other mines. Metallurgists direct smelting and refining processes.

Civil engineers construct railways, highways, airdromes, bridges and buildings. The 600 kilometers of railways completed and the hundreds kilometers under construction, the 5,000 kilometers of highways completed and the 11,000 kilometers repaired as well as the 4,900 kilometers under construction, are eloquent testimonials to their ability.

New power stations, operated by steam or water, have been erected to furnish current to the war industries. Electric engineers have laid the foundation of electrifying the Northwest and Southwest, a feat not even thought of before the war.

Textile engineers supervise the many modern cotton and woolen mills in the west, where before the war there was only one modern cotton mill, in Shensi. Centres of the new textile industry are in Szechwan, Kansu, Yunnan, Kwangsi and Kweichow.

Chemical engineers are engaged in bleaching bristles, spinning silk, cracking *tung* oil, processing tea, and treating other agricultural products for export. Engineers specializing in preserving, canning and storing foodstuffs have also their wartime importance, for the army as well as for the civilians.

Machines bought in prewar days and left idle are now running at full speed. Century-old native methods have been improved to supplement machine production. Prewar scholars indulging in theories and book knowledge have adapted themselves to reality and gone into active work. Many, it seems, have turned from theoreticians to "practitioners" for good. They, too, have their share in war and reconstruction work.

Inventions and improvements made by Chinese engineers during the war are numerous. Between 1938 and May, 1941,

the Ministry of Economic Affairs granted 134 patent rights, 11 more than those granted by the former Ministry of Industries in the six years between 1932 and 1937. Those granted patent rights represent about 35 per cent of the applicants.

Before the war, engineering students shunned applied engineering, rather preferring to be teachers. The war's rising demand for native-made goods caused the erection of many small factories built by young engineers.

KWEICHOW'S RECONSTRUCTION ORGANS

In June, 1941, three of Kweichow's new economic and educational organs celebrated anniversaries. In June, 1939, was established the Kweichow Development Corporation, driving power behind provincial industrialization. Great China University, moved 1,000 miles inland from Shanghai, celebrated its seventeenth anniversary. And the new Kweichow Provincial Bank opened its doors.

The Kweichow Development Corporation, now in its third year, has made progress. Its capital of \$6,000,000 has been increased to \$10,000,000. Significant in this increase has been the conversion to useful purposes of idle capital tucked away by the people. The number of industrial, mining and agricultural enterprises has risen from 20 to 22. The increase by two units is notable because the corporation during the last year concentrated on expanding and improving the existing undertakings under its control rather than embarking on new ventures.

One of the corporation's contributions has been the introduction of modern coal mining methods. The Chu Tung (Eastern Kweichow) coal mines, equipped with light railways, supply to a number of plants fuel in large quantities and at rates much lower than formerly considered possible.

A successful experiment with charcoal burning motor cars and trucks in Kweichow as expected to considerably reduce the consumption of imported gasoline. The experiment was carried out by the China Machine Works, established by the corporation. In co-operation with the Ministry of Economic Affairs, the corporation plans to purchase a number of cars fitted with charcoal burners which are being manufactured by the machine works in increasing quantities.

The corporation controls several kinds of enterprise to develop the province. Its 22 concerns embrace mining, electrical and chemical plants and transportation and commercial ventures.

Training of technical personnel and scientific studies are promoted.

One of the first institutions of higher learning to move into Kweichow, Great China University is building permanent premises on a scenic spot outside Kweiyang. For this reason, the seventeenth anniversary of the school in early June assumed a new significance.

The university removed to Kweiyang soon after the outbreak of the war. After a long, difficult journey by faculty and students, the school reopened in the capital of Kweichow Province more than three years ago. Since that time, 700 Kweichow students have graduated from the school.

The arrival of the university was heartily welcomed by the Kweichow people. To the building of new premises, partly completed in April, monetary contributions were made by prominent persons in the province. Before the war, Kweichow students seeking advanced education had to travel over long distances from home, and because of the inconveniences and expenses of such journeys, had to remain "abroad" until completion of their studies. With the construction of Great China's permanent campus, Kweichow has its opportunity for higher education at home.

Following the lead of Great China University, a few colleges have taken refuge in the province. Moreover, the Ministry of Education plans to erect a National Kweichow University.

Meeting a long-felt need in Kweichow, the Kweichow Provincial Bank was formally opened for business on June 6 of this year. With the assistance of the government banks in the province, the new institution promises to be a driving force in Kweichow economics. Among its functions will be to facilitate wider circulation of the legal tender in outlying districts, give financial assistance to farmers for developing agriculture and help to explore other resources.

Prior to its establishment with a capital of \$6,000,000, co-operative banks had been founded in most parts of the province. They, however, proved unable to cope with all rural needs.

The provincial bank is not exclusively a government institution. The authorities have encouraged participation by private investors.

THE MOST DIFFICULT HIGHWAY TO BUILD

From the engineering point of view, the Loshan-Sichang Highway, 525 kilometers long, surpasses all existing highways

in China in the obstacles, physical and otherwise, that were encountered in the course of construction.

First of all, the new road, which links western Szechwan with southern Sikang, traverses an unbelievably difficult terrain. Sichang, its southern terminus, is 1,700 meters above sea level. The highway goes up to 2,800 and 2,600 meters at two places before it abruptly drops to a mere 500 meters at Loshan. (The highest point on the Burma Road is 2,000 meters.)

At the two peaks, one known as the "Straw Raincoat's Peak," and the other as the "Buddha's Cliff," it snows six to seven out of twelve months. During the warm season, it rains most of the time. Sunshine was thus denied to the workers who had to carry on in wet clothing day in and day out last year.

The new road beats all other Chinese highways on another account. It took a larger toll in human lives. An unbearable climate, lack of nourishing food, inadequate medical facilities, and accidents all conspired to kill seven thousand road-builders in less than two years. At one spot alone, several hundred fell dead because of illness. Their graves by the side of the road stand as a monument to great sacrifices exacted in rushing through the road.

Furthermore, the amount of stone-work to be done is also larger than all precedents. At many places, the road was simply hewn out of rocky hillsides. The most awe-inspiring project was carried out at a deep canyon separating Szechwan and Sikang provinces. Here, over 70 stone-cutters dropped to death in two or three months.

The cliffs overlooking the canyon are so steep that the workmen had to crawl up by toes and nails. Slowly and dangerously they proceeded to cut a foothold 300 meters above the bottomless valley. First, it was just a few inches, which they gradually widened. Then with ropes around their waists, they dangled down from trees further above to continue their arduous assault against the stubborn granite with hammers and chisels.

For two months last winter, day and night, with the aid of large torches made of straw soaked in wood oil, these workmen hammered away at the slow-yielding rocks. The entire valley for miles around echoed to the deafening black-powder blasting. Fatal accidents were often due to the snapping of the waist-ropes after long hours of friction with sharp stony corners. At other times, it was just a slip.

During the noisy operations, accidents were not always noticed at once. Only at the nightly roll call at the workmen's hut was the man found missing. In fact, even when the accident

was eye-witnessed by fellow-countrymen, little could be done. For in nine out of ten cases, nothing but a bloody mess would be found down below.

Though so many of their comrades had thus lost their lives, those left behind to improve the road still demonstrate a good spirit. Most of them are husky northerners from either Shantung or Honan. The war has cut them off from all contacts with families in the Japanese-occupied areas north of the Yellow River. They subsist on a monotonous daily fare of corn and potatoes.

However, every one of them knows the importance of the road they have been building. Indifferent to material comforts, they reason that, being illiterates, they can only use their hands to serve the country. As to larger contributions requiring mental power, they gladly leave them to the educated ones. Their one and only thought is to do their job fast and well.

Construction work on the new highway began in the summer of 1939. One of the factors for the delay was shortage of food-stuffs. Excepting places near the two ends where rice is ordinarily obtainable, this staple Chinese food had to be carried by porters or pack-animals over long distances to reach the consumers. On the average, it takes one man to transport rice for every two men at work. Thus, a large percentage of the manpower which otherwise would have been available for road-building, was diverted.

Despite all sorts of hardships, the workmen occasionally had some fun. For instance, Yenwokow used to be inhabited by hordes of monkeys, who did not like the intrusion. When the workmen began to cut a path on the hillsides, they watched from tree tops with great misgivings. Soon they decided that something must be done to preserve the tranquility of their region.

One day last December scores of these monkeys hurled stones at the road-builders all at once. The latter had practically no way of defending themselves. As a result, many heads were broken. As if the daylight attack was not enough, the monkeys raided the workmen's huts at night, and snatched a large quantity of corn, thereby almost bringing on a starvation threat. Finally the workmen had to post guards, armed with clubs and pistols, to protect their food as soon as the sun goes down.

The man *vs.* monkey battle lasted for several days. The monkeys refused to admit defeat until explosives used for blasting purposes sent them scurrying for cover. Today they still hang around but always discreetly keep away from the road.

The construction of the highway, constituting another proof of the magnitude of China's manpower, required no less than 100,000 people drafted from Szechwan and Sikang. The figure does not include 20,000 experienced stone-cutters recruited from different parts of the country, and several thousand Lolo tribespeople, who, led by their chieftains, worked side by side with other road-builders for many months.

GOVERNMENT TO ISSUE FOOD TREASURY NOTES

Government control of the nation's food supply has gone one step further with the promulgation on August 4 of a set of regulations governing food treasury notes. The issuance of the notes, which is scheduled for September 1 for whole China, was one of the important resolutions made in the financial conference held in June. Other important resolutions by the conference were the centralization of the nation's land tax in the hands of the central government and the levying of the land tax in kind instead of in cash.

The issuance of the food treasury notes, first of its kind ever introduced in China, is regarded as an important means to stabilize the food price level and to centralize the nation's food supply in the hands of the government. The Ministry of Finance and the Ministry of Food are authorized by the National Government to issue these notes in payment of purchases of extra food from private sources.

The notes are divided into rice and wheat notes. It is estimated that, in addition to the 6,000,000 piculs (660,000,000 pounds) of rice to be levied in lieu of cash from Szechwan farms this year under the new system, the government will have to issue notes to pay for the purchase of further 6,000,000 piculs of grains in that province. No quota has been set for the distribution of the notes in the provinces. Notes are to be issued only according to the national food supply needs for the current year.

The purchase of surplus grains by the government is seen by the authorities as an effective way to check profiteering and hoarding and to gradually bring about an equal distribution of land ownership in China.

WOUNDED SOLDIERS MODEL VILLAGE PLAN

The Chinese National Women's Association for War Relief, which has Madame Chiang Kai-shek for its president, recently celebrated its fourth anniversary in a big way. Among other

things to mark the occasion, it announced a plan to construct a \$3,000,000-model village for China's disabled soldiers and their families.

Most likely, the model village will be located in western Hunan where the cost of living is about two-thirds lower than in Chungking and where arable wasteland is abundant. The village will be big enough to accommodate upwards of 1,000 crippled soldiers and their families.

It is to be the final word in the rehabilitation of warriors incapacitated by the war. The village will be a utopia which the veterans, their wives and children will have to themselves. There will be factories and farms so that the men with their curtailed abilities may engage in handicrafts or in agriculture, and where their better halves may lend a hand. For the education of their children, there will be schools.

Men with families will each occupy a cottage of their own. For those without dependents general dormitories will be provided. Other features of the village will include a hospital, club-house, gymnasium, barber shop and bathhouse. Anything within the financial limits that may contribute to the physical well-being and mental enlightenment of the inhabitants will be provided.

The fourth anniversary of the Chinese National Women's Association for War Relief was a day of blessing not only for the disabled soldiers but also for soldiers' families and recruits and those fighting on the front in general. On that day, the association distributed \$40,000 among 3,000 soldiers' families in and near Chungking and sent \$5,000,000 worth of medicines to the front.

These funds and medical supplies were drawn from contributions raised during the past four years. Up to the end of June 1941, cash gifts received exceeded \$20,000,000, gold rings and ornaments 500-odd ounces of precious metal and medicines \$5,000,000.

Madame Chiang awarded embroidered pennants, citations and autographs to the outstanding contributors of relief funds. The recipients of these honours included the Philippine branch of the association and the Chinese War Relief Association in Palembang which contributed \$1,000,000 each; Messrs Tan Kah-kee and Chen Shou-ming, noted Chinese industrialists in Singapore and the Chinese Recreation Association in Selangore who donated more than \$100,000 each; the War Relief Associations of Sarawak and Klang and Madame Wu Ting-chang, wife of the Kuai-chow chairman, who gave \$10,000 to \$50,000 each.

Stationed in hospitals for wounded soldiers and convalescent camps are more than 200 girls who were trained in nursing and first-aid by the association.

Working under the association's supervision are eight medical service corps organized by the New Life Movement Association under the leadership of Lt.-Gen. J. L. Huang and Dr. Y. Y. Tsu. They are stationed in hospitals for wounded soldiers and in orphanages.

As a measure of occupational relief for families of soldiers and recruits, the association has established three handicraft factories at Paisha, Peipei and Chungking. The two at Paisha and Peipei engage in spinning and weaving, towel and carpet making. The Chungking plant makes cotton-padded clothes, shirts and pants, cloth shoes and stockings.

Today, the Chinese National Women's Association for War Relief has 41 branches in Free China and 17 branches in Hong Kong, Burma, Paris, Newyork, London, Philippine Islands and Washington. It has more than a million members.

SOUTHERN KIANGSI IN THE MAKING

Special Commissioner Chiang Ching-kuo, eldest son of Generalissimo Chiang Kai-shek, is determined to make the 11 southern Kiangsi counties under his control a new model area in the province. Full of new ideas and plans brought back from Europe after the outbreak of the war, young Chiang launched a three-year plan on New Year's Day, 1941. He is out to revitalize the formerly backward and bandit-ravished southern Kiangsi counties, and able to report satisfactory results after six months of hard work.

The fundamental object of the three-year plan is to supply food, clothing, housing, work, and education to every one of the 1,600,000 people in the area. It covers 11 sections—agriculture, forestry, industry, commerce, mining, communications, education, culture, health, relief, and administration.

To supply competent personnel for the execution of the plan, a training class is maintained by the commissioner's office. Five classes have so far graduated from this class; the sixth is now under training. Those trained include government clerks, officers of the self-defense corps, and school teachers.

The *pao* assemblies, provided for in the new district autonomy system, function in the 11 southern Kiangsi counties. The preliminary work was completed during the first half of the year. Organization and functions of the assemblies were

explained to the populace. The family heads in each *pao* (from 100 to 150 families) are to meet once each month to decide major issues concerning the *pao*. After a three months' trial, village and town assemblies will be introduced, preparing the way for county councils.

The population is trained in three groups, men, women, and youth. The first aim is the training of able-bodied men. With a training centre in each village, they are taught to read and write, stretcher bearing and first-aid, besides elementary military knowledge. It is planned to conduct, in addition, centralized training in each county with four men from each *pao*. The training of women and young people will follow.

In the economic field, experimental agricultural stations and model farms have been established in the counties with a main station in Kanhsien. The stations total 758 *mow* (126 acres) and the farms 3,558 *mow* (593 acres). Selected rice, cotton, beans, wheat, vegetables, and other plants are raised to study their adaptability to southern Kiangsi soil and climate and to introduce them to the local farmers.

The district has 861 rural co-operative societies, their members representing 10.62 per cent of the population. It is planned to set up 48 co-operative factories, all under county governments, in the latter half of 1941. They will be financed by the Bank of China, which has sent out field workers to study economic and other conditions.

Three new highways, on which construction began this spring, are expected to be completed this fall. They total 196 kilometers. More roads will be built in the next two years, including national and provincial highways. New inter-village telephone lines laid this spring totalled 880 kilometers. It is expected that the special commissioner's office will be able this winter to call directly the county, town, and village governments over the long distance telephone.

Since 1940, four new schools were added. Most of the initial expenses were met by donations from the local gentry, each school getting more than \$100,000. Taiyi on the Kiangsi-Kwangtung border opened an agricultural school.

Five new village schools have been added to the original 196 schools. Another 501 people's schools have been reorganized to improve their financial conditions and teaching. Before the end of the year, 220 more of such schools are slated for reorganization. Summer classes will be conducted to give supplementary training to school teachers.

For relief and health work, the office has under its direction 16 institutions, including orphanages, nurseries, hospitals, factories and homes for the aged and cripples. Four of them are for children.

CHINESE LOAN \$450,000,000 TO GOVERNMENT IN NINE MONTHS

Between September, 1940, and June, 1941, the Chinese people saved \$450,000,000 through government promotion measures, according to a survey made by The China Information Committee. This sum represents the people's voluntary efforts to lend money to the government for reconstruction purposes in these nine months. It excludes saving deposits in the banks.

In the total, \$310,000,000 represented the purchase of thrift-savings certificates issued by the banks with the authorization of the Ministry of Finance. Then \$120,675,000 came from the sale of wartime government bonds in Chungking, while the remaining \$15,000,000 were obtained from the savings lottery sponsored by the Central Savings Society.

In addition, the Chinese people during the period under review gave money in many other ways, such donations to the government, soldiers and refugees. The prohibition on wine and luxuries, the popularization of a balanced diet and the increase in the consumption of subsidiary staple foods have helped the people to live economically and rationally in accordance with the national thrift movement.

ACREAGE INCREASE IN WINTER CROPS REPORTED

An average increase of four per cent in the acreage of winter crops of 1941 over that of 1940 was reported from the 15 Free China provinces of Ningsia, Chinghai, Kansu, Shensi, Honan, Hupeh, Szechwan, Yunnan, Kweichow, Hunan, Kiangsi, Chekiang, Fukien, Kwangtung and Kwangsi, according to the National Agricultural Research Bureau.

Reports show that wheat acreage totals 128,000,000 *mow* (21,300,000 acres) which marks an increase of 9,200,000 *mow* or eight per cent over that of 1941; barley 51,000,000 *mow* (8,500,000 acres) an increase of 1,700,000 *mow* (300,000 acres) or three per cent; peas 34,000,000 *mow* (5,700,000 acres) an increase of 600,000 *mow* (100,000 acres) or two per cent; beans 31,000,000 *mow* (5,000,000 acres), an increase of 1,700,000 *mow* (300,000 acres) or six per cent; rape

56,000,000 *mow* (9,300,000 acres), an increase of 1,400,000 *mow* (230,000 acres) or three per cent.

The acreage increase in winter crops of 1941 has a few exceptions. In Szechwan, for instance, the acreage of rape decreased by 18 per cent due to lower prices of rapeseed oil last year. The acreage of peas in Yunnan, Kweichow and Hunan was reduced by four per cent because of a drop in the market price of peas and the prevalence of insect pests. Acreage for beans in Chekiang and rape in Kwangtung also fell off by one or two per cent as more wheat and barley were grown.

Despite the general acreage increase, advance estimates made by the bureau shows a downward trend in the size of all 1941 winter crops. This was due to a widespread drought in the spring this year.

Wheat harvest in the 15 provinces is estimated at 195,000,000 piculs (at 110 pounds), a decrease of 6,000,000 piculs or three per cent against the 1940 production; barley at 78,500,000 piculs, a decrease of 7,400,000 piculs or nine per cent; peas at 43,000,000 piculs, approximately the same as last year; beans at 48,000,000 piculs, an increase of 240,000 piculs or one per cent; rape at 46,400,000 piculs, a decrease of 2,100,000 piculs or four per cent.

While the 1941 wheat crop is the lowest during the four years of war, it is still by 26,000,000 piculs larger than the prewar seven-year average. Likewise, the expected yield of rape shows an increase of 10,000,000 piculs over the prewar seven-year average.

LITERARY MOVEMENT IN FOUR YEARS OF WAR

The military phase of China's resistance against aggression has another side. On this side of the war are Chinese writers fighting with their pens.

Nationalism characterised many literary productions during that period. There was a widespread condemnation of the weak-kneed non-resistance policy and a general admiration for the bravery and heroism of the Chinese guerillas in the Four North-Eastern provinces. Representative works in which these sentiments are embodied include two plays, "The Death of Captain Lee" by Ouyang Yu-ching and "The Melody of Spring" by Tien Han, and two novelets, "Expectation" by Wang Ping-ling and "The Countryside in August" by Hsiao Chun.

Hsiao Chun is one of a large group of young Chinese writers who came to the interior of China from Manchuria shortly after

September 18, 1931. To them, dear old Manchuria was a sweet home, lost but bound to be regained. These emotions of theirs are vented in such novelets as "The Land of Life and Death" by Hsiao Hung, "The Orphan without a Fatherland" by Shu Chun and "By the Side of Hulan River."

The statement made by Generalissimo Chiang Kai-shek at Lushan (Kuling) immediately after the Lukouchiao Incident on July 7, 1937, in the course of which he declared that China had reached the limit of her endurance was a historic document. He mobilized the nation's armed forces and with them China's men of letters. Chinese writers, authors, poets, novelists and playwrights in Shanghai and Nanking began to organize themselves. They went to the fronts and composed poems and songs under gunfire. Mobile dramatic troupes came into being like mushrooms and courted death staging patriotic performances behind the firing lines.

Literary efforts during that early stage in China's resistance were mainly directed towards arousing the people's patriotism and stressing national unity and solidarity against Japanese aggression. There was a strong note of sensationalism in all writings.

With the withdrawal of Chinese forces from Nanking, the tri-cities of Wuhan became the nerve centre of China's resistance both military and literary. With the bulk of government offices and personnel, Chinese poets, composers, short-story writers, novelists, playwrights and dramatists gathered in the Wuhan cities from all parts of the country. They met like friends in distress and in that friendly spirit discussed and put their heads together in the common pen war against aggression.

Stronger unity and solidarity came into the ranks of China's literati with the inauguration of the China National Literary Resistance Federation in Hankow on March 27, 1938. The moving spirit for this national organization was Mr. Shao Li-tze, then Minister of Publicity and now Chinese Ambassador to Soviet Russia. The manifesto issued by the federation was written in four languages, Chinese, English, French and Russian.

Besides publishing a monthly magazine entitled "Resistance and Literary Arts," the China National Literary Resistance Federation, sponsored literary discussion meetings from time to time. Representatives were sent out to organize branches in various parts of the country.

The headquarters of the federation and the Society of Literary Arts were both removed from Hankow to Chungking during the autumn of 1938. An event of importance was an inspection trip made by 15 Chinese writers under the leadership

of the late Mr. Wang Li-hsi to various war fronts to gather first-hand material. Unfortunately, Mr. Wang fell seriously sick and died at Loyang before the trip was completed.

The federation also compiled several kinds of "folk literature," reading matter suitable for the common people and pamphlets and booklets for the frontline soldiers.

Working in close co-operation with the federation was the Society of Literary Arts which, among other things, was instrumental in securing and editing the twelve best war songs solicited from contributors.

The big progress in the work of the two national literary organizations during the past four years of war has been further evidenced in the great number of publications bearing on China's resistance now in circulation.

Meanwhile, the China National Literary Resistance Federation has branched out to the principal cities of the country.

To encourage literary productions, the Central Government last year decided to set aside \$100,000 as literary endowment fund. This action of the government is expected to bring about a further increase in quantity and improvement in quality of China's wartime literary productions.

The literary output during the past four years of war, however, in the opinion of several critics of outstanding caliber, lacks what might be called real "masterpieces" that might go down to posterity. This has been mainly due to the conditions inherent in wartime in which it has been impossible for the writers to settle down to their writing with peace and calmness of mind for any considerable length of time.

The degree of crudity in literary productions, however, has decreased as time went on. During the first year of war, short stories, poems and plays concentrated on a portrayal of the atrociousness of the Japanese and the heroism of the Chinese soldiers. As the war entered its second year, the scope began to extend to political conditions and economic reconstruction in the rear. The tendency to cover further aspects of the war and to turn out better pieces of work continued to grow during the third and fourth years.

This trend has been most evident in the dramatic field. Plays such as "The Devils' Hideout" by Chen Pai-chen, "An Ancient City Afire" by Ku I-chiao (Vice-Minister of Education), "Defection," "Taierhchwang," "Eight Hundred Men," "Able-Bodied Citizens," and "Flying Heroes" produced during the earlier stages of the war mainly described the baseness of the traitors and the bravery of Chinese soldiers and airmen. It was

not until the third year of the war that such plays as "Transformation" by Tsao Yu, "Fading Fog" by Lao She and "The Nation Is the Foremost Consideration," which portray the national cause from all important angles, were staged before the public.

DEVELOPMENTS IN LAW, CONSTITUTION AND ADMINISTRATION: PERIODICAL SURVEYS

LEGISLATIVE PRIVILEGES IN INDIA*

BY

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The privileges are the 'venerable special rights'¹ and attributes of a representative house which are incidental to its position, function, and efficiency. They are enjoyed either by a legislature in its collective capacity, or individually by its members. In the former category are included such privileges as are necessary to support the authority and dignity of the house and which facilitate the exercise of functions entrusted to it by the constitution. In the latter class are grouped those which are necessary to protect the persons of the members and secure their independence and dignity.

The privileges are highly priced rights of legislatures, as they constitute a rampart of their defence against any incursions on their authority and independence of internal jurisdiction. Without them a legislature becomes a body destitute of its importance and meaning as a custodian of the interests of the people and as a forum for the determination and formation of the will of the State; and the fulfilment of the obligations of the representatives of the people to their constituencies is greatly impeded in lack of them.

Parliamentary Privileges.

The Privileges of Parliament in England are ancient and undoubted rights of Parliament, which rest partly upon its own

* A paper submitted to the Indian Political Science Conference, Third Session, Mysore, December, 1940.

¹ *The Procedure of the House of Commons*, by Redlich, Vol. II, p. 147.

law called the 'lex et consuetudo Parliamenti'² and partly upon certain statutes³ which have been passed from time to time.

The House of Lords and the House of Commons claim both collectively and individually certain privileges, and derive their sanction and authority from the fact that Parliament is not only the sovereign legislative body but acts as the High Court of Parliament. The most commonly known privileges are:

Common to both Houses.	Peculiar to the House of Commons.	Peculiar to the House of Lords.
1. The right of collective access to the Crown.	1. Favourable constitution to be put upon its proceedings.	1. Right of trial.
2. Freedom from arrest and molestation.	2. Power of expulsion.	2. Voting by proxy.
3. Liberty of speech.	3. Right to determine qualifications of its members to sit and vote in parliament.	3. Access to king enjoyed by each member.
4. Freedom from arrest.	4. Power to fill vacant seats and also vacancy caused by a member becoming insane.	
5. Exemption from service on Juries (for both officials and members).	5. Impeachment.	
6. Freedom of publication of debates.	6. Right to control finance and initiate financial legislation.	
7. Power to exclude strangers.	7. Right of information regarding the cause of arrest of a member.	
8. Power to order attendance.		
9. Exclusive cognisance of matters within the House.		
10. Right to inflict punishment on members and outsiders for contempt.		

² It is a part of unwritten law and as such is to be found in the Rolls of Parliament and other records and by precedents and continued experience. May's *Parliamentary Procedure*, p. 65.

³ Statutes which have been passed from time to time for the purpose of making clear particular matters wherein the privileges

Each House claims to be the custodian of its privileges, and asserts its right to expound the law of Parliament and to be the sole judge in the determination of cases involving infringement of its privileges.⁴ But the claim is not absolute. In asserting its privilege, the Houses of Parliament have no right to do anything or cause anything to be done, which is in contravention of the law of the land. But in the regulation of proceedings within the chambers and in the interpretation of statutes pertaining to them, both the Houses enjoy freedom from interference of courts. Similarly the courts do not take cognisance of reasons of commitment unless the contrary appears on the face of warrants issued by the Houses.⁵

So it is now recognised that "within the orbit of its privileges, either House of Parliament is supreme and no appeal lies from its decisions. It can accuse, condemn and execute, reprimand, fine or imprison without any interference, and can punish members and outsiders for contempt."⁶

Constitutional Law Regarding Privileges in the Dominions.

The 'lex et consuetudo Parliamenti' does not apply to the federal, state, or provincial legislature. So apart from legislation, its privileges are such as naturally belong to any important deliberative body, i.e., the authority to maintain order and prevent interruption of its debates. But by legislation they can define

claimed by either house of Parliament have come in conflict with the rights of individuals. Halsbury's *Laws of England* (1936 Edition), Vol. Parliament, Part VII, Para. 697.

⁴ Offences generally held by Parliament as the breaches of privilege are: (a) Disobedience of general orders and rules, (b) Publication of false and perverted debates or so-called malafide reporting, (c) Reporting evidences given before committees, (d) Disobedience of witnesses, (e) Wilful violation of the orders pertaining to forgery of signature, protection of witnesses, and for the protection of officers of the house, (f) Indignities offered to the character or proceedings of parliament, (g) Assaults, insults, or libels upon members, (h) Wrongful arrest of members and services of summons within the precincts, (i) Reflection upon the character of the Speaker and the Chairman of Ways and Means and accusations of partiality in discharge of their duties, (j) Offering bribes to members and the acceptance of bribes by members, (k) Tempering with witnesses.

⁵ The situation is summed up in the Halsbury's *Laws of England* (Parliament), Part VII (1936 Edition), Para. 695.

⁶ *Chalmers and Asquith*, p. 82.

or assume privileges⁷ akin to, but not exceeding those of, the British Parliament.

Colonies.

The constitutional law in colonies is that a legislature has no right to privileges of the type enjoyed by the House of Commons, save in so far as additional authority is taken by legislation. The law governing the assumption of powers to punish breaches of privilege is defined by Halsbury as⁸:—

“Without express grant, a colonial legislature possesses no power to protect itself against obstruction, interruption, or disturbance of the proceedings by misconduct of any of the members in the course of those proceedings, except such as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute. Whatever in a reasonable sense is necessary for those purposes is impliedly granted, whenever any such legislative body is established by competent authority. For these purposes protective and self-defensive powers only and not punitive are necessary. There are Legislative Assemblies in the British Colonies which have, in the absence of express grant, no power to

⁷ Halsbury's *Laws of England* (1936 Edition), Vol. II, Part IV, page 153.

“The Parliament of Canada is restricted to the privilege of the House of Commons for the time being. In the provinces it has been held that the power to create privilege falls under the authority of Constitutional change, and that it is legitimate to take power to summon witnesses and to arrest and imprison for contempt; powers analogous to those of the Commons have thus generally been assumed. In the Commonwealth of Australia the Constitution gives unqualified power but until its exercise, accords those of the Commons. Victoria and South Australia are restricted to the Privileges of the Commons at the date of the coming into effect of their constitutions. The Union of South Africa has unlimited power, but has restricted its ambit to that of the House of Commons from time to time and this is the rule under the constitution of Western Australia. The Irish Free State has unfettered power, which it has not yet exercised, but the constitution embodies the doctrine of exemption of speeches from external control and of freedom of members from arrest. The other Dominions and States have freedom of legislation.

⁸ Halsbury's *Laws of England* (Abridged Edition), pp. 536, 916.

adjudicate upon, or punish for contempts committed either in their presence or beyond their presence.”

Privileges in India.

The powers and privileges of a legislature and immunities granted to its members are the attributes and functions of sovereignty. It was not inconsistent, therefore, with the subordinate position of India that the framers of the Government of India Act 1919 summarily dismissed such a vital problem, as that of privileges, in a single section of a clause. So it was provided under sections 67(7) and 72D(7) that there would be freedom of speech in the legislatures subject to the Rules and Standing Orders and that no person would be held liable to any proceedings in any court by reason of his speech or vote in any council or by reason of anything contained in any official report of the proceedings of any such council. Under section 110 the ministers in the provinces were exempted from (a) the original jurisdiction of any High Court by reason of anything counselled, ordered or done by any of them in his public capacity, (b) liability to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction and (3) the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony. Besides these, there were two other privileges which were secured by Standing Orders, viz., (1) the right to address the Governors and the Governor-General at the Centre and in the Provinces respectively and (2) the right of clearing galleries.

Enacted Privileges.

The Reforms Enquiry Committee of 1924 expressed their great dissatisfaction with the then existing privileges and immunities enjoyed by the legislatures and their members, and strongly recommended the adoption of certain other protection and privileges for the legislatures; namely; (1) that members of the legislatures in India should be exempted from sitting as jurors or assessors in criminal suits; (2) that the members be granted immunity from arrest and imprisonment for civil causes during the seasons of the legislatures for periods of a week immediately preceding and following actual meetings; (3) that the influencing of votes of members by bribery, intimidation and the like should be legislated against and be made penal offences; (4) that legislation should be undertaken in India or England barring the courts from premature interference with the President

of the Councils; and (5) that the immunity granted to ministers should be made complete as opposed to mere exemption from the original jurisdiction of the High Court.

In response to the first two recommendations, the Legislative Members Exemption Act of 1925 was passed in the Central Legislature. The Act secured the exemption of members of any legislative body constituted under the Government of India Act (1) from liability to serve as jurors or assessors, and (2) from arrest and detention in person under civil process during the continuance of any meeting of the chamber or during the continuance of any meeting of the Select Committee or the Joint Committee (if he was a member of the latter committee), and during the fourteen days before and after such meeting or sitting. As regards the other suggestions, the Government of India expressed its willingness to substantiate them and actually took some initial steps for their realization, but nothing material resulted from them, at least, before the enforcement of the Act of 1935.*

* The Legislative Bodies Corrupt Practices Bill, which proposed to penalize (1) the offering of a bribe to a member of a legislature in connection with his functions as such; and (2) the receipt on demand by a member of a legislature of a bribe in connection with his functions, as such, was introduced in the Central Assembly on the 25th August, 1925, and was referred to a Select Committee on the 3rd September of the same year. The measure was based on the precedents of the U.S.A. and of Canada. On reference of the bill to the local governments for their opinions, it was ascertained that all governments supported the bill except those of the Bombay and Madras. The Bombay Legislative Council objected mainly on the ground that the measure was detrimental to the dignity and independence of members; while the latter accepted the principle with reservation that a committee of the House be constituted as a court of record to try the offence, subject to the limitation that it be empowered at the maximum to expel a member from the House.

(b) To free a legislature from premature interference by the courts, the Government of India, in consultation with the Secretary of State, suggested an amendment of the sections 67, 72 D and 78 of the Government of India Act as follows:—

“Notwithstanding anything contained in any law for the time being in force, no person to whom powers are vested by or under this Act for the regulation of the course of business or for the preservation of order in either chamber of the Indian Legislature, or for the conduct of business, the determination of procedure to be followed or, generally, for the determination of any question relating to the selection, arrangement or performance of business therein, and no member of either of the said chamber, acting in the exercise of any rights conferred upon him by or

Privileges under the Government of India Act, 1935.

Consistent with the attribute of ministerial responsibility and the supremacy of legislature, the Act of 1935 gives a little more favourable position to the much-talked-of privileges.

Section 71 of the Indian Act of 1935 relates to the privileges of a provincial legislature. It reads as follows:—

- 71(1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.
- (2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by an Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this part of this Act enjoyed by members of the Legislative Council of the Province.
- (3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

under this Act and relating to the business of the said Chamber, shall be subject to the jurisdiction of any court in respect of the exercise of such powers or rights.”

The above section in a modified form is now embodied in the Government of India Act 1935 as section 87.

- (4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the Chairman of a committee so to do;

Provided that any such Act shall have effect, subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding some confidential matter from disclosure, as may be made by the Governor exercising his individual judgment.

Statutory Privileges.

Freedom of Speech.

Freedom of speech is a privilege which is essential to every legislative body; for speech is an element which gives life and power to a parliamentary body and gives to its action self-consciousness and purpose. But as such, the privilege is not a claim of irresponsibility. In its operation, it is subject to the rules governing the debate. This restriction is consistent with the principle of Parliamentary freedom of speech, as the autonomous jurisdiction of the legislature is the reverse side of shield which protects it.¹⁰

In India, each legislature has been given the privilege of freedom of speech, "subject to the provisions of this Act (the Government of India Act) and to Rules and Standing Orders regulating the procedure of the Legislature." The implications of this qualifying clause is doubtful. It may be held, on the one side, that the right of freedom of speech is only available when functioning within the limits of law, Rules and Standing Orders. If that is so, then who is to judge whether a member is within the scope of the Act and speaks within the limits of Rules and Standing Orders? Have the courts jurisdiction to go into the question as to whether a speech is within the scope of the qualifying clause and even nullify the decision of the chair in matters of relevancy.¹¹ If the interpretation is that the privilege is only available when a member is within its Standing Order and that

¹⁰ Redlich, *'The Procedure of the House of Commons,'* Vol II, p. 147.

¹¹ *The Report of the Committee of Privileges—Annexure 1* p. 11.

the courts can take cognisance of the question of irrelevancy, then the privilege is reduced to absurdity. Though the speaker is exempted under section 87(2), yet a member is liable, according to this version, to be brought before the court for every irrelevant speech. In that case a very absurd situation will be created for the members and legislature alike; and the privilege of freedom of speech will become a farce.

The other interpretation is that the right of freedom of speech is the right of a legislature as opposed to the right of a member.¹² As such, the legislature lays down rules of debates, imposes restrictions on speeches, regulates abuse of the forms of debates and demarcates the limits between parliamentary freedom and unrestricted license within the walls of the house. So by right a member is at liberty to say anything on the floor of the House in so far as his speech does not come in clash with any Standing Order or the provision of the Government of India Act. The right of the House to regulate its debates and enforce its Standing Order by censure, expulsion, or suspension from the service of the House is, therefore, expressly granted to a legislature by the Act—a provision which is not inconsistent with the principle of parliamentary privilege. But subject to this internal jurisdiction of the House, a member is otherwise not to be liable to be impeached or questioned in any court for anything said, or questioned,¹³ or any vote given by him in the legislature or any committee thereof. Similarly, he is not liable in respect of the publication by or under the authority of his House of any report, paper, votes or proceedings. The qualifying clause does not purport to imply to this part of the clause, or else the constant interference of courts will nullify the privilege.

To place the right of freedom of speech beyond ambiguity the "Assembly Powers and Privileges Bill" of the Bengal Legislative Assembly intends to define the privilege as follows:—

3 (1) There shall be freedom of speech in the Assembly or

¹² *Ibid.*, p. 12.

¹³ In Burma Legislative Council, Mr. U. Khim Maung asked a question about gambling dens and smuggling of cocaine and opium done by a certain person, named in the question. A case of defamation was brought by Mr. A. W. Eu Wah against the member. The case went up to the High Court ultimately, where the Chief Justice Sir Godman Roberts gave his decision on the 20th July, 1936. The Chief Justice said that the member of the Council enjoyed absolute privilege in respect of questions also, as he does in the case of speech and vote; and that no proceeding lies in a law-court on that account.

any Committee thereof and such freedom of speech shall not be liable to be impeached or questioned in any court.

(2) Nothing in any Rules and Standing Orders regulating the procedure of the Assembly shall be deemed to take away the right of any member conferred on him by section 71 of the Government of India Act of 1935 or by any of the provisions of this Act and no member shall be liable to any civil or criminal proceedings in any court in respect of anything said or any vote given by him in the Assembly or in any Committee thereof contrary to such Rules and Standing Orders, and in any proceeding in any court he shall be deemed to have the right as conferred on him by section 71 of the said Act or by any of the provisions of this Act, as if there were nothing in such Rules and Standing Orders restricting him in any manner.

Publications of the Proceedings.

The proceedings published under the authority of a legislature are privileged ones; but any publication of any report, paper, votes or proceedings not by or under the authority of a chamber is considered a separate publication, and, as such, is amenable to ordinary process of law. Therefore, any member, who causes his speech to be printed or published in a newspaper or pamphlets and books, or gives publicity himself in any other way, cannot claim the immunity arising out of his right of freedom of speech or by the right of the legislature to publish its own proceedings. Similarly if a newspaper or a journal publishes any speech or the translation of any speech of any member, it will be governed by the usual law of libel and defamation applicable to newspapers. Thus in matters of single speeches the law in India corresponds to that of England,¹⁴ except that in England a report of the speech by a member of the House of Commons *bonafide* addressed to his constituents is privileged.¹⁵

The question of privilege of publication of speeches was

¹⁴ In England the principle of law is that "if a member publishes his speech, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament." Thus if a member of Parliament publishes his speech, even *ad verbum*, he is liable to an action in the court. With regard to a newspaper it is established by *Rex versus Creemy* (1813) and *Rex versus Lord Abingdon* (1713) that the publication in newspapers of speeches made in Parliament reflecting upon the character of individuals, is actionable. May's *Parliamentary Procedure*, p. 100.

¹⁵ *Davison versus Duncan*—L. R. 4 Q. B., p. 79 and p. 95.

discussed fully in the Central Assembly in 1936,¹⁶ when it was argued that the right of freedom of speech in the Legislature, by implication meant freedom of publishing speech and that a faithful report or a verbatim report was protected by the right of freedom. It was further maintained that it was an implicit assumption inherent in the constitution that if a member has the privilege of freedom of speech, he has equally a right to publish that speech faithfully or verbatim. The mere fact that the latter right was not specifically mentioned, would not make the publications other than official publication liable to impeachment in the court. After a full-dress debate, the President of the Central Assembly gave his ruling that in view of the unambiguous terms of the Government of India Act 1935, the Statutory privilege is limited to the actual making of speeches in the Houses of legislature and to the official reports thereof, and that it does not protect publication of any speech or a newspaper, however, faithful or *bonafide* such publications may be.¹⁷

Press in relation to the Publication of the Proceedings of a Legislature.

The position of the Press in India with regard to the privilege of publishing the proceedings of the Indian Legislatures is still vague and unsecure. The Press enjoys no definite privilege whereas, in England it has been established in *Wason versus Walter* that a faithful and fair report of the proceedings of the Parliament published in a newspaper are privileged.¹⁸ By section 499 of the Indian Penal Code the publications of the proceedings of a court of justice are protected; but no analogy is drawn between the proceedings of the courts and the proceedings of a legislature, as was done in *Davison versus Duncon*¹⁹ and *Wason versus Walter*, to construe the law to afford equally the protection to the proceedings of a legislature.

¹⁶ The issue was that the Government of the United Provinces demanded security from the Editor and Publisher of *Abhyudaya* for publishing the Hindi translation of the speech delivered by Pt. Krishna Kant Malaviya in the Central Assembly on the 6th of September during the discussion of the Criminal Law Amendment Bill. The question was raised in the Assembly in the form of an adjournment motion moved by Sardar Sant Singh.

¹⁷ *Legislative Assembly Debates*—27th February, 1936—86.

¹⁸ *Wason versus Walter* (1867), L. R. 4 Q. B.

¹⁹ L. R. 4 Q. B., p. 79 and p. 95.

It was pointed out by the Home Member in the Central Assembly in February 1932 that protection afforded by the Government of India Act did not extend to the publication of reports by newspaper of which the liability is determined by the ordinary law. There is no judicial decision over the matter in India—corresponding to the case of *Wason versus Walter*; so the implication is still not without difficulty. In the case of *Lala Lajpat Rai versus Englishman Ltd. (Appeal case)*,²⁰ Justice Harington remarked: "I agree that the defendant was entitled to publish that Secretary of State for India has made in the House of Commons such and such a statement and as long as he published a substantially accurate account of what was said in the House of Commons, not as a statement of his own, but a statement made in the place, then I think he would be doing nothing unlawful." From this decision it is generally inferred that the courts will generally decide in favour of a newspaper if an action of libel is brought by an offended person against it, for a faithful reproduction of proceedings in the legislature damaging his character.

The position of the Press *vis-à-vis* the State is very unsound. The laws governing newspapers are becoming so repressive and stringent that the newspapers, not infrequently, desist from publishing speeches or portions of speeches of the members which are defamatory in character or involve in any other way seditious utterances.²¹ However an attempt is made in Bengal to clarify the privilege of the press as in the 22nd clause of the Assembly Powers and Privileges Bill it is provided:

22. "No Editor, Printer or Publisher of any newspaper or any person connected with editing, printing and publishing of such newspaper shall be liable in law on account of a faithful and correct report or a faithful and fair summary of the proceedings of the Assembly, provided that the provisions of this section shall not be applicable to any part of the proceedings or publication whereof is prohibited by Mr. Speaker."

Freedom from Arrest.

The privilege of freedom from arrest enjoyed by the legislators in India is confined like that of the members of the

²⁰ *Calcutta Weekly Notes*, Vol. 14, p. 724.

²¹ Speeches on War-resolutions in the Punjab Assembly, 1939.

House of Commons to civil causes only.²² In India the members (under the Legislative Members Exemption Act, 1925) are not liable to arrest or detention in prison under civil process during the continuance of any meeting of such a body or any meeting of any committee thereof and during the fourteen days before and after such meeting or sitting.

The principle is sound in a democratic country; but the case is different in India, which is still living under the sweltering sky of bureaucracy and Imperialism and where the right and liberty of speech and press is gagged by manifold repressive laws. The privileges of a member of a legislature is taken away elsewhere on ground of treason and felony. But in India the people are arrested for treason on flimsy grounds and they are detained without trial on petty political reasons. It is peculiar to India that the prisoners become the prime ministers and ministers, and the prime ministers become the prisoners, the next day.

Thus, not infrequently, the members are deprived from the service of the Houses on political grounds and are detained indefinitely without trial.²³ Such frequent arrests deprive the legislature of the services of their members and constituencies of their representatives. The point is often raised in the legislatures that such criminal processes constitute the breach of privilege and that, constitutionally speaking, the legislatures on such occasions ceased to be fully constituted and properly representative. But there is a wide gap between the law and the constitution in India. That is why constitutional propriety is very often over-ridden by the rigorous view of law; and, therefore, convention and usages seldom find their way through legal intricacies to establish privileges which are not otherwise definitely granted by the laws of the land.

Formerly no information was sent to the legislature regarding the cause for which a member was detained from the service of the legislature. Mr. H. A. Casson, President of the Punjab Legislative Council, claimed that information as a matter of courtesy. But now, as the right of declaring vacant the seat

²² In England not only the immunity is not allowed but the circumstances attending arrests or imprisonment for these cases cannot be brought before the House.

²³ Even before the start of Civil Disobedience Movement in 1940, there were four members in the Punjab Assembly who were detained without trial. In the Central Assembly there were cases of Subhas Chandra Bose (1940), Sarat Chandra Bose (1935) and S. Mitra (1927).

of a member, if he is absent without the permission of the chamber for sixty days from its meetings, has been vested in a chamber of legislature, the Speaker of the Bengal Assembly has given a ruling that if a member is detained or arrested, and is thus forced to be absent from the house, the fact of his conviction or detention be immediately communicated to the Speaker.²⁴

Accordingly, the "Assembly Powers and Privilege Bill," which is introduced in the Bengal Assembly makes necessary provision for such information being sent to the Assembly.²⁵ The Bill further provides for bringing any member, who has been arrested, detained, convicted or imprisoned, and if his presence is determined to be essential for the purposes of the proceedings of the Assembly or any Committee thereof, before Mr. Speaker for such period as may be required for such special purposes.²⁶ In case of a bailable offence the bill provides that the bail should be granted to such a member to enable him to attend to his legislative duties.²⁷ In another direction, the bill secures freedom of movement of a member within his constituency and in other parts of India unless by virtue of the operation of the criminal law of the land, his movement is restricted in any manner.²⁸ Besides these the bill tends to maintain and protect the dignity of the Speaker by exempting him from arrest, detention or imprisonment unless duly convicted in a court of law.²⁹ As regards the dignity of the members, it forbids any process to be served to any member within the Assembly.³⁰

Corrupt Influencing of Votes within a Legislative Body.

Corrupt influencing of votes is considered a serious breach of privilege in England. The intimidation of a legislator for the purpose of securing votes for a particular measure is a penal offence in India under sections 503, 506, and 507 of the Indian Penal Code. But rendering a bribe to and receiving a bribe by a member of a legislature in India is no offence. The attempt

²⁴ Ruling of the Speaker, *Bengal Legislative Assembly Debates*, Vol. LII, No. 1, 14th February, 1938, pp. 147-48.

²⁵ Para. 7.

²⁶ *Assembly Powers and Privilege Bill* (1939), Para. 8.

²⁷ *Ibid.*, Para. 9.

²⁸ *Ibid.*, Para. 10.

²⁹ *Ibid.*, Para. 13.

³⁰ *Ibid.*, Para. 14.

to create it a penal offence failed in 1925.³¹ The Punjab Assembly Rules provide freedom of discretion in voting; and on the negative side, prohibit voting for any pecuniary gain.³² But in Bengal an attempt is made to declare it an offence under a law.³³

The provincial legislatures may create bribery a penal offence. But it is far more advisable, and consistent with the dignity of the members, that the offence be constituted as a breach of a Standing Order. This position would be in consonance with the practice of the House of Commons. Though in Canada and U. S. A. bribery is governed by the laws, yet it is far more expedient to rely on the good sense of the members than to depend upon the legal punishment for the abolition of this corrupt practice.

Privileges secured by Legislation.

Section 71 (2) of the Government of India Act is a provision of great potentialities. It empowers legislators to define or create their privilege subject to the limitation embodied in the said section, but until so defined, the privileges are such as were before the commencement of the new constitution enjoyed by the members of the old legislature. This authority corresponds to that of the colonies and not that of the Dominions; because while the latter can assume the character of the House of Commons in matters of privileges, the colonial legislatures cannot. The Indian Legislatures are explicitly denied the status of a court or privilege to assume power to punish contempt as a breach of privilege. Under clause (4) of section 71, the legislatures are authorised to empower any court to punish persons, who refuse to give evidence or produce documents before the Committee of the Legislature. It is contended, on the one hand, by Mr. Aiyanger that the forementioned specific provision by implication negatives, a wide power of creating offences of contempt.³⁴ While on the other hand, Mr. Aziz-ul-Haque, the Speaker of the Bengal Assembly, supports the contention that the Indian Legislatures can declare any act of legislative contempt, insults or obstruction as a penal offence and can devise suitable procedure for the same, and can also declare

³¹ See Foot-Note 1, page 5.

³² *Assembly Powers and Privilege Bill* (1939), Para. 19.

³³ *Punjab Assembly Standing Orders* Nos. 64 and 65.

³⁴ Aiyanger, *Government of India Act*, p. 48 (Notes on Section 28).

the nature and form of evidence required in such cases.³⁵ However, the former view seems to be not only inconsistent with the spirit underlying clause 2 of the section, but the history of the clause 4 manifests that it was enacted to restore a specific power which was originally refused and not in any way to restrict the power of legislature to define its privileges by statutory enactments.

Punjab and Bengal are pioneers in making use of the power conferred upon them by section 71 (2). The former has enacted a measure of great importance, by virtue of which the Governor, or any other officer instructed by him, is authorised to appoint a Marshal and his assistants, required chiefly to enforce the orders of the Speaker and to eject forcibly the members named by him. In the latter, an important privilege motion, sponsored by Mr. Abdur Rahman, was passed in February, 1938, which provided that a Committee be constituted to define and enact privileges of the Bengal Legislative Assembly. As a result of the deliberations of the Committee, a valuable report was submitted on the 4th of May, 1939, and the Assembly Powers and Privileges Bill, which was drafted by the Committee, was introduced in the Assembly on the 10th of May and re-introduced in November, 1940.

The attempt of the Bengal Assembly to define its privileges is commendable. When the Bill is enacted, it shall not only clarify the privileges in Bengal but will impart to the Bengal Legislative Assembly attributes and dignity necessary for executing the functions entrusted to it by the constitution.

Conventional Privileges.

Besides the written privileges, there are certain other privileges, which have developed by convention in India, i.e.—

- (1) It is considered a breach of privilege for a member to ask questions based on a newspaper report.
- (2) It is considered a breach of privilege to give publicity to a question or a resolution of which notice has been given by the member to the Secretary, unless and until the question or resolution has been admitted and officially published.
- (3) Papers relating to a Bill are treated as confidential

³⁵ Report of the Committee of Privileges (Bengal Legislative Assembly), dated the 4th May, 1939—Annexure 1, page 14.

until the Bill has been introduced in the Council or it has been published before introduction.

- (4) It is a breach of privilege to refer in the legislature to anything that happens in the Select Committee, save and except that which appears in the Select Committee report.
- (5) Publication of disallowed questions, adjournment motions, etc., is also taken to be a breach of privilege.
- (6) Publication of in-camera proceedings is similarly viewed as a breach of privilege.

The legislatures in India always aspire to be replica of British Parliament in its attributes, privileges, dignity and powers. By convention and legislation they always claim to assume privileges, which may be worthy of their status and functions as representative Assemblies.

In order to vindicate the honour and dignity of the house, it is always considered a serious breach of privilege if an employee of the State, however highly placed, offers an insult or shows disrespect and indiscretion to any member.³⁶ Any discourtesy shown by the ward or constable on duty within the chamber also constitutes a breach of privilege. Libel against President³⁷ or Speaker, or a reflection on the impartiality of the Speaker is viewed as a wanton attack on the dignity of the House. In earlier Bengal Legislative Council libellous attacks made against individual members and the House as a whole were considered as sacrilege of Parliamentary honour and prestige.

After the inauguration of the Provincial Autonomy, there are other kinds of privileges, which have been claimed by the legislatures, i.e.—

- (1) That members of a legislature be ensured freedom of movement within their constituencies.³⁸

³⁶ Adjournment Motion re treatment of M. Iftikhar-ud-Din and Sardar Ajit Singh by the Police—Ch. Mohd. Abdul Rahman Khan's case in 1928. (*Punjab Assembly Debates*, 31st March, 1939, Vol. IX, No. 1, p. 68).

³⁷ Decision from the Chair—Reg. No. 220—also No. 221 and 222. For Amrit Bazar Patrika case, see *Central Assembly Debates*, 5.9.1936.

³⁸ Dr. Sanyal's resolution in the Bengal Legislative Assembly, dated 13th July, 1939.

- (2) That an important member of the ministry be appointed as the leader of the Upper Chamber.
- (3) That, as a privilege, no bill having financial obligations should be sent for consideration to the Lower House after it has been passed by the Upper House.³⁹

Enforcement of the Privileges.

The only power possessed under the old constitution to punish breach of privileges was, "the President shall preserve order and have all powers necessary for the purpose of enforcing his decision on all points of order." So formerly the power, if at all, was vested in the President. Now the Speaker exercises the power in conjunction with the House.⁴⁰ But despite this difference and till the contrary is provided for, the power remains, more or less, the same. So in accordance with this power, the President could ask the offending person, if a member, to apologise or to withdraw; or as it is at present, the Speaker names the offending member and the house suspends the said member from its service.

A stranger may be asked to withdraw or may be removed from the precincts of the Assembly Chamber. In relation to the Press for committing breach of privilege, the President could, and the House can, censure the conduct of the editor or the reporter and refuse the privilege of reporting proceedings of the legislature and the supply of parliamentary papers.

The Rules and Standing Orders in the Indian legislatures did not admit before 1937 of Presidents following the House of Commons practice in associating the House with them in passing orders of suspension and expulsion. The powers in question rested with the President alone. There was no unanimity among the Presidents of the Indian Legislative Councils regarding employment of physical force for expelling an offending member. Sir Fredric Whyte was of the opinion that he could take the aid of police in driving out a recalcitrant member. Mr. Cotton was little apprehensive about such matters being taken to the court. He held that a member should in the first instance be ordered by the President to withdraw. If he did not do so forthwith, the

³⁹ *Bengal Legislative Council Debates*, Vol. 1, dated 25th January, 1938.

Bengal Legislative Assembly Debates, 28th March, 1939.

⁴⁰ *Punjab Assembly S. O.*, No. 77.

President would send the Secretary to repeat the order. Should the member still decline to obey, the President would announce to the Council that the offending member had twice been directed to leave the Chamber and had twice refused to do so, and that, unless he withdrew forthwith the services of the police would be requisitioned to remove him. He maintained that in some cases a short adjournment of the House might be expedient. Sir F. Whyte and Sir Ibrahim Rahimatullah differed from the procedure contemplated by Mr. Cotton. They were doubtful of the propriety of the intervention of the Secretary and they believed that a President should himself intervene in the matter and ensure immediate compliance at all costs with any order given by him.

So far, whenever the members had been asked by the Presidents to leave the Chamber, they had invariably complied with such orders; but the case, in which the members refused to leave the Chamber on being named by the Speaker, arose for the first time in the Punjab Assembly on the 16th January, 1929, when two members persistently defied the orders of withdrawal. Should the President ask to employ force in giving effect to his order, they threaten to resist such an attempt by force. The Deputy President, who was in Chair, then twice suspended the House, but to no avail. At last he invoked the help of a Watch and Ward Officer to implement his order. A point of order was raised at that moment regarding the authority of the Chair to call forth such a help. Later, however, on the intervention of the Leader of Opposition, the members, so named, withdrew from the Chamber. The matter did not end there. The Government then secured subsequently the enactment of a law which provides the appointment of a Marshal and his assistants to forcibly remove a member so ordered by the Speaker.

The employment of the services of a Marshal may be essential in some extreme cases; but it is much more desirable that conventions should arise in the legislature governing such an eventuality. It is no denying the facts that a forcible ejection of an honourable member is derogatory to the prestige of a legislature and of the Speaker, as much, as is the conduct of a member so violating the authority of the chair. The undignified and stormy scenes are not peculiar to the Punjab Assembly; they are common to all the legislatures including even the House of Commons. The occasions may arise, when in excitement the bleeding hearts of some members may run away with their bloody heads. But at such moments the remedy lies not in employing force to suppress the rowdy scenes; but in tactfully taking the stream out of the opposition by redressing

the grievances of the opposition, as far as, it is possible for the Government to do so consistent with the Public interest—of course, not with the party interest.

Since the inauguration of the Montford Reforms, "Scurrilous press articles against the proceedings of the legislature," "libellous attacks against individual members in regard to their speeches or votes," "attacks against the conduct of the chair, accusations and insinuations of partiality," had not been uncommon in India. There are no special powers inherent in Indian legislatures as the High Court of Parliament has. They can only take defensive actions against outsiders for breaches of privileges. A stranger can be ousted by force from the gallery or be removed from the precincts of the House. In case of a newspaper, if it publishes a libellous article against the Assembly⁴¹ or against the Speaker,⁴² or against any member of the legislature, or publishes a confidential report of the House,⁴³ the Speaker may take action by disallowing the representative of that newspaper a seat at the reporters-table or admission to the visitor's Gallery, or may ask the Government to strike the name of the paper from the list of approved papers for giving official advertisements and notices for publication; or the House by a resolution may resent against such attack or censure the newspaper concerned.⁴⁴

Sir Fredrick Whyte was of the view that the appropriate remedy for misconduct by an outsider, lay in resort to the courts by the party aggrieved, and that the chair should only take notice of such conduct in extreme cases. Mr. Patel gave his opinion in the Central Assembly in 1928 that "it is the inherent right of any Legislature to defend itself against outside attacks and it is perfectly open in a proper case for the House to table a substantive motion and pass a vote of censure of condemnation on the attack."⁴⁵ Sir Narayan Chandavarkar held the theory

⁴¹ In the First Legislative Council of Bengal.

⁴² Case of the correspondent of the *Times of India* and the correspondent of the *London Daily Telegraph* in the times of Mr. Patel. Case of *Amrit Bazar Patrika* in times of Sir Abdur Rahim (Sept., 1936).

⁴³ Case of *Daily Pratap* in relation to the Deputy Speaker of the Assembly, Jany., 1939.

⁴⁴ Instances have occurred in case of United Provinces Council, Madras Council and the Punjab Assembly.

⁴⁵ *Assembly Debates*, 1928, Vol. 3, p. 154.

that the power to cause the editor of an offending newspaper to be brought before the Bar of the House was inherent in the Legislature. The present Speaker of Bengal Assembly holds that there should be intermediate procedure, namely, that when the House agrees with the Privilege Committee that a *prima facie* case of contempt has been established, the offending person may be given a notice to appear before the Bar of the House to explain, at his option, the conduct for which he has been adjudged guilty by the House.⁴⁶ "The Bengal Assembly Powers and Privileges Bill" provides for certain penal offences and for legislative contempts and makes provision for special procedure and special rules of evidence for such offences.⁴⁷

The enforcement of privileges, without the express sanction of force behind it, depends, at best, upon the good-will and the parliamentary sense of the parties concerned. Contempts of legislatures and their privileges without the penal offence, can at the most, be dealt with reprimand and censure of a chamber; and the effectiveness of that moral pressure will depend upon the degree to which the public opinion arrays itself behind the legislative privileges. But as the legislatures in India do not command, for obvious reasons, the respect of the people as much as the British Parliament does; so a breach of legislative privilege or a defiance of Speaker's authority does not excite the public opinion as much in India as it would in England, unless the party aggrieved is very popular.⁴⁸

Jurisdiction of Courts in relation to Privileges.

In England, Parliament is supreme and the courts do not interfere in any way with the conduct of business in any of the Houses. This principle was explicitly recognised by the Courts in the case of *Bradlaugh versus Gosset*. But in India, as the legislatures are subordinate bodies the courts claim to question

⁴⁶ *Assembly Report of the Committee of Privileges* (Bengal Assembly), dated 4th May, 1939, Annexure I, pp. 22 and 23.

⁴⁷ *Ibid.*, Sections 26, 27 and 28.

⁴⁸ The act of defiance of Speaker's ruling or orders, or of reflection upon the impartiality of a Speaker, constitute from the point of constitutional propriety, a serious breach of privilege in all the cases; but still the difference between the repercussion on the public opinion of such breaches that occurred in case of President Patel and those that occurred in case of the Deputy Speaker of Punjab in 1939, may well be marked.

their proceedings.⁴⁹ In another way, the High Court asserts that no matter is beyond its jurisdiction, unless it is expressly shown to be so. The question whether the Presidents of the Legislative Councils of India could claim immunity from the jurisdiction of the High Court arose in a very important case pertaining to an ordinary civil jurisdiction of the Calcutta High Court in 1924. The Honourable Mr. Justice Ghose in delivering the judgment in the case of *Kumar Shankar Roy Choudhry and Anar versus The Honourable Mr. H. E. A. Cotton*,⁵⁰ declared, "Rule 15, in my opinion does not exclude the jurisdiction of this court. It is a rule by which the members of the Bengal Legislative Council are bound . . . , that when the President has given his decision on a point of order, his decision is final, so far as the members of the council are concerned, and that it cannot be questioned by any body within the council The presence of the word "final" in Rule 15 does not exclude the jurisdiction of this court, nor does it conclude the matter." The High Court actually issued an injunction on the 7th July, 1924, on the President of the Bengal Legislative Council to prevent him from putting the motion regarding the supplementary demands for grants to the House.⁵¹

The Reforms Enquiry Committee made its recommendation that the legislation should be undertaken either in England or India barring the courts from premature interference with the Presidents of the Council. The recommendations of the Committee were considered by the Government of India in consultation with the Secretary of State and it was agreed that the legislature should be free to perform their own functions in accordance with the Government of India Act, the Rules and the Standing Orders, as interpreted and applied by their own authorities. A draft amendment was suggested by the Government of India, which in a modified form was subsequently embodied in the Government of India Act 1935 as section 87. This provision of the Government of India Act thus places on a more firm and enduring foundation the position of a legislature

⁴⁹ *Hari versus Secretary of State for India*, I.L.R. 27 Bom. 424 at p. 439.

⁵⁰ Suit No. 1846 of 1924.

⁵¹ When the Council met on the 7th July immediately after the issue of its order by the court, the President announced the prerogation of the session by His Excellency the Governor.

The Government, however, saved the situation from taking a serious turn by amending instantaneously the legislative rule under contention.

than it was the case before the inauguration of the new Reforms. Section 87 reads as:—

- (1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.
- (2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Conclusions.

India has now a written constitution and the extent of the powers and privileges of the legislatures must remain within the compass of the Government of India Act. But, while the legislatures in India suffer from the restriction on their powers to function as courts, they are armed, at the same time, under section 71(2) with legislative power of great potentiality, which if fully availed of, will create a new history of the parliamentary privileges in India. Bengal has shown the way in that direction. Other legislatures, when resurrected, may well nigh follow it.

No constitution, however rigid, can incarcerate in its strait jacket the growing political life of a nation. It may be earnestly hoped, therefore, that legislative privileges will grow with the development of parliamentary government and parliamentary traditions in India; and as such, the future of parliamentary privileges is not dark.

Opinions on the Indian Journal of Political Science

Sir Alfred E. Zimmern, Professor of International Affairs, University of Oxford :—

".... I have found a good deal of interest in the first three numbers The periodical surveys are most valuable and give a most useful insight into the working of government in various provinces."

Pandit Jawahar Lal Nehru, Allahabad (July 18, 1940) writes :—

".... It seems to me a very useful journal, attractively got up, with worthwhile contents. It certainly deserves success."

The Leader, Allahabad (September 12, 1939):—

The *Indian Journal of Political Science* which is the quarterly organ of the Indian Political Science Association, has a strong editorial board ... The issue for July-September contains scholarly contributions by distinguished writers ... There are well-written notes on constitutional problems and international affairs, e. g., constitutional deadlocks and conventions, provincial finances under autonomy, reform of the Covenant of the League of Nations and various aspects of the new constitutional machinery in the provinces. We congratulate the editor on the judicious selection and high standard of the articles, their careful editing and arrangement and the neat printing and get-up. The Journal bids fair to be one of the most weighty and most authoritative publications of its kind.

The Indian Nation, Patna (September 15, 1939):—

The Journal is the first enterprise of its kind in this country and contains valuable articles from well-known writers on and professors of political science. We are sure that a Journal of this kind, with which the names of so many prominent professors are associated, will be found extremely useful by students of political theory and political institutions in the country.

The Hindustan Review, Patna (for Sept.-Oct., 1939):—

The first number fully sustains its reputations as one of the leading quarterlies in the country. Its bill of fare is of high standard and it should be able to command a large circulation amongst students of Political Science.

The National Herald, Lucknow (November 8, 1939):—

We welcome this appearance of the Journal as a landmark in the evolution of political science in this country. The subjects range from International affairs to provincial autonomy and the growth of administrative law in the provinces. Equal attention is paid to theory and practice.

A revolution requires workers as well as thinkers, and it is a good sign that our professors are taking their proper place as moulders of political thought and as students of political institutions. There has been a divorce between thought and action in India. The amateur has had his say too much. Progress must be fed with clear thinking and clear expression; if not, it would lead to much slipshod work. The spade-work of the American Revolution was done by political thinkers and that is why America is now a democracy which, with all its defects, stands as a rock against time. That is a lesson for India.

We commend this Journal to the student as well as to the politician.

THE POLITICAL SIGNIFICANCE OF THE DOCTRINE OF TAUHID IN ISLAM*

BY

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Tauhid, or the doctrine of the unity of God, is the basic principle of Islam. It means that God is One and that He is the only Sovereign in the universe. It is the negation of all authority except that of Allah, the spiritual embodiment of the highest attributes of human nature. The principle of Tauhid is the pivot round which faith and conduct and the entire conception of human destiny turns.

Islam does not recognize the sovereignty of a certain set of human beings over other human beings. It says that God is the ultimate source of all power and authority. Tauhid implies the divine right of human conscience in place of the divine right of rulers or communities according to modern theories of State. All dominion is founded on the will of God who is the creator and master of the whole world. All power belongs to Him only. The word *Ilah* even in pre-Islamic Arabia connoted power and authority. Hence the evolution of the doctrine of Tauhid (there is no Allah but Allah) which is the foundation of Islamic faith and thought. This is exemplified in different verses of the Quran:—And they have chosen (other) Gods (*Ilah*) beside Allah that they may be a power for them (XIX: 81). And they have taken (other) gods (*Ilah*) beside Allah, in order that they may be helped (XXXVI: 73).

Choose not two Gods. There is only ONE GOD (*Ilah*). So of Me, Me only be in awe. Unto Him belongeth whatsoever is in the heavens and the earth, and religion is His for ever. Will ye then fear any other than Allah (XVI: 51). He unto Whom belongeth the sovereignty of the heaven and the earth, He hath chosen no son nor hath He any partner in Sovereignty. He hath created everything and hath meted out for it a measure (XXV: 2). The Sovereignty rests with Allah only, Who hath commanded you that ye worship none save Him (XII: 40).

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December, 1941—January, 1942.

He maketh the night to pass into the day, and He maketh the day to pass into the night. He hath subdued the sun and Moon to service. Each runneth unto an appointed term. Such is Allah, your Lord; His is the sovereignty (XXXV: 13). Praise be to Allah, Who hath not taken unto Himself a son, and Who hath no partner in the Sovereignty, nor hath He any protecting friend through dependence (XVII: III). Then exalted be Allah, the True King (XX: 114). But the judgement (Command) belongeth only to Allah, the sublime, the Majestic (XL: 127).

It is apparent from these verses that supreme authority rests with Allah who is the One, the eternally besought of all. Obedience is due to Him primarily. But how to determine His will? His will is to be determined by the *Shariat* as laid down in the *Quran*, and by the individual conscience which is the sole criterion of what is good and just. When it is admitted that Allah is the sovereign authority, it impliedly suggests that it is only human conscience which is competent to interpret His will and purpose. In the words of Iqbal, "Islam as a polity is only a practical means of making this principle (Tauhid) a living factor in the intellectual and emotional life of mankind. It demands loyalty to God, not to thrones. And since God is the ultimate spiritual basis of all life, loyalty to God amounts to loyalty to his own ideal nature."¹

The political significance of the doctrine of Tauhid is quite different from any that gives absolute power to any authority, be that authority pertaining to community or to any individual. There must be found somewhere some sort of protection and appeal against the tyranny of the Magistrate as well as that of prevailing opinion and feeling which seeks to prevent the formation of any individuality not in harmony with its ways, however rotten and injurious those ways might have become, having lost their purpose in course of time. Social tyranny is sometimes more formidable than many kinds of political oppression. In such cases the principle of Tauhid stirs the conscience of man to disobey all that militates against the behests of his own higher nature. No obedience to any human agency is valid in Islam which is likely to distract the mind from the thought of God, the supreme Master, and to keep enchained the conscience of advancing humanity.

Thus belief in the omnipotence and omniscience of God leads man to the cultivation of a certain temper of mind, which

¹ *The Reconstruction of Religious Thought in Islam*, p. 140.

the conscience is to apply to ever-varying social and political exigencies of time and place. Tauhid aims at creating the consciousness of human dignity as the mainspring of human conduct. Islamic history is replete with instances when individuals defied political authority in order to establish the right of human conscience to realize its own higher urges. This is why the character of Imam Husain is put forward as the beau ideal of human conduct by many a mystic poet of Islam. Muinuddin Chishti of Ajmer, the well-known patron saint of the Indian Muslims, is reputed to have said:—

Shah ast Husain padshah ast Husain,
Din ast Husain, Din panah ast Husain,
Sar dad o na dad dast dar dast i Yazid,
Haqqa ke binai la Ilah ast Husain
(Husain is the King, Husain is the Emperor).

Husain is the faith as well as the defender of faith. He sacrificed his life but refused to own allegiance to Yazid. Verily, Husain is the foundation of La Ilah (there is no God but God).

The thought of social progress and its inspiring hopes are naturally engendered from the doctrine of Tauhid as it serves as a dynamic force for individual interpretation of truth and justice in the ever-changing conditions of life. It seeks to dethrone the Leviathan of the metaphysical entity called the State from its august position, giving its place to the idea of the good in human will. It establishes a control over the sovereign power by rendering it subservient to moral obligations of humanity.

In Islamic political theory the State-sovereignty is limited. The State, like other human institutions, has certain fixed rights and duties which are determined by the *Shariat* on the one hand, and by individual conscience on the other. There is a sphere where it cannot enter. The human conscience is and has always remained outside from its purview. Between the fundamental ideas of the absolute sovereignty of State and the right of human conscience to revolt, the struggle has all along continued in Islamic history. Islam lays great stress on the conditionality of power, expecting right conduct to be its only *raison d'être*. The political chief in Islam is not allowed to act in contravention of the recognized law of the *Shariat*. The Caliph Abu Bakr has very aptly summed up this theory in his first speech, made after his election to the high office of the Caliphate. He said:—"Verily! I have been appointed your Chief (Wali). I know I am not the best among you. If I do well, support me. If I commit mistake, warn me. Truth is a trust, and falsehood is treason. In my

sight the powerful and the weak are alike: and to both I shall render justice and safeguard their rights. As I obey Allah and His Prophet, obey me; if I neglect the laws of God and the Prophet, I have no more right to your obedience."

The theory of absolute State-sovereignty has even recently been challenged by some great modern writers on jurisprudence and political science on practically the same grounds as mentioned above. They have done much to undermine the doctrine of the absolute will of the State, as the ultimate sanction for all human action. They have sought the solution of the difficulty in a fundamental norm. The defects and inadequacies of positivism have led to revival of interest in the old theory of the law of nature, which according to Islam is the law of God. Islam seeks to interpret all human phenomena, including the political, in terms of spirit. It seeks to spiritualize matter. Again in the words of Iqbal, "the essence of Tauhid as a working idea is equality, solidarity and freedom. The State, from the Islamic standpoint, is an endeavour to transform these ideal principles into space-time forces, an aspiration to realize their indefinite 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 his supposed infallibility . . . The ultimate reality, according to *Qur'an*, is spiritual, and its life consists in its temporal activity. The spirit finds its opportunities in the natural, the material, the secular. All that is secular is therefore sacred in the roots of its being . . . As the Prophet so beautifully put it: 'The whole of this earth is a mosque.' The State according to Islam is only an effort to realize the spiritual in a human organization. But in this sense all State, not based on mere dominations and aiming at the realization of ideal principles, is theocratic."²

According to Islam power is a sort of fiduciary trust for achieving certain ends. If it fails to achieve these ends, resistance to it is the duty of every Muslim citizen. Thus change, inspired by a fundamental moral norm, becomes a necessary condition of political progress. The idea of the transformation of States and the perpetual shifting of the location of sovereignty is thus beautifully expressed in the *Qur'an*:—"Say: O Allah! Owner of Sovereignty! Thou givest Sovereignty unto whom Thou wilt and Thou withdrawest sovereignty from whom Thou wilt. Thou exaltest whom Thou wilt, and Thou abasest whom

² *The Reconstruction of Religious Thought in Islam*, p. 147.

Thou wilt. In Thy hand is the good. Lo! Thou art able to do all things" (III: 26).

The attitude of man towards political authority, or 'the determinate human superior' as Austin has put it, need not always be antagonistic, nor does the doctrine of Tauhid imply anarchy. It simply seeks to assist freedom of thought of the individual, since having at his disposal an infallible test of good and true in the shape of his interior conscience, he would have a sure means of regulating his conduct in different exigencies of life. Islam obviates the dangers of instability by laying down that obedience to the established authority is essential unless and until it openly goes against moral values and purposes, flouts all noble canons of behaviour and suppresses legitimate human freedom. No doubt, a lurking tendency towards individualism is apparent from this attitude towards life, as it makes human conscience the sole criterion of what is good or bad. But after all individuality is the most precious possession of human existence which lends reality to life. As Miss M. P. Follet has put it:—"I live for ever the individual life. As an individual I am the undivided one, as the group—I, I am again the undivided one, as the State—I, I am the undivided one—I am always and for ever the undivided one, mounting from height to height, always mounting, always the whole of me mounting."³

The doctrine of Tauhid in Islam stands for respect of human individuality, for conditionality of social and political authority and for the principle of change in the sense of a movement from an imperfect to a relatively perfect form of human organization.

³ *The New State*, p. 319.

THE PLACE AND IMPORTANCE OF MARSILIUS OF PADUA IN MEDIEVAL POLITICAL THOUGHT*

BY

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Conditions Prevalent in Europe and their influence over Marsilius.

During the middle ages in general and during the 13th and 14th centuries in particular Europe was suffering from great unrest. Italy was torn with internecine wars between petty princes. The power of Pope had attained its highest peak under Boniface VIII. There had been a great controversy between the Pope and the Emperor for supremacy and which came to end by now resulting in the triumph of the Emperor. The Emperor had destroyed the papacy at Rome and had erected at Avignon. A Frenchman was elected as Pope. Boniface VIII was tried before the new Pope. The papacy was discredited and humiliated. It is surprising to note that although before awhile papacy had reached so high a summit and found defenders in great thinkers like Salisbury, Thomas and Boniface, now not even a single person defended or supported it. The papacy had received a death blow—a death blow from which it never recovered. The people were either “hostile” or “contemptuous” or “indifferent.”

These were the conditions under which Marsilius of Padua was born in 1270. He was brought up under an atmosphere, anti-papal and even anti-clerical. He was educated at Paris and later on became the Rector of the University of Paris. He must have been present at Paris when the trial of Boniface VIII was being conducted and which must have had its influence over him. At Paris he met John of Jandun. The latter was associated with a party tainted with Averroism. The two wrote a book, *Defensor Pacis*, addressing to and upholding the claim of Lewis of Bavaria against the Pope John XII, in a controversy between the Emperor and the pope which had again assumed a little significance. There is a controversy as to the authorship of this book: some

say that it was exclusively the work of Marsilius and others ascribe the authorship to both of them. The recent editors of this book like C. W. Previte, Orton, Cambridge, 1928, and Herausgegeben von Richard Scholz, Hannover, 1933, uphold the former view, though allowing for collaboration of the two men while the book was being written.

The book, *Defensor Pacis*, is a land-mark not only in the history of the Medieval political thought as such but in the history of the political thought as well. It is remarkable for its coherence, originality and argumentation. So far the reply to the high claims of the Pope was given more by force, but this book tried to answer it by an appeal to reason. So much so that this book was described by the Pope as “full of heresies” and the authors as “pupils of Damnation.” There were other writers, who had defended Emperor against Pope. Dante’s *De Monarchia* was the most important work. But it was, in fact, off the point; it was merely a “fine piece of imaginative construction.” It could not give an apt reply to the conditions and needs of the times. *Defensor Pacis* tried to find a solution of the problem and gave one. It not only denied the superiority of Church, but also gave a theory of State—not an ideal or imaginative one like that of Dante, but a practical one. The book was, in fact, a “topical” one. The importance of the book is not so much due to its denunciation of the Pope and his authority, as to the conception of the State contained in it and the new approach which is manifested in solving of the problem.

Marsilius of Padua’s Theory of the State. Marsilius follows Aristotle in his conception of the State and being influenced by Averroism gives us a naturalistic interpretation of Aristotalianism. For Marsilius, man is a gregarious animal and the State is like a “living being.” It is there so that man may live and live a good life. A good life has two aspects: mundane and celestial or temporal and spiritual. About spiritual life, the philosophers have not been able to lay down its contents or define what it means. On the other hand what constitutes the temporal life has been well demonstrated. It has been proved that for fulfilling a common life community is necessary, because man cannot but attain his end only through co-operation. To keep justice in vogue and put down the tendencies leading towards dissolution of the community, a guardian or a protector is necessary. And as the protector has to put down disruptive forces, he must possess coercive power. Further the community may need other conveniences, improvements and arrangements for the realization of common ends. These all are to be provided by the State. Marsilius then

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December, 1941—January, 1942.

examines the functions of the State as those of a judge, soldier, officer, farmer, artist and the priest. It is the duty of the State to help the people in the realization of their spiritual life, which is regulated by the revelation of God. For this State needs to provide teachers to educate the common people in this revelation. Thus those who perform these functions constitute "the multiplicity and diversity of the parts of the State."

So far the theory is traditional of the medieval ages. The originality of Marsilius consists in his conception of law and its framing and its application. It is here that modernism in Marsilius, if any, may be searched. What is his conception of law? Law is of two kinds: Divine and Human. "The divine law is a command of God directly without human deliberation, about voluntary acts of human beings to be done or avoided in this world but for the sake of attaining of the best end, or some condition desirable to man in the world to come." The rewards or punishments for these laws are to be given in the next world and this is the greatest distinguishing factor between the human and divine law as in case of the former, the rewards are awarded or punishments inflicted in this world. Further, the divine law is merely ethical teaching, while the distinguishing factor of human law is its "imperative" and "coercive" character. The human law is framed by the whole community or at least its prevailing part. Here, writers like Gierke have formed the germs of popular sovereignty in Marsilius' theory. But this is not wholly correct. Marsilius qualifies his position and adds the words "and the quality." The laws are framed not only by the members but also by the quality. The votes are not only to be counted but also weighed. So Marsilius is always opposed to the fundamental doctrine of the "original and natural equality of all the members of a community" which is the basis of modern democracy and popular sovereignty. He is in favour of limited monarchy, as we shall see further.

Character of Law. Marsilius makes a further break with traditional medieval thought. He emphasizes on the formal aspect of law which up till now philosophers like St. Thomas had been concerned with its "content." For Marsilius the essence of law is its coercive force. A law is useless if it is not obeyed. Here we may find in him a forerunner of Austin and Hobbes. For St. Thomas, a law was to be determined by its content and justice it embodied. For Marsilius, law was what the community or the 'legislator humanus,' as he calls it, may desire. He does admit that law must be based on justice. But justice for Marsilius is quite different than what it was for Thomas. "The

definition and valuation of that justice which must be embodied in law, entirely depends upon the will of the legislator, which is itself also the source of the laws' imperative character." It is the needs and desires of the community as expressed in law through the Legislator Humanus that is to determine or value justice. "Thus the human judgment is raised to nothing less than a standard of truth." Here we find the germs of Utilitarianism in the theory. Here the conception of the "general will" of "Rousseau" is much more manifested. All the same Marsilius has not been propounding any "revolutionary" or new doctrine of democracy. He was re-interpreting, though more clearly and boldly, the traditional judgments of the middle ages. His theory resembled more to that of Roman doctrine of the transmission of power from Prince to the people, and his ideas to the undemocratic ideas of Aristotle.

Application of the Laws. Law is framed and established by the "Legislator Humanus" but it is applied by "pars principans." It is the latter's duty to govern in accordance with it. "Pars principans" is nothing but the medieval prince. Here some writers have found the "germs of the theory of the separation of powers." It is nothing of that type. The "pars principans" is no executive in the modern sense of the term. In fact the word executive is nowhere mentioned in the book. It is merely an *ad hoc* agent of the legislator. "The legislator institutes the pars principans and draws up the rules under which it in turn establishes the other parts in the State and continues to rule them so established." This prince or king, pars principans, is to work according to the law laid down by the legislator. Further the functions of the legislator and the pars principans are not merely legislative and executive respectively. Those of the pars principans include judicial and others, while those of legislator are more "constituent" as MacIlwain calls them than "Legislative." In fact in his conception there is no division of power, since all power ultimately belongs to the legislator, who is "the real and supreme creative force within the State and of the State itself."

Estimation of the Contribution of the Political Theory of Marsilius.

It is true that Marsilius has not propounded any new and revolutionary theories but all the same the traditional judgments and practices of the medieval ages underwent a radical change at the hands of Marsilius. He has given us a legal and corporate

conception of State and here he differs from Aristotle, whose conception of State was natural and organic. It is he who gave to us for the first time during the middle ages the clear conception of "modern limited monarchy." For him the king or the *pars principans* was at once the servant and the creature of the people.

Relation between Church and State. In the 2nd part of the book, Marsilius describes the relation between the church and the State. Marsilius studies the question with quite a new approach. He is faced with a dilemma that in every society and in all times there has been a religious institution. Without answering as to the reason of its existence, he gives a political basis to the priesthood, as we have seen he describes it a department of the State. This view was opposed to the contemporary papal view. For him, the church was not an institution with a Pope at its head, but the whole christiandom, the "body of the faithful believing in and calling upon the name of Christ." There was no difference between the clergy and the laity. Of course, he admits the necessity for the clergy. His function was to provide for the education of the revelations of God. However, it is the State and not the church as understood in the middle ages who is to appoint them. Why? Because though the religious acts of the individuals bring their reward or punishment in the next world, they have social and political consequences and hence are to be controlled by the State. Thus, his interpretation of the medieval controversy was a legal one. For him the ultimate source of power, both in spiritual and temporal matters, was the same, *i.e.*, the community. Until now the writers, like Dante, have been taking defensive positions, but now Marsilius for the first time moves to attack. His novelty consists in his view that there was unity in religious and political life. Both the religious and political bodies coincide completely in one, *the communitas perfecta fidelium*. However, for him also State cannot live without the church and *vice versa*, the difference being only this that they are united in one. And here he could not reach an ideal unknown to the traditional medieval mind, "the notion of a deep and far-reaching difference between political and religious obligations."

Nor Pope need have any coercive authority. The disobedience to divine law will be punished after grave. If it is punished in this world through the devices of heresy and excommunication, they must be controlled by the State because they will have temporal effects. Punishment in this world must be determined by civil law.

Thus, the liberty of religious organization is totally denied and the church is wholly absorbed in the State. It is here that we find modernism in Marsilius. Further religion is almost debased to merely a political instrument, and it was Machiavelli's conception . . . a dangerous contribution a truly damnosa as D'Entreves has called it, handed down to the later writers.

It is this idea of unity of Marsilius that has contributed towards the development of our conception of the unitary State. For him, no other law can be prevalent in State except that of the State and there is no law, natural or divine, supreme over it. There is no limitation over the law of the State, it is an embodiment of justice.

JOHN WYCLIFFE*

BY

PROFESSOR H. KRISHNA RAO, M.A.,

*Maharaja's College, Mysore.***Introduction.**

John Wycliffe is the last name on the 'beadroll of Imperialists' like Dante, Marsiglio and Ockham. While Dante in his 'De Monarchia' assaulted the Hildebrandine ideal of the temporal power of the Popes, Marsiglio and Ockham brought Dante's attack on the external organisation of the Church to its logical conclusion. It was left to Wycliffe, the English reformer and the theologian, 'to attack the privileges of the Church, the doctrines which she taught and the religious usages which she inculcated.' Wycliffe was the first English theologian to challenge the intellectual superiority of the Church and the only solitary reformer of his country who saw the needs of his age and the possibilities of the future.

Oxford, a centre of great movements.

Wycliffe's career is an illustration of the *obiter dictum* that 'Oxford is the home of movements, Cambridge of men.' John Wycliffe was born about 1320 in Sprerswell (a misprint for Threswel, the modern Hipswell) in Yorkshire and was educated at Oxford. His early life must have been spent at Oxford as a student, a teacher in Arts and Theology and as an administrator. He was once master of Balliol and probably the Warden of Canterbury Hall. Wycliffe took to theology with all seriousness and devoted to the study of the Bible intensely. He learnt the principle of 'Augustinianism' from Thomas Bradwardine and 'received his master's teaching with a difference and directed it for the highest good of all creatures.' Wycliffe became at once the greatest school-man and greatest preacher of his day. None could match him in the pulpit oratory. He preached to all classes of people his new views on Religion and Society which 'must have grown up in his mind more by a process of intuition

than by a cold logical reasoning.' Before long Wycliffe became a popular figure in Oxford and a great political force in his country.

Wycliffe a prophet of the new age.

Wycliffe may be described as a rebel against the old order and a prophet of the new order. The age of transition in which Wycliffe lived, gave him a peculiar advantage in exposing the defects of Mediæval civilization and in preparing the ground for the new order things yet to come. The later Middle Ages were a period of the beginning of National Spirit as opposed to Universalism of old, of competing claimants for the Papal seat in place of the old unitary and monarchical character of Papacy, of a struggle for political order against the disruptive tendencies of the Feudal nobility, of rivalry between the merchantile nobility of towns and the Feudal nobility of rural areas, and of a conflict between 'the old order for authority, asceticism and charity' and 'the new order for reason, joy of life and thirst for personal glory.' The age of hope and growth was slowly giving way to an age of hopelessness and decay due to the gigantic calamity brought about by the Black Death. The consequent shattering of the belief of the people in the old order of things made the task of reconstruction easy and of those who were responsible for the creation of the new age John Wycliffe was one.

Wycliffe's Writings.

Wycliffe is known by his works and there is no other record of his life except 'the strings of abusive epithets from his enemies.' No definite information is available regarding the order in which he wrote his works. Probably his writings on the disendowment of the Church property must have preceded his doctrinal heresies and his attack on the organisation of the Church belongs to a later period. His Latin works are of little interest to ordinary readers. Though his English pamphlets are written in 'a simple, vigorous style' there is in them 'a predominance of hard, intellectual and moral qualities over the emotion.' Like many of his contemporaries, Wycliffe was more radical in his views than being moderate.

'De Civili Dominio,' 'De Dominio Divino,' 'De Officio Regis' and 'Speculum Militantis Ecclesiae' and 'Trialogus' are some of his important works which form the source of his doctrines. 'De Civili Dominio' is an elaborate scholastic argument for the secularisation of Church property in particular and of duties

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December, 1941—January, 1942.

and rights of property in general. 'De Dominio Divino' deals with a theory of authority in general and shows the relation of God to the Universe, of the King to his subjects and of the proprietor to the slave. 'De Officio Regis' is concerned with the relation between Church and State while his 'Speculum Militantis Ecclesiae' and his 'Trialogus' tend to the exaltation of the State at the expense of the Church. Wycliffe's great contribution to the development of political thought is the doctrine of Dominion which is 'the pivot on which his whole philosophic system turns.' The invention of this doctrine was not Wycliffe's but its interpretation and application to matters of Church and State were entirely Wycliffe's Contribution.

The Doctrine of Dominion.

The origin of this doctrine is traced to Fitz Ralph, the Archbishop of Armagh, and Egidius Romanus. Fitz Ralph lays down the principle that 'no one can be said to have dominium (lordship) unless he is purged from sin and has received grace,' and that a sinner does not lose his natural title to the use of things but his right needs to be safeguarded by positive law. The doctrine at the hands of Wycliffe means 'the abstract relation of the being that is served to the being that serves.' He says that 'Dominium' is founded on the will of God and that 'all the numerable and inexplicable matters of life are simply the whirling-wheel on which the clay is changed and shaped till the potter's design is finally accomplished.' The central idea of this doctrine is that 'all things created by God are related to each other in a certain order established by their Creator under which some are placed above others and in virtue of this superiority must be served by them according to the measure of their superiority.' Dominion is of three degrees, the dominium of God over the world animate and inanimate, the dominium of one person over other persons and the dominium of a person over inanimate objects. When the authority exercised is of right, it is dominium in the right sense, it is true Dominion. The lordship of God is the highest and the greatest of all. God is called the Lord-in-chief and His authority is not distributed through various grades of vassals but is exercised immediately upon everything. Of the two lower species of dominium, viz., *naturale* and *Civil*, the first is that which is 'shared under the law of the Evangel by all who are in the state of grace, which is a state in which all in love serve one another.' Dominion Civile is of the human institutions and is occasioned by sin and is in all respects inferior

to the other species. It follows from this doctrine that 'all have dominium in a measure which exactly corresponds to their place in the hierarchy of created things as established by God.'

Doctrine of Dominion and Church.

In the polemical tracts, Wycliffe 'identifies the pope with Anti-Christ' and accordingly he is found unsparing in his attack on the papacy. Wycliffe observes that 'it is not deducible from Scriptures that the Pope should dominate our realm secularly in temporal matters,' that 'if there were no Popes, no Cardinals, holy Church would stand well by the order that Christ made.' Wycliffe is of opinion that Popes sinned grievously by living as earthly princes and the position of their priests were in no way better. Wycliffe infers from his doctrine that 'the pope is not truly the lord of the Church property, that his fief is purely spiritual which is held on condition of true and laudable service' and that ecclesiastical persons and corporations 'have no indefeasible right to temporalities nor do they have any right to exact tithes and other contributions of temporal property by the threat of excommunication.' Wycliffe traces all the evils of the then existing Church to the huge accumulation of wealth by her and suggests disendowment of her property as the only remedy. He recommends only tithes to the Church men and adds that even tithes could be refused by the public if the priests went wrong. Disendowment of Church property according to Wycliffe is perfectly justifiable because Church property is a social evil. It has deprived many of their legitimate lands, either because of their 'grandfathers' piety' or because of their 'fathers' fear of purgatory.' Disendowment would be the only way to relieve the pressure of taxation on the poor. Wycliffe in his reply, on behalf of the English Government, to the Pope on the latter's demand for 'the treasure of the realm' says that "the Pope cannot demand this treasure except by way of alms It would not be the work of charity but of fatuity to direct the alms of the realm abroad when the realm itself lies in need of them." He hoped that the goods so recovered would be "prudently distributed to the glory of God putting aside the avarice of prelates and Princes."

Doctrine of Dominion and State.

Wycliffe says that 'the origin of Government is divine and that government is a divine remedy for man's sin.' "We hold that God Himself instituted both powers (Church and State)

immediately and not in the sense that one of them should institute or authorize the other." Civil dominium, he adds, is accepted by the custom and consent of the people as being approved by reason or quotes in support of his view St. Paul who says that 'the ruler bears the sword not without a cause.'

Wycliffe discusses the problem of good government and observes that there are two forms of Government, *viz.*, Aristocracy and Monarchy, that under Aristocracy 'men are ruled by judges in accordance with the Law of God.' His conception of Aristocracy is 'a bend of the Platonic conception of guardians, Aristotle's conception of Aristocracy of virtue and the conception of judges of the Israelites.' Wycliffe justifies monarchy because of man's sinful nature and remarks that under monarchy 'men are ruled in accordance with civil laws.' Wycliffe who prefers monarchy does not approve of hereditary monarchy. He says that 'continuity of hereditary monarchy would encourage tyranny while the possibility of deposition would act as a check upon tyranny.'

Laws in the opinion of Wycliffe are more essential to the community than the King for 'they provide a perpetual and inflexible remedy more generally for the wrongs of every man.' Though Law is introduced by men on account of sin with respect to the goods of the body and of fortune it does not mean that Law does not derive its authority from God. Two consequences follow from it. As Law has a Divine source even King should obey the law. As Law is made by a King, he is above the Law. Wycliffe says that there is no contradiction between these two views. His explanation is that 'subjection' is used in two senses, *viz.*, subjection as due to the authority of law itself and subjection as due to a higher law. The first kind of subjection is called *compulsory* and is applicable to all subjects. The second kind of subjection is called *voluntary* and is applicable to the king, *i.e.*, a king is subject to Law in virtue of the authority of Divine Law, not in virtue of the authority of his own law.

It is the business of the ruler 'to take thought for the prudent government of his realm' which consists in "institutions of laws, few and just, in an administration of them wise and exact and in general in the protection of the status and the right of each of his liegemen." Wycliffe remarks, that 'a king who violates the law transgresses against God and his people.' As the head of the nation on earth, it is his duty to see that every member of the body, clerk or layman, fulfils his function. The jurisdiction of the king extends to all parts of his realm and over all his subjects in every case affecting the peace of the kingdom. The King, in

brief, 'bears the image of Christ's Godhead, the priest that of his human character.' As a practical measure he however justifies the authority of the ruler whether he is good or bad probably because he wanted 'to forge a weapon with which to strike down the Church.'

Doctrine of Dominion and Basis of Political Obligation.

As political power is not original but derived, the people, says Wycliffe, should obey the authority of the ruler, they should distinguish between cases where the injury inflicted by the ruler affects them personally and cases where the action is against God. In the first case it is their duty to submit to the authority of the ruler patiently and in the second case, they must resist his authority even to death patiently and submissively. The right of rebellion is not advocated by Wycliffe and a Government though bad, he says, must be obeyed, and if men go beyond this and resist by force or fraud the authority of the ruler, they are guilty of a great sin.

Doctrine of Dominion and Society.

Wycliffe gives a feudal form to his doctrine because he wants to speak to his contemporaries in a language familiar to them. He therefore speaks of God's earthly lordship, its division into a number of fiefs, each being under a lord, God being the overlord of all. The right attitude of all towards God, he says, 'is the State of Grace and if any one falls from this, he, whether King or peasant, cannot own anything and cannot have dominium over others.' Accordingly Wycliffe rebukes the nobles for the trains which they carried with them and calls them as 'the proud Lucifer's children, extortioners and robbers' and speaks of them as 'destroying their poor neighbours and making their house a den of thieves.'

This doctrine when applied to property, means that 'unrighteous men have no right to property for they abuse and do not use what they have.' An avaricious man who uses his possessions for his own exclusive benefit is said 'not to possess that which he has any more than that which he has not' and the possession of the whole world cannot bring him any profit as he does not use it to God. The righteous man on the other hand is the lord of the whole sensible world and Wycliffe quotes in support of his view Christ who has said that 'there is no man that has left house or brothers for my sake and for the gospel's sake but he shall receive a thousand fold now in this time.' This

means that every one ought to be in grace and if he is in grace, he is the lord of the world and as this is impossible with a multitude of men, unless they had all in common, all things ought to be common. Wycliffe does not press his arguments further in favour of communism but defends the right of property on the ground that it should be functional. He shows a deep sense of the solidarity of human interests. In brief according to his doctrine, though unrighteous men cannot have dominium over property in the highest sense, they can have dominium in the ordinary legal sense.

Though Wycliffe has a great sympathy for the poor he is never tired of emphasising the right of property and the duty of the performing of service even to a sinful lord. Unlike the popular preachers of his day who exhorted the villeins to withdraw their services from their wicked masters, it was part of Wycliffe's moral teaching to exhort all Christians 'to render legal dues without question of their equity.'

Conclusion.

There was nothing new in the doctrine of Dominium which was not said before but its practical application to the matters of Church and State were entirely his and he did the task with his characteristic courage. The doctrine of Dominium is 'Common to all Christians of all ages because it upholds the supremacy of Divine or Natural law over positive law.' The divine lordship is justified not only by the Platonic principles of idealism but also by the then existing social systems of Europe. Wycliffe's doctrine of dominium and his exaltation of the State unfortunately seem to be ill-matched and the reasons for his reconciling the two may be attributed to his belief in the divine origin of political power, his anti-papal tendency and a desire to crush papacy with the help of the Crown. In his exaltation of the State at the expense of the Church, Wycliffe anticipates the Reformation and the Divine Right Theory of the 17th century. What is significant in his writings and speeches is a persistent attack on the Church and her property, an insistence on the maintenance of political order in spite of a ruler being bad and to urge for the independence of his country from all foreign power and influence, spiritual and temporal.

To the people of the later middle ages the old order meant 'the Empire, the Church or the guild,' the individual having an existence only as a part of some group. The new order meant 'the State, the national church, the merchant,' the individual being

considered as the very breath of society. The transformation of the old order into the new order, the breaking of the chain that bound the past and the saving of the world from stagnation and decay—all these, was the work of a band of noble souls of whom Wycliffe undoubtedly was a prominent figure.

THE POLITICAL THEORY OF MYSORE AS A DEKHAN POWER (1700—1800)*

BY

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In the eighteenth century Mysore rose to the position of a great power in the Dekhan and South India. Her territories, status and influence were such as to weigh in the balance of the political system of India. Now the question is how this happened. My answer is that her political theory was creative, constructive and conciliatory—creative because new life came to the old country, constructive because it held the structure of the state tight, and conciliatory because it was at once legally acceptable and popular.

But what was this theory? Was it simply pax-Karnataka? Or was it the ancient dharma?

The meaning of the former of these is the Peace of the Karnataka. For centuries, Karnataka enjoyed peace and prosperity under the Gangas, the Chalukyas, the Rashtrakutas and the Hoysalas in spite of wars with their neighbours, because their administrations were good. The Vijayanagar rule carried on the tradition with a greater success, but from our point of view it was the greatest influence on the future Government of Mysore. Not only the administrative policy, rules and policy continued in the new State of Mysore created from the Viceroyalty of Seringapatam, but also the Gandabherunda crest, the Vaishnavite religion and the peacock throne of the Vijayanagara emperors became the symbol, faith and seat of the Wodeyars of Mysore Kingdom. If Kantirava Narasaraaja and Chikka Devaraja Wodeyars made any modification it was only in non-fundamental matters like dress, ceremonial, departmentalisation, etc. 'Pacific' Mysore was the reputation of the State under the Wodeyars, according to an English traveller in the later half of the eighteenth century.

The expression dharma according to a distinguished historian means Raja-Dharma or King's Duty in its larger sense of looking after each and all within the State so that God's will

be done. This ideal is as old as our *Sruti* and *Smritis* and has been the subject of speculation and study in every century almost until recently.

A critical study of the political phrases, institutions and incidents in the eighteenth century will show that the theory of State under the Mysore Wodeyars was a happy combination of the ancient dharma and local tradition.

Keladinripa Vijayam (1650) says:—

'This king ruled his kingdom by punishing the evil-doers and protecting the good and by his constant austere devotion to Lord Shiva and by lessening the hardships of his people.'

Kantiravanarasaraaja Vijayam (1650) describes the character of kingship as follows:—

'Do not say that this is no praise of God but only a praise of man and therefore there is nothing great in it. Lo! The Vedas themselves proclaim that King is God on Earth.'

Chikka Devaraja Wodeyar's greatest prayer in his Binnapa (1700) was:—

'This 'apratima' King spends his time in performing kshatradharma this way as the Service to Lord Vishnu and in expounding the philosophy contained in the shastras.'

Everywhere it was said that the State existed for the welfare of the Brahmans and the cows, it was deva-datta, and it served for the happiness of all men, animals and insects. Haidar Ali's advice to Tippu Sultan, two months before his death at Arcot in 1782, contained the following:—

'Mysore is our motherland. Do not forget it. We have arrived at this station by the grace of the Mysore Kings and we should therefore be very loyal to them as our masters and do our work only in their name. One of the duties in connection with your work as Regent should be to protect cows and Brahmanas and look upon the temples and mosques with equal regard.'

Krishnaraja Wodeyar II begins his letter in 1759 to the Pontiff at Sringeri with a reference to Mysore as 'This Dharma-samsthana.' Maharani Lakshmi Ammanni was addressed as Narapathi Karthar. The motto of the Wodeyars was that they would uphold *satya* or truth although the Heavens fall and their titles narrate chronologically their achievements in this direction.

Among the important political institutions of the century were the Queen, the coronation ceremony, the cabinet, the so-called 'attara cutcherry,' the espionage, the maths and temples, the feeding-houses for the Brahmanas, the Dasara festival and procession, the durbar, and the seven pillars of the kingdom, *viz.*, King, ministers, treasury, army, fort, territory and allies.

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Regarding the political incidents, inscriptions, treaties, letters of correspondence and travellers' writings are full of accounts which show that life was full and crowded and the problems of the State were not less imminent than now. A few illustrations may be cited. Krishnaraja Wodeyar I made a grant in 1722 of villages to the Brahmanas and temples of Tonnur; his wives restored the tanks of the Melkote temple, and he repeated Vishnusahatranama everyday, kept up the sacrificial fire, gave cows and money to Brahmanas, and listened to the holy scriptures. Krishnaraja Wodeyar II propitiated God's will by giving lands to Brahmanas and going to the Sri Ranganatha temple at Seringapatam regularly. Maharani Lakshmi Ammanni assumed the name Sri Ranga in signing all letters with the Madras Government and referred to Mysore State as one bestowed for the service of God, Cows and Brahmanas—a description which revived at the restoration in 1799 and has continued since then.

Now what do all these indicate? They point out most clearly that Mysore was and is a Hindu State, pursuing the ideal of dharma in the larger sense but shaped and sized for practical purposes by local circumstances and tradition which is best summed up in the expression pax Karnataka. The strength and weakness of the Mysore polity lay in the blending of the ancient ideal with the current ideas. The boldness and martial spirit of Kantirava Narasaraaja Wodeyar, the statesmanship of Chikka Devaraja Wodeyar and the diplomatic skill of Wife-Mother-and-Queen Maharani Lakshmi Ammanni in the darkest hours of the dynasty were due to Bhakti in God and their readiness to prepare the images of themselves and their queens in a reverential posture in front of or in the precincts of Gods in different temples and to prostrate themselves with their family members before His representatives on earth who were no other than the High Pontiffs of Sri Parakalaswami and Sringeri Maths. But at the same time their neglect of military science, their complete trust in their ministers and generals and their superstitious tendencies rendered their career extremely hazardous, and but for the providential treaty of the great Queen with the British in 1782 their restoration would have been impossible.

The one serious and disturbing factor in this view is the Islamic bias of Tippu Sultan with its political consequences. He called the State as God-given State or Khudabad Sarkar and himself as Emperor or Padshah. He would not come to any understanding with the Nizam of Haiderabad owing to the comparatively secular nature of the latter. But when all is said and done, it is to be remembered that Mysore proper—the home

country—was safe and free from the fanaticism of Tippu Sultan and that the old Hindu state was quite intact. His homage to his masters was paid regularly until 1796 but withdrawn from that date only at the instigation of the French for creating an impression on the English who recognised the Dowager Queen as the 'Sovereign of Mysore' after the Maharaja's death in that year. Tippu Sultan for one knew that he was only a Sarvadhikari like his father with the control of the purse and sword of the State, a complete military usurper willing to offend but afraid to strike.

THE STATE IN RELATION TO LABOUR IN INDIA*

BY

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In this dynamic world far-reaching changes have taken place in our conception of the end and functions of the State. From an institution with negative functions, the State has now developed into an institution with positive, definite and complex functions of a varied character. Of these functions none is now so important as the one embracing the economic activities. The economic life of mankind includes all those activities and processes by which we obtain the necessities of life and by which we satisfy our desires for things which may not be necessities but minister to our enjoyment, comfort and convenience. And the State is now called upon to take up all those activities which satisfy our needs. In short, the State has now primarily become an economic, or you may call it economico-political organisation.

In the early part of the nineteenth century, there occurred the Industrial Revolution. Machinery quickly supplanted the household as a unit of production. The application of machinery to agriculture and the demand for labourers in the factories tended to revolutionise agricultural conditions. The industrial worker, and to a certain extent the commercial worker, ceased to be his own employer. He went to work in a factory or a large commercial establishment as a hired employee. It was no longer possible for each man to own and control his own means of production. Factories and commercial establishments of all sorts, therefore, came to be controlled by individuals of large wealth or by corporations combining the wealth of a number of individuals, and this was the beginning of the era of capitalism which began functioning on the doctrines of free competition and *laissez-faire*. Naturally, these doctrines profoundly influenced people's ideas as to the function of government in economic life. It was conceived to be the business of government to maintain order, to protect persons and property, to provide for the enforcement of contracts, and a few matters of that sort, but not to

invade the realm of private life and interfere with what people chose to call their personal liberty to do as they pleased in their economic and social life. This "Hands Off" theory of government reached the height of its popularity about the time when the American constitution was drafted.

Early Attitude of the Government of India. The doctrines of *laissez-faire* and individualism dominated economic and political life in India for generations, following the English example of the nineteenth century. The incessant flow of Labour from India to the newly settled British colonies in different oceans, did attract, to a certain extent, the attention of the Indian Government towards the problems of Indian labourers abroad. But the Government being almost entirely manned, at the top by foreigners—the British—who determined its policy, paid scanty heed to the interests of Indians as against the capitalists in the colonies, capitalists who were related to these very rulers of India. For a time, while the scientific discoveries of the 19th and 20th centuries stirred all governments in other lands to protect the interests of the labourers, the Indian Government, on account of its foreign complexion, remained impervious to the almost feeble public demands in India for improving the lot of the Indian labouring classes abroad as well as at home. Almost till the end of the last century the State did not exercise any control over conditions of employment in any industry in India. The employers had fullest possible freedom to determine hours of work, which were very excessive, and fix any rates of wages, and these were fixed as low as possible. In 1875, Mr. Sorabjee Shapurjee started an agitation in order to draw the attention of the Government to the wretched conditions of the workers, especially women and children in factories. But the progress of the movement was very slow. It was in 1891 that the Factory Act was passed to regulate the employment of women and children in factories. But in the succeeding decade two new factors worsened the conditions in Indian factories, the introduction of electricity for lighting factories and the outbreak of plague in an epidemic form. But up to 1911, no further step was taken towards the welfare of the labour, the time was merely spent in mere investigations. A few committees and commissions in the first decade of the present century reported about the abuses and evasions of the Factory Acts of 1881 and 1891.

In 1911, another Factories Act was passed which restricted the hours of work of male adults to a maximum of 12 hours a day. The hours of work for children were reduced to six per day. Intervals were also provided. That more was not done is

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due to insufficient organisation of Labourers to bring pressure on the Government. Workers' Unions were in their infancy and lacked the strength needed to rouse an indifferent administration to activity. Trade-Unionism was more progressive in Bombay than in Bengal. Even the workers could not be persuaded, by the leaders of labour movement, to join the unions in larger numbers.

Government Attitude Since 1919. The Great War gave a new fillip to Indian industry. New industrial centres grew up, and the Government was compelled to focuss its attention on the urgent need of securing the welfare of the workers in factories. The Preamble to Part XIII of the Treaty of Versailles, to which India was a signatory in its own right, stated that "the failure of any nation to adopt humane conditions is an obstacle in the way of other nations which desire to improve conditions in their own countries." And to establish universal peace on foundations of true social justice, the International Labour Organisation was set up, on the Governing Body of which India, then considered as one of the eight industrially important countries, was given a seat. India was represented at the Washington International Labour Conference. Mr. N. M. Joshi was the representative of the Indian Labour at the Conference.

As a result of these new factors, the question of the welfare of labour engaged more serious attention of the Indian Government. Before 1920, there was almost no co-ordination between the Central and Provincial Governments in India in matters affecting labour. In the same year the Government of India established a Labour Bureau and the Governments of Bengal and Madras appointed Special Labour Commissioners. Two years later, another Factories Act was passed, The Factories Act of 1922. It defined a factory as any concern using power and employing not less than 20 workers. Children under 12 years of age were not to be employed in factories. Hours of work for children between the ages of 12 and 15 were reduced to six per day. Women's hours of work were reduced and they were not to work in factories between 7 p.m. and 5 a.m., except in a few types of defined factories. Men's hours of work were also restricted to sixty per week. Compulsory weekly holiday was provided. Besides, certain other minor improvements were also made in the condition of the labouring classes.

The close association of India with the International Labour Office and Conferences had its natural repercussions on the Government's policy. As a result of public demand for greater amenities for workers and the removal of their grievances, His

Majesty the King appointed in 1929 the Royal Commission on Indian Labour. The same year communist agitation in the country reached its climax. There were strikes throughout the country in important industries and factories. Communist leaders were arrested. The Royal Commission's Report was published in 1931. Consequent on its recommendation, the Government of India passed the Indian Factories Act of 1934, which made far-reaching changes to improve the lot of the workers. Here it may be mentioned that several provincial measures were also passed between 1921 and 1930, to deal with provincial labour problems.

In 1937, Congress ministries were formed in 7 out of the 11 provinces. Their policy and sympathy for the industrial workers went a great way in securing labour welfare. Workers were helped in cases of strikes or lock-outs, and Labour Commissioners were appointed to settle disputes arising between them and their employers.

The establishment of an Indian Bureau of the International Labour Office in Delhi has also done much to increase the interest of all parties in labour matters. True, the Government of India has not yet ratified all the important Conventions recommended by the International Labour Conferences, yet whatever conventions have been ratified have done appreciable good to the workers by giving them different kinds of relief.

State and Labour Welfare in India. One of the most important duties of the State in relation to Labour is welfare work, which may be defined as work for improving the health, safety, general well-being and the industrial efficiency of the workers beyond the minimum standards laid down by the Factory Act and other labour legislation. The importance of welfare work is greater in India than in the West. Indian workers regard industrial employment as a necessary evil from which they are eager to escape as early as possible. The necessity of welfare work arises out of the modern system of production which destroys all personal touch between the employers and workers. The aim of welfare work is threefold. It is partly humanitarian, to enable the workers to enjoy a richer and fuller life. It is partly economic to improve the efficiency of labour, to increase its availability where it is scarce, to secure a better class of workers even if it is not scarce, and to keep them contented so as to minimise the inducement to resort to strikes and take direct action. The aim is partly civic, to develop a sense of responsibility and dignity among the workers, and thus to make them worthy citizens, by providing them recreational facilities, etc.

Before the last Great War, welfare work hardly existed in India owing to ignorance and apathy of the workers.

Even today the position is that more than 60 per cent of Indian Industrial workers are still not covered by any schemes of welfare work whatever. Largely owing to the efforts of the International Conferences, public opinion is being roused and educated in the matter and Government, as a result, is forced to take an active interest in welfare work. More space, more light, better ventilation, more suitable temperature, better water supply and better sanitary conveniences than are laid down by the Factory Act, are some of the urgent needs of the Indian workers. Also provision for dining rooms, tea shops and canteens supplying wholesome food, bathing and washing facilities, day schools for children, reading rooms for adults, co-operative societies, cheap grain and cloth shops, medical help, better housing, open air and indoor games, etc. While some of the private institutions and social service leagues are doing their best to provide various amenities to the workers, the State must come forward with legislation and funds to do different kinds of welfare work. Without State aid and active help, the lot of workers is not likely to improve.

There are positive evils like drink, opium, gambling and other vices from which the workers suffer. It is in this field that the welfare worker should also exert himself to his utmost. The Labour Commission recommended that there should be a more general extension on the part of the employer of welfare work in its broader sense by providing for health visitors, recreational and educational facilities. But it is the duty of the State to do something in this matter, as it is doing in the West. It is sometimes urged that as industrial workers constitute only a small proportion of the population, it will not be justifiable on the part of the State to undertake any large extension of welfare work for their benefit only. This is a very narrow and poor conception of the scope of State activity, because the general raising of the standard of living and the better education of the workers, is bound to react on the education and standards of living of all workers, agricultural and industrial gradually. The theory of the greatest happiness of the greatest number applied to this problem means that the State should undertake social welfare work as one of its proper functions because workers whether industrial or agricultural constitute more than 9/10 of the population of this country. Difficulties such as the illiteracy, the temporary and floating character, and the differences of race, language and religion of the labour force, no doubt, exist. But

then, the object of social welfare work primarily is to remove these very difficulties. The Labour Commission recommended that the Provincial Governments should be given the power to issue, as in England, welfare orders under the Factories Act to groups of employers, requiring them to provide certain facilities for their workers, such as the provision of one or more first aid boxes of a prescribed standard in all industrial establishments. What is required is the realisation on the part of the State, the employers and the public that the human rights of the workers to live (and not merely to exist in hovels) have a claim upon society and that if this claim is not conceded in time we will have neither social justice nor social peace and the alternative will be revolution instead of evolution.

Suggestions and Conclusions.

The outbreak of the second world war just a quarter of a century after the first one has raised entirely new economic and industrial problems in India. This war has come to the very gates of India and even the alien Central Government in the country has been roused to a consciousness of the urgent necessity of placing Indian industry on a war footing. The State has started either directly, or through subventions, new industries in the country, which have during these two years manufactured, in the words of Sir Ramaswami Mudaliar, the Commerce Member with the Government of India, at least 400 new articles which have never been manufactured in this country. All these industries are at present temporary, but the urgent public demands and the resulting economic reconstruction after the war would make it imperative for the Central Government, which, it is expected, would be national in complexion, to put all these newly started industries on a permanent basis. At that time the international repercussions of the economic conditions in the belligerent countries would bring the Indian workers closer together to demand social justice and the removal of social inequalities and inequities. The future Government would then be called upon to enact a large volume of labour legislation, to raise the standard of living of the workers, to provide them greater amenities of life and to make provision for better education of their children. Any Indian who has taken the care to examine for himself the deplorable conditions of the workers in industrial centres, would admit that the problem of labour welfare has an urgency all its own. Till now the inadequacy of State aid in solving the labour problems and removing the grievances

of the workers has been due to the lack of a national government. But with the political advancement of India towards national independence this cause would no longer exist. With the introduction of compulsory education, the problem of the education of the workers would be automatically solved. But to raise the standard of living and to provide them with decent clean houses and sufficient nourishing food would need further State legislation.

India along with other industrial countries of the world is beginning to realise that even the larger interests of the capitalists require that the skilled and the non-skilled workers must be enabled to produce better work, and this cannot be achieved unless the interests of the weaker partner, that is, the employees, in the industrial advancement are adequately protected. The framers of the future constitution of India would have to give adequate powers to the Central federal government, concurrently with the provincial governments, to exercise effective control over labour problems in the country. When provincial autonomy has become real in the future constitution, all provincial governments would enact legislation affecting the life and interests of workers. But in such a large country as India the necessity of uniformity in all provinces in these matters cannot be over-emphasized. It is, therefore, suggested that a Central Labour Board should be established and there should also be established provincial labour boards to deal with all these questions. These labour boards should consist of three kinds of members: Government nominees, representatives of employers and representatives of workers. These three kinds of representatives may be in equal numbers. To these members must be entrusted practically every work affecting the interests of the workers and also the work of deciding disputes between the employers and the employees. Then and then alone we shall have social justice in that new order which is now envisaged for India as a result of the present-world conflagration.

SHOULD THE INDIAN LEGISLATURES HAVE ANY POWER OF RETROSPECTIVE LEGISLATION?*

BY

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I

The question I propose to discuss in this paper is a twofold one: first, whether the legislatures¹ in British India should have any power of passing any retrospective law; and, secondly, even if they should, whether the exercise of this power should be subject to any condition. The question is, to my mind, not merely one of academic or speculative interest, but also of great practical importance to us, particularly in view of the peculiar circumstances of India, and the complexity of its economic and political life, chiefly arising from what is compendiously referred to as its communal problem.

II

Retrospective Law.—"A statute," says Sedgwick,² "is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."

Again—

A retroactive (or retrospective) law "is one which applies to cases existing at its passage, so as to impose new duties or attach new disabilities with reference to past transaction, or to impair vested rights."³

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¹ To be referred to hereinafter as the *Indian Legislatures*.

² See his *Statutory and Constitutional Law*, 2nd Ed., 1874, p. 160.—Quoted by W. F. Craies in his *Treatise on Statute Law* (3rd Ed., by Pease and Gorman, 1923) on page 324.

³ *The Cyclopedic Law Dictionary*, 2nd Ed., Chicago, 1922, pp. 891-92.

Thus, as Judge Cooley⁴ has rightly observed, a retrospective law reaches back, and gives, "to a previous transaction some different legal effect from that which it had under the law when it took place."

III

The present position of the Indian legislatures.—As is well-known, the Indian legislatures are, to use Prof. Dicey's words, "non-sovereign law-making bodies:" their powers and authority have been derived, directly or indirectly,⁵ from the Government of India Act, 1935, which is the supreme law of this country, and their laws are valid if they are not in any way inconsistent with this supreme law. But so long as they act within the limits of their constitutional authority, they have "plenary powers of legislation, as large, and of the same nature, as those of Parliament itself." This principle was authoritatively declared by the Privy Council in 1878, in the course of its judgment on what is known as *The Queen V. Burah*⁶ case. The Privy Council stated:

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmative-

⁴ See Thomas M. Cooley, *A Treatise on the Constitutional Limitations, etc.*, 8th Ed., Walter Carrington, Vol. 2, 1927, pp. 771-72.

⁵ See the Government of India Act, 1935, Parts V and XIII, and the Ninth Schedule to the Act.

⁶ See *The Queen v. Burah* (1878), 3 App. Cas., pp. 889-907.

This case is also referred to as *The Empress v. Burah* and *Another* (i.e., Book Singh). See *The Indian Law Reports, Calcutta Series*, Vol. IV, 1879, pp. 172-183.

The judgment of the Privy Council on this case was delivered on an appeal from a decision of a Full Bench of the High Court of Judicature at Fort William in Bengal. The judgment was actually delivered by Lord Selborne.

⁷ See *ibid.*

ly, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

And what the Privy Council declared in 1878 as law in the course of its judgment on *The Queen V. Burah* case is, under Section 212 of the Government of India Act, 1935, "binding on, and shall be followed by, all courts in British India."

It follows as an implication from what is stated above that, in respect of matters within their respective legislative competence, the Indian legislatures possess, like the British Parliament, the power of passing both *prospective* and *retrospective* laws. This enabled, for instance, the Bengal Legislature to pass the Bengal Money-Lenders Act, 1940.⁸ The object of this Act, the assent⁹ of the Governor-General to which was first published in *The Calcutta Gazette* of 1st August, 1940, and which was to come into force on such date as the Provincial Government might, "by notification in the *Official Gazette*," appoint, was "further to regulate transactions of money-lending in Bengal." This Act, which is now in force in Bengal, contains several provisions of considerable importance, which operate retrospectively. I may refer here to one or two of them.

For example, there is, in the first place, a frequently used expression in the Act, namely, *suit to which this Act applies*.¹⁰ It means¹¹ any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution—

- (a) for the recovery of a loan advanced before or after the commencement of this Act;
- (b) for the enforcement of any agreement entered into before or after the commencement of this Act, whether by way of settlement of account or other-

⁸ The Bengal Act X of 1940. See *The Calcutta Gazette* of 1st August, 1940.

⁹ Presumably under Section 107(2) of the Government of India Act, 1935, taken along with Section 76(1) thereof.

¹⁰ The italics are mine.

¹¹ Section 2(22) of the Bengal Money-Lenders Act, 1940.

wise, or of any security so taken, in respect of any loan advanced whether before or after the commencement of this Act; or

- (c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act."

The word "suit" also "includes an appeal."¹²

It is clear from the above that, although the Bengal Money-Lenders Act was passed in 1940, it was to apply to "any suit or proceeding"¹³ instituted or filed on or after the 1st day¹⁴ of January, 1939, or pending on that date . . . for the recovery of a loan," etc. The expression "pending on that date" is very significant. It implies that the Act was to apply even to suits or proceedings instituted before the 1st of January, 1939, but still pending for decision or execution on that date. No less significant is the expression, "*before*¹⁵ or after the commencement of this Act," which occurs thrice in the extract from the Act quoted above.

Again, Section 30 of the Act lays down¹⁶—

"30. *Notwithstanding anything contained in any law for the time being in force, or in any agreement,*^{16a}

- (1) no borrower shall be liable to pay after the commencement of this Act—

- (a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,

¹² Section 2(21) of *ibid.*

¹³ Including "a proceeding in execution for the recovery of a loan," etc.

¹⁴ As the Government spokesman, the Hon'ble Mr. H. S. Suhrawardy practically admitted on 24th May, 1939, this date was chosen more or less arbitrarily.—See the Bengal Legislative Assembly Proceedings of 24th May, 1939.

¹⁵ The italic is mine.

¹⁶ Clause (3) of Section 30 of the Act is not quoted here as unnecessary. It is more or less of a consequential character.

^{16a} The italics are mine.

- (b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,

- (c) interest at a rate per annum exceeding in the case of—

- (i) unsecured loans, ten per centum simple,
(ii) secured loans, eight per centum simple,

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act;

- (2) no borrower shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates *per annum* exceeding those specified in sub-clause (c) of clause (1)."

One of the implications of this Section is that whatever might have been the nature of the agreement, in regard to the rate of interest, between a lender and a borrower in respect of a loan transaction which had occurred before the commencement of the Act, and however lawful might have been the agreement at the time it had been entered into, it is to be deemed, even if a decree has since been passed by a Court of Law on the basis of the agreement or even if interest has already been paid by the borrower in accordance with the terms thereof, invalid, and therefore inoperative, after the commencement of the Act, to the extent it is found to have been inconsistent with the requirements of clauses (1) and (2) of the Section as quoted above. The words *be deemed to have been liable to pay* in clause (2) of the Section, are really very interesting in this connexion.

Moreover, Section 36 of the Act declares, among other things—

"36. (1) Notwithstanding anything contained in any law for the time being in force, if in any suit to which this Act applies, or in any suit brought by a borrower for relief under this section whether heard *ex parte* or otherwise, the Court has reason to believe that the exercise of one or more of the powers under this section will give relief to the borrower, it shall exercise all or any

of the following powers as it may consider appropriate, namely, shall—

- (a) reopen any transaction and take an account between the parties;
- (b) notwithstanding any agreement, purporting to close previous dealings and to create new obligations, reopen any account already taken between the parties;
- (c) release the borrower of all liability in excess of the limits specified in clauses (1) and (2) of section 30;

“Provided that in the exercise of these powers the Court shall not—

- (i) reopen any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date more than twelve years prior to the date of the suit by the parties or any person through whom they claim, or
- (ii) do anything which affects any decree of a Court, other than a decree in a suit to which this Act applied which was not fully satisfied by the first day of January, 1939, or anything which affects an award made under the Bengal Agricultural Debtors Act, 1935. . . .”

“(2) If in exercise of the powers conferred by subsection (1) the Court reopens a decree, the Court—

- (a) shall, after affording the parties an opportunity of being heard, pass a new decree in accordance with the provisions of this Act, and may award to the decree-holder such costs in respect of the reopened decree as it thinks fit”

The provisions of Section 36 of the Act as quoted above are very clear. Notwithstanding anything contained in any law for the time being in force, they require, in certain circumstances, the Court of Law to “reopen any transaction” previously closed; to “reopen any account already taken between the parties (*i.e.*, the borrower and the creditor); to “release the borrower of all liability in excess of the limits specified in clauses (1) and (2)

of Section 30” as shown before; to reopen a decree already passed by a Court of Law “in a suit to which this Act (*i.e.*, the Bengal Money-Lenders Act of 1940) applies which was not fully satisfied by the first day of January, 1939”; and to “pass a new decree in accordance with the provisions of this Act”.

There are several other provisions in the Bengal Money-Lenders Act, 1940, which are also retrospective in their operation, but to which I cannot refer here for considerations of space.

It may be noted here that there are some other Acts of the Bengal Legislature, such as the Bengal Money-Lenders Act, 1933,¹⁷ the Bengal Agricultural Debtors (Amendment) Act, 1940,¹⁸ in which also I find the element of retrospectivity. The principle of retrospectivity was also, to some extent, introduced by the Central Legislature of India into the Usurious Loans Act of 1918. But this Act left a good deal of discretionary power to the Court of Law,¹⁹ which to a large extent neutralized the mischievous effects of the introduction of the principle of retrospectivity into its provisions. It seems to me that perhaps the partial introduction of the principle of retrospectivity by the Central Legislature of India into the Usurious Loans Act of 1918, and by the then Bengal Legislature into the Bengal Money-Lenders Act of 1933, encouraged the promoters of the Bengal Money-Lenders Act of 1940, to go the length they did, in introducing into its provisions the principle of retrospectivity. Herein lies the inherent danger of this principle once it is accepted, to which I shall have an occasion to refer later on.

I do not know whether other provincial legislatures in India have passed any retrospective statute. Even if they have not so far, they may do it whenever they want to, since they have, as I have shown before, the power of passing retrospective laws. The question, therefore, which I first propose to consider now is whether the Indian legislatures should at all have any such power. This leads us on to the consideration of the question of the justifiability of retrospective statutes.

IV

Retrospective Statutes: how far justifiable.—It is a well-known maxim of jurisprudence that a “new law ought to be

¹⁷ The Bengal Act VII of 1933.

¹⁸ The Bengal Act VIII of 1940.

¹⁹ See Section 3 of the Usurious Loans Act of 1918 (Central Act No. X of 1918).

prospective, not retrospective, in its operations".²⁰ Laws, according to Blackstone,²¹ should "in general be made to commence *in futuro*". Again, "Retrospective laws," says Herbert Broom,²² "are, as a rule, of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. . . . Accordingly, it has been said that every statute which takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past, must be deemed retrospective in its operation, and opposed to sound principles of legislation."

It is really difficult to differ from these views. Indeed, a retrospective statute, even in the field of civil law, often causes a good deal of hardship to those who are adversely affected by it and who were not at all prepared for it. Moreover, it, not seldom, violates the sanctity of contracts which have been deliberately entered into by the parties concerned, fully in accordance with the requirements of the law for the time being in force, and thus helps to introduce into society elements of instability, uncertainty and insecurity. As Mr. David Hendry, a member of the Bengal Legislative Assembly, rather bluntly—though not very improperly—said on 22nd June, 1939, in the course of his speech on the Bengal Money-Lenders Bill, 1939:²³

"The social structure . . . depends upon the maintenance of the sanctity of contract, of which retrospective legislation is a menace."

"It manifestly shocks our sense of justice", says Herbert Broom,²⁴ "that an act legal at the time when it was done should be made unlawful by a new enactment; and the injustice and

²⁰ See Herbert Broom, *A Selection of Legal Maxims*, 9th Ed. (Byrne), 1924, p. 21.

²¹ *Commentaries on the Laws of England*, Ed. 1869 (Broom and Hadley), Vol. I, p. 40.

²² See Herbert Broom, *op. cit.*, pp. 21-22. Also see in this connexion the speech of Mr. H. C. A. Hunter in the Bengal Legislative Council on 19th January, 1940, in *Bengal Legislative Council Debates* (Official Report) of the same date.

²³ See the Bengal Legislative Assembly Proceedings (Official Report) of 22nd June, 1939.

²⁴ See his *Selection of Legal Maxims*, 9th Ed., 1924, pp. 25-26; also Craies, *A Treatise on Statute Law*, 3rd Ed., pp. 327-28.

impolicy of *ex post facto*²⁵ or retrospective legislation is most apparent in the case of new criminal laws".

Some such considerations must have weighed with the framers of the American Constitution when they incorporated in it provisions forbidding both Congress and the State legislatures in the United States of America to pass any *ex post facto* law.²⁶ Moreover, the State legislatures there are forbidden to pass any "law impairing the obligation of contracts".²⁷ What Madison said in justification of these restrictions upon the legislative competence of both Congress and the State legislatures is perhaps worthy of reproduction here. He observed:²⁸

"Bills of attainder, *ex-post-facto* laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they

²⁵ "Ex Post Facto" (lit. 'from what is done afterwards'), a phrase used especially of laws operating retrospectively"—*Encyclopaedia Britannica*, Vol. 8, 14th Ed. Sometimes a distinction is drawn between a retrospective statute and an *ex post facto* statute. "Every *ex post facto* law," said Chase, J., in *Calder v. Bull*, "must necessarily be retrospective, but every retrospective law is not *ex post facto* law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective. . . . But I do not consider any law *ex post facto* that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction."—Quoted by Craies in his *Treatise on Statute Law*, Ed. 1923, pp. 325-26. Also see Cooley, *Constitutional Limitations*, 8th Ed., Vol. I, p. 542.

But this distinction is not observed by many writers on constitutional law.

²⁶ See the Constitution of the United States, Article 1, Sections 9 and 10.

²⁷ *Ibid.*, Article 1, Section 10.

²⁸ See Madison's paper in *The Federalist* No. XLIV.—See *The Federalist* (Lodge).

have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community.^{28a} They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

It is true that as early as 1798 the Supreme Court of the United States of America declared in *Calder v. Bull* that the prohibition imposed by the Constitution on Congress and the State legislatures in respect of *ex post facto* laws, applied only to criminal legislation.²⁹ Although what the Supreme Court authoritatively declared in 1798 has since been the law in the United States on the subject of *ex post facto* legislation, yet it is very difficult to say that the view held by it in this regard is justified by the wording of the relevant provisions of the Constitution. Nor does what Madison had stated in *The Federalist* in 1788 in justification of those provisions, support this view. Nor, again, is this view supported by some of the eminent writers on the Constitutional Law of the United States. For instance, Professor Willis³⁰ says—

^{28a} This description applies very well to the chain of such laws as the Usurious Loans Act of 1918, the Bengal Money-Lenders Act of 1933, the Bengal Agricultural Debtors (Amendment) Act of 1940, and the Bengal Money-Lenders Act of 1940.

²⁹ See James Kent, *Commentaries on American Law*, 10th Ed., p. 458; also Willis, *Constitutional Law of the United States*, 1936, pp. 515-16; also Cooley, *A Treatise on the Constitutional Limitations*, 8th Ed., Vol. 1, pp. 541-43; also Maurice Amos, *Lectures on the American Constitution*, 1938, p. 150.

³⁰ See his *Constitutional Law of the United States*, p. 515.

"It was undoubtedly the intention of the framers of the Constitution to make the *ex post facto* clause apply to civil as well as to criminal legislation, but in an early case³¹ the United States Supreme Court followed English usage and confined it to penal statutes. This decision was undoubtedly historically inaccurate, but it settled the law in the United States and has been followed ever since".

Judge Cooley³² has also observed—

"At an early day it was settled by authoritative decision, in opposition to what might seem the more natural and obvious meaning of the term³³ *ex post facto*, that in their scope and purpose these provisions were confined to laws respecting criminal punishments, and had no relation whatever to retrospective legislation of any other description".

The position, therefore, in the United States is that under its Constitution as interpreted by its Supreme Court, retrospective laws of a civil nature can be enacted both by Congress and by the State legislatures. This does not mean, however, that there is, or can be, no sanctity or obligation of contracts there. For, in the first place, the States are, as noted before, forbidden by the Constitution to pass any law impairing the obligation of contracts.³⁴ Secondly, although this prohibition does not apply to Congress, there is the safeguard provided by the interpretation put by the Supreme Court upon the expression, "without due process of law," occurring in the Fifth and the Fourteenth Amendment to the original Constitution. As Professor Willis³⁵ has observed, "the due process clause has now been extended so as to include protection against the impairment of the obligation of contracts As a consequence, the federal government is limited by the due process clause even though it is not limited by the obligation of contracts clause, and state governments are limited by the due process clause as well as by the

³¹ I.e., *Calder v. Bull* (1798), 3 Dall. 386.—*Ibid.*

³² See his *Treatise on the Constitutional Limitations*, 8th Ed., p. 541.

³³ The italics are mine.

³⁴ See Article 1, Section 10, of the Constitution (U.S.A.).

³⁵ See Willis, *Constitutional Law of the United States*, pp. 600-601; also Chapters XXI and XVII thereof.

obligation of contracts clause." And Sir Maurice Amos³⁶ has remarked that "though the Constitution as originally drafted, and as originally understood, did not forbid Congress passing laws which impaired the obligation of contracts (that restriction being imposed upon the States only), the 14th Amendment has taught the 5th Amendment, which had hitherto stayed rather coyly in the background, that any interference with a vested right which the Supreme Court thinks unjust or unreasonable is an offence against Due Process, so that, since a valid contract creates vested rights, the Contract Clause, sheltering behind the 5th Amendment, has now come to control Acts of Congress."

V

Conclusion.—It will be evident from what we have shown above that the position in India is entirely different from that in the United States, in respect of *ex post facto* laws or laws impairing the obligation of contracts. It seems, therefore, highly desirable that there should be some adequate safeguards in our future Constitution against the easy enactment of *ex post facto* laws, either of a civil or criminal nature, or of laws impairing the sanctity or obligation of contracts lawfully entered into. I would go further and say that such a "constitutional bulwark," to quote the words of Madison, is absolutely necessary in the interest of our "personal security and private rights." A careful perusal of the proceedings of the Bengal Legislature relating to the Bengal Money-Lenders Bill, 1939, has convinced me of this. Moreover, as Judge Cooley³⁷ has rightly observed, the power of enacting retrospective laws is "exceedingly liable to abuse." Under the existing Constitution of India any majority party in a legislature, formed more or less on communal lines, may easily carry an *ex post facto* bill of a most objectionable character against the strenuous and persistent opposition of the helpless minority party in it. And we must not forget that our parties are, and will, as far as I can see, for a long time to come be formed not, to quote the words of President Lowell used in another connexion, on

³⁶ See his *Lectures on the American Constitution*, Lecture V, pp. 100-101.

³⁷ *A Treatise on the Constitutional Limitations*, Vol. 2, p. 772.

"vertical" lines as they should be, but practically on "horizontal" lines.³⁸

It may be noted here, by the way, that the British analogy does not, really speaking, apply to Indian conditions today. For, in the first place, the British Parliament is a sovereign legislature. Secondly, the population in Britain is much more homogeneous than that in India, and, as a consequence, there is much less conflict of interests there than in this country. Lastly, what publicists call the conditions of good party government obtain to a much greater extent in Britain than they do in India now.³⁹

At the same time, I feel that it may not perhaps be expedient to forbid altogether the passing of retrospective laws by our legislatures. Sometimes, retrospective legislation may be necessary for curing a formal defect in a previous law or for passing, say, an act of indemnity in times of crisis. Moreover, as Willis, J., stated in *Phillips v. Eyre*,⁴⁰ "There may be occasions and circumstances involving the safety of the State, or even the conduct of individual subjects, the justice of which prospective laws made for ordinary occasions and the usual exigencies of society for want of provision fail to meet, and in which the execution of the law as it stood at the time may involve practical public inconvenience and wrong."

I, therefore, think that the Indian legislatures should have, as now, the power of retrospective legislation or of legislation impairing the obligation of contracts; but that the exercise of this power must be subject to the condition that no law of a retrospective character or no law impairing the obligation of contracts can be passed by any of them except with the consent of the two-thirds or the three-fourths—I would personally favour three-fourths—of its members (or of the members of each house thereof, in case the legislature happens to be bicameral). This will mean that, save in "special and exceptional" circumstances of which a majority of two-thirds or three-fourths, as the case may be, in the legislature (or in each house thereof, if it happens to be bicameral) must be convinced, no retrospective law nor a law

³⁸ See in this connexion the author's paper entitled *The Problems of Party Government in India*, published in the Conference Number of *The Indian Journal of Political Science*, April-June, 1941.

³⁹ See *ibid.*

⁴⁰ *Phillips v. Eyre* (1870), L.R. 6Q. B.1, p. 27.—Quoted by Beal in his *Cardinal Rules of Legal Interpretation* (3rd Ed.), pp. 470-471.

impairing the obligation of contracts can be enacted. In the peculiar circumstances of India I consider such a constitutional safeguard essential in the interest of our minorities. And by the expression "minorities" here I mean not merely the Muslims, the Sikhs and other considerable minority communities in India, but also, for example, the Hindus in the Provinces in which they are in a minority.

AGREEMENT AS A PRE-REQUISITE OF INDIAN CONSTITUTIONAL DEVELOPMENT*

BY

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(1)

The worth of any system of government lies less in what it is than in what it does. And it is because a constitutional government is, under certain circumstances capable of achieving better results than a despotism that there is a general demand in India for the immediate and complete constitutionalising of the system of government in the provinces and at the centre.

It is quite true that a government should possess many other attributes besides being constitutional. It should for instance provide for an expert civil service and for administration of justice by impartial judges. But these features do not give to it a constitutional character. It is quite possible that effective provision for them might be made even by a despotic government. We cannot, therefore, speak of the constitutional development of India unless it be with reference to the constitutionalizing of its governmental system.

The nature of constitutional government has been described by all great writers on political science starting from Aristotle. Some have looked at it as government whose authority is limited and some others as government responsible to the governed. Woodrow Wilson¹ described it thus: "By a constitutional government we, of course, do not mean merely a government conducted according to the provisions of a definite constitution; for every modern constitution with which our thoughts deal at all has a definite constitution, written or unwritten, and we should not dream of speaking of all modern governments as Constitutional A constitutional government is one whose powers have been adapted to the interests of the people and to the maintenance of individual liberty." It was however the view of Calhoun,²

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¹ *Constitutional Government in the United States*, p. 1-2.

² Andrew C. Mc Laughlin, *A Constitutional History of the United States*, p. 442.

another famous American statesman that "a negative on governmental action is the heart and centre of constitutionalism." Apprehending on the other hand that a government subject to checks might become weak, H. J. Ford³ stated his view in the following words: "The true distinction between despotism and constitutional government does not lie in limitation of power but in the existence of means for making power accountable for its behaviour. Ability to act promptly and energetically in the presence of emergency is of such paramount importance that every other consideration should give way to it. Any Constitution of government which disregards that principle is doomed. A genuine form of representative government avoids that error. It never seeks nor allows any partition of executive authority, nor restricts it in any way save that it shall be answerable for results." Professor Carl Joachim Friedrich⁴ is, however, of the opinion that the presence of effective restraints on political and governmental action is the essence of constitutionalism.

These descriptions of constitutional government differ from each other only in the degree of emphasis they lay on the two characteristics referred to above. They may be easily reconciled if it is understood that by constitutional government is meant government whose authority is limited by its responsibility to the governed enforced through regular and well-recognised means.

No elaborate argument is necessary to show that the system of government which has been in existence in India for the last one Century and a half has to-day arrived at a stage where unless it becomes constitutional it will lose all its value. All that a despotism could have achieved in the peculiar circumstances of India of the eighteenth and the nineteenth centuries in promoting political unity and the preservation of peace and order, it has already achieved. An enlightened despotism rooted in the soil of the country could have accomplished more, especially in the social and economic life of the people. It is here that it differs from the enlightened despotisms that flourished in several European Countries in the pre-democratic age. The growth of national consciousness in the country has now placed it on the defensive. It is at present in that situation where a government tries to prove its title deeds not by what it is doing now but by what it did in the past and identifies the good of the governed with its own continuance in power. To preserve its own existence at any cost becomes its supreme object and it has to resort more and

³ H. J. Ford, *Representative Government*, pp. 304-05.

⁴ *Constitutional Government and Politics*, p. 103.

more to a policy of repression and of divide and rule. It does not possess the strength required to effect social and economic reforms so necessary in the twentieth century, reforms effected in England, the United States and the Dominions within the British Commonwealth by governments resting on public opinion. Even the Indian Statutory Commission⁵ recognised this when it expressed the view that, "the most formidable of the evils from which India is suffering have their roots in social and economic customs of long standing, which can only be remedied by the action of the Indian peoples themselves." The Joint Committee on Indian Constitutional Reform⁶ has to remark thus: "As our enquiries have proceeded, we have been increasingly impressed, not by the strength of the Central Government as at present constituted, but by its weakness Indeed, the main problem which, in this sphere, Parliament has now to consider is how to strengthen an already weakening Central Executive." It has also observed⁷ how in the sphere of social administration "a point has been reached where further progress depends upon the assumption by Indians of real responsibility for Indian social conditions." What is true of social conditions is equally true of economic and political conditions. We have now come to a situation in India where as was stated by the philosopher T. H. Green⁸ in another connection the need is for intelligent patriots co-operating in the service of the State instead of subjects blindly loyal. Governmental institutions as they exist now in India have reached the point of their maximum utility and cannot grow any further in their present form. In the absence of growth they are bound to degenerate. They require to be completely overhauled.⁹ Herein lies the case for the introduction of constitutional government into India.

(2)

Although the need for the introduction of constitutional government is recognised, the prospect of its fulfilment has become very remote owing to the laying down of the formula that any new constitution that is to be framed must have as its pre-

⁵ *Report*, Volume I, p. 409.

⁶ *Report*, Volume I, Para. 41.

⁷ *Ibid.*, Para. 18.

⁸ *Lectures on the Principles of Political Obligation*, p. 130.

⁹ Cf. G. E. G. Cablin, *Principles of Politics*, p. 452.

requisite the agreement between the principal elements in India's national life. This is the keynote to the various statements made on the subject by the authorities in England and India during the last two years. In a statement made on April 22, 1941 the Secretary of State for India¹⁰ observed thus: "Even more important in this connection is the stipulation that the constitution itself, and also the body which is to frame it, must be the outcome of agreement between the principal elements in India's national life. That is an essential pre-requisite to the success of the future constitution." In another statement¹¹ made on August 1, 1941 he observed: "The difficulty I have tried to explain throughout is not our unwillingness to give self-government to India but the absence of any willingness among Indians themselves to agree upon terms on which they are ready to govern themselves, either for India as a whole or as has been suggested in separate units. There is no agreement on that and the whole essence of our policy is to invite and urge Indians to come to an agreement."

Superficially regarded, the formula embodied in the above observations is unexceptionable. It is in line with the whole of modern liberal and democratic thought that government should be based upon the consent of the governed. But its deeper implications are of such a character that any strict adherence to it will make the introduction of constitutional government an impossibility. It has already come to bear an analogy with the use made of the social contract theory by Hobbes to defend despotism.

The value and the utility of the formula depend on (a) the nature and the number of the principal elements in India's national life whose agreement is considered necessary; and (b) the nature of the agreement—whether unanimity or majority—that is sought.

The question of the principal elements in India's national life has been given so much prominence by British statesmen as they have always been of the view that there is nothing like an Indian People with a consciousness of unity among them. On the other hand, they have always believed that India is a land of communities, creeds and castes each with its separate interests. It is this belief that permeates the analysis of the conditions of the Indian problem which forms a feature of every document and

¹⁰ *The Hindu* (Madras), April 24, 1941.

¹¹ *The Hindu* (Madras), August 3, 1941.

report bearing an Indian Constitutional reform.¹² The analysis as well as the inferences drawn from it have little relation to the realities of Indian life. Certain characteristics of this life have been abstracted or isolated from the rest and have been regarded as giving a correct and a complete picture of India. No people of any country in the world—Britain, the United States, Canada, South Africa, Switzerland, etc., are homogeneous, in the sense of being uniform in all respects. Differences due to race, language, religion, culture and property exist dividing one section from another. Conditions in India are not very much different from what they are elsewhere. The growth of the national movement in the country during the last fifty years and more is a clear indication that a larger element of homogeneity is coming into existence. To ignore this is to regard Indian Society as being immobile and static which is not the real truth. And the inference that in such a country the presence or absence of agreement in regard to matters of political importance should be discovered not through the recognised democratic method of "one man, one vote" but through that of "one element, one vote" is to apply to India a test which perhaps no country can stand. The exaggerated importance that it has become a fashion to give to homogeneity and to agreement on fundamentals in the working of democracy has drawn the following observation¹³ from a thoughtful student of politics: "It seems highly questionable whether fundamental agreement, or the absence of dissent in matters of basic significance, is really a necessary or even a desirable condition for a Constitutional democracy. When one considers the frantic efforts which the totalitarian regimes are making to secure uniformity of opinion and belief, one is bound to ask whether this insistence upon agreement on fundamentals, far from being an essential concomitant of democracy, is not really alien to its very conception."

The first defect, therefore, of the formula under consideration is that it departs from the usual method of discovering agreement, though there is very little warrant for such a departure. The second defect lies in the difficulty in defining what is exactly meant by "an element in national life" and how many such elements there are. The term is so elusive in character. It is

¹² *Montagu-Chelmsford Report* (1918), Chapter VI; *Indian Statutory Commission Report* (1930), Part I, *Joint Committee Report* (1934), pp. 1-2.

¹³ Cf. Friedrich: *Democracy and Dissent*, pp. 671-72; *Political Quarterly*, Vol. XI (1939).

important to observe in this connection that this term has come into use in political statements and documents only in the course of the last two years. The earlier references have always been to political parties, communities and interests. Even the term "interests" has been regarded as vague and one of the objects of the joint memorandum submitted to the Parliamentary Committee on Indian Constitutional Reform was the removal of this vagueness. But the Committee purposely avoided a strict definition of the term and observed: "No doubt it will be the five or six well-recognised and more important minorities in whose interests the Governor's powers will usually be invoked, but there are certainly other well-defined sections of the population who may from time to time require protection, and we can see no justification for defining the expression for the purpose of excluding them." In the case of terms like "Minorities,"¹⁴ and "Interests," it is possible to arrive at some kind of precision as they have been in use for a long time and as attempts at defining them have been made by students and thinkers. But no such definiteness can be attached to the term "Elements." It may be made to include any number of groups whether they have significance from the point of view of politics or not. And this is just the loose meaning given to it by the Secretary of State for India. In one of his speeches he observed: "In this connection, I should like to correct a misapprehension which, judging by the terms of another resolution passed by the same conference, seems to have been entertained—at any rate in some quarters—and that is, in insisting upon agreement between the principal elements in India's national life, the British Government were only thinking of the major political parties. The main elements of India's national life include not only political organisations or great religious and cultural communities, but they also include geographical and administrative elements, provinces of British India, more especially those which have not thrown away the responsibilities of self-government, and Indian States."¹⁵ Mankind has been classified by students of social sciences on a variety of bases according to the standpoint of each science—Anthropology, Ethnology, Economics, Geography, etc. It is recognised that a classification appropriate and valid from the point of view of one science is not appropriate from that of another. It is quite

¹⁴ Report, Para. 79.

¹⁵ Cf. C. A. Macartney, *National States and National Minorities*, pp. 1–21.

¹⁶ *The Hindu* (Madras), August 3, 1947.

possible to arrive at a scientific definition of a political group just as it is possible to arrive at definitions of economic groups or racial groups. The elements, however, whose agreement is regarded as a requisite for drafting a new constitution for India do not consist of merely those groups which may be regarded as "politically significant"¹⁷ but of all possible groups and sections into which the people of India can be classified on a territorial, linguistic, racial, religious, communal and all other kinds of basis. This makes the expected agreement meaningless for purposes of constitutional reform. All this reference to "Elements in national life" not only causes confusion between really political groups and the non-political groups but also denies to the individual the freedom to choose the group through which he wishes to have his political needs satisfied. The normal democratic method of one man one vote secures to the individual this freedom. He is given the opportunity to become a member of as many groups as he has purposes in life and is not compelled to use only one group—the religious or the linguistic—for all purposes. It is the supreme merit of democracy as it has been usually understood that it makes possible for a citizen to simultaneously enjoy the advantages of freedom and of group life.

A third defect of the formula under consideration is that it has left vague the relative weight that each element should possess in framing the constitution. It does not say definitely whether the agreement among the elements should be unanimous or whether a majority decision should be regarded as serving the purpose. Two pronouncements have been made on this subject by the Viceroy. In the Statement¹⁸ issued in October 1939 an assurance was given to the minorities in the following terms: "Let me in that connection add that in the conversations I have had, representatives of minorities have urged most strongly on me the necessity of a clear assurance that full weight would be given to their views and to their interests in any modifications that may be contemplated. On that I need say no more than that over more than a decade at the three Round Table Conferences, and at the joint Select Committee, His Majesty's Government consulted with and had the assistance or the advice of all parties and all interests in the country. It is unthinkable that we should

¹⁷ Cf. Harold W. Stoke, *The Paradox of Representative Government* in Essays in Political Science in Honour of Westel Woodbury Willoughby. Edited by Mathews and Hart (1937).

¹⁸ *The Hindu* (Madras), October 18, 1939.

now proceed to plan afresh or modify in any respect any important part of India's future constitution without again taking counsel with those who have in the recent past been so closely associated in a like task with His Majesty's Government and with Parliament." This implies that the amount of weight to be given to the views of any party or minority will depend on the impression they make on the British authorities who retain in their hands the final power of decision. In the declaration of August 1940 the Viceroy was more definite and emphatic. He stated there:¹⁹ "It goes without saying that they (His Majesty's Government) could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government." Here the distinction is drawn between elements which are large and powerful and those which are not. The former have the right of veto against any constitutional change. But the point as to how it will be decided whether an element is large—is it, with reference to numbers?—, whether it is powerful and whether equal weight will be attached to an element which is large but not powerful or powerful but not large, is left quite vague. This is a serious defect of the whole formula.

Professor MacLeod²⁰ has remarked, "how limited after all is the human mind in so far as the creating of essentially new political patterns is concerned". The profundity of this truth is brought out when one considers how the view that there is nothing like a people in India, that there are only "elements", that it is the agreement among these "elements", that has to be obtained and that every large and powerful element should have the power of veto over any constitution that is to be framed is parallel in the field of theory to the whole conservative philosophy and in the field of practice to the medieval representation of orders and to the class system of representation in the modern Kingdom of Prussia. Nearly a century ago the famous American Statesman Calhoun gave typical expression to this conservative philosophy and Indian students of contemporary politics can learn a great deal from a study of his writings. It was his contention that there was not, at the time of his writings, nor had there ever been, any such political body as the American people, that in that character the people never performed a single political

act and that the American Union was a union of States as Communities and not a union of individuals.²¹ And from this he evolved the doctrine of concurrent majority as distinguished from that of numerical majority. He argued²² thus: "The necessary consequence of taking the sense of the community by the concurrent majority is . . . to give to each interest or portion of the community a negative on the others. It is this mutual negative among its various conflicting interests, which invests each with the power of protecting itself;—and places the rights and safety of each, where only they can be securely placed, under its own guardianship." The only observation that may be made on this doctrine is that it led to the secession movement and the American Civil war.

It therefore follows that while agreement is a requisite to any constitution that should be introduced into India, it should be an agreement regarded as such by Common sense and the practical experience of the people of all countries in the world and not one which is specially devised on the basis of some abstract idea of what the Indian People are. To think of India as a unique country and her minority problems as unique is to take an unrealistic view of the situation.

One other difficulty that will arise in any attempt to apply the formula with all its vagueness may be referred to. There is an "element" in India which wants to break the political unity of the Country which characterised it for ages. There is another "element" which has no faith in constitutional government. It is beyond all reasonable effort to bring about an agreement among elements that believe in unity and that are opposed to it or between those that believe in constitutionalism and those that believe in despotism. Insistence on agreement among such elements will lead to two results. The introduction of constitutional government will have to be postponed indefinitely to a time when all these differences disappear; and the present system of government with all its defects will have to continue. The other result will be the growth of totalitarian parties in the country—for that is the only way by which all differences can be removed and complete agreement achieved. Neither of these two results is desirable.

While it is not given to mere students of political science to advocate the desirability of this or that scheme of reform, it is

²¹ Andrew C. Mc. Laughtlin, *op. cit.*, p. 443.

²² J. Mark Jacobson, *The development of American Political Thought*, p. 424.

¹⁹ *The Hindu* (Madras), August 8, 1940.

²⁰ W. C. MacLeod, *The Origin and History of Politics*, p. 344.

their duty to point out the consequences that are likely to arise out of a particular course of action. In this paper an attempt has been made to point out the consequences of adopting the formula that agreement among the elements in India's National life is a pre-requisite of constitutional reform. The consequences are the outcome of its vagueness and impracticability.

FREEDOM OF THE SEAS: A NOTE

BY

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U. S. A. was asserting a right to send vessels not only to belligerent ports but also enter Combat Zones. This presupposes that the Sea is open and free for all nations during war as in peace time. An examination of the question in a pragmatic setting will serve to clarify the issues.

It can be stated to be a well-established principle of modern international law that "the sea as a general rule cannot be subjected to appropriation." Prof. Hall has well added the qualifying statement from practice that "portions of the sea are affected by proprietary rights on the part of the states of which the territory is washed by it".¹ How have these rights of appropriation and of retention as property with reference to the sea grown up?

Celebrated Controversy Recalled.

Celsus and Ulpian had long ago indulged in the liberal view that the sea as the air and running water is *res communes* (Common to all but not capable of appropriation by any).

The early German Emperors had asserted themselves as 'Kings of the ocean' also. In a state paper of 1338 drawn up by Edward III with the assistance of his legal advisers, there is ascribed to the King of England the possession of sovereignty over the English Sea as well as maritime police authority "amongst all manner of people."²

Fantastic visions of mastery over the entire water world were checked by the shaping of the law of nations. The next possible thing was to put claims over large portions of the seas. During the fifteenth century Spain asserted dominion over the Pacific and the Gulf of Mexico. Portugal declared the Indian Ocean and all the Atlantic South of Morocco to belong to it. Both these Powers pushed the "exercise of proprietary rights to the extent of prohibitions all foreigners from navigating or entering their waters."

¹ Hall, *International Law*, VIII Ed., p. 178.

² B. Y. I, L., 1921, p. 101.

Effective answer to such pretensions was given by the daring voyages of Drake and Cavendish and Holland's Commerce with the East. Mendoza, the Spanish envoy at the English Court, was answered by Queen Elizabeth thus:—Spain's right to debar British subjects from trade with the East was not admitted on the ground that navigation of the vast ocean was free "seeing the use of the sea and air is common to all; neither can a title to the ocean belong to any people or private persons, for as much as neither nature nor public use and custom permitteth any possession thereof."³ "Inconsistency is the hobgoblin of little minds"—(Emerson). Rarely has consistency been a virtue in politics. England asserted her control over St. George Channel, the Bristol Channel, the Irish Sea and the North Channel. Elizabeth's argument could be turned against her with remorseless logic. Grotius wrote his famous work "*Mare Liberum*" in 1609. He had taken a leading part in "maintaining the common right of mankind to the free navigation, commerce and fisheries of the Atlantic and Pacific Oceans against the exclusive claims of Spain and Portugal, founded on the right of previous discovery, confirmed by possession and the papal grants."⁴ Grotius in his famous Treatise on "*De Jure Belli ac Pacis*" hardly admits more than the possibility of appropriating the waters immediately contiguous, after adducing a number of quotations from ancient authors supporting a broader pretension. Grotius himself is found adding an "illogical qualification" to allow that "gulfs and marginal waters might be reduced into ownership as attendant upon the land."⁵

But Albericus Gentilis in his "*Advocatio Hispanica*" (1613) supported the claim of English sovereignty over British Seas. Selden's "*Mare Clausum*" (1635) fully controverted the position taken up by Grotius. The first book of Selden's treatise deals with the proposition that the sea may be made property, which he attempts to show not by reasoning but by culling a number of quotations. In the second part, through proofs of "usage and positive compact" he is arguing for sovereignty of England over the Narrow Seas. It has to be noted here that Selden himself declared that a state could not forbid "the navigation of its seas by other peoples without being wanting to the duties of humanity."⁶

³ Camden, *History of Elizabeth*.

⁴ Wheaton-Dana's Edition, 1866, §186.

⁵ *De Jure Belli ac Pacis*, lib. ii; Cap. 3, §§8—13.

⁶ *Mare Clausum*, lib. i.; C. 20.

Father Paul Sarpi, the historian of the Council of Trent, wrote a vindication of the claim of the Republic of Venice to the sovereignty of the Adriatic (1676). Bynkershock admits that certain portions of the sea may be susceptible of exclusive dominion. He also asserts that there was no instance, at the time when he wrote, "in which the sea was subject to any particular sovereign, where the surrounding territory did not also belong to him." Puffendorf lays it down that in a narrow sea the dominion belongs to the sovereigns of the surrounding land and is against the view that the main ocean can never be appropriated.⁷ Puffendorf argues that fluidity in itself is not a bar to property as exemplified by the case of rivers; that though the sea is inexhaustible for some purposes, its fish and the pearls, the coral and the amber that it yields are not inexhaustible, and that "there is no reason why the borderers should not rather challenge to themselves the happiness of a wealthy shore or sea than those who are seated at a distance from it; "finally that the sea is a defence," for which reason it must be a disadvantage to any people that other nations should have free access to their shores with ships of war without asking their leave or without giving security for their peaceful and inoffensive passage."

Vattel makes a concession to navigation and fishery where a title to one nation against another can be established where the non-user assumes the nature of a consent or tacit agreement.⁸

A turn to Practice.

Turning from this celebrated controversy to the practice of the seventeenth century, Venice is found preserving her control over the Adriatic; Denmark in 1637 seized vessels placed outside Danzig to levy duties on merchantmen; Denmark also increased her dues payable on passing the Sound (the Sound dues were abolished in 1857); England continued to require that foreigners intending to fish in the German Ocean should take out English licenses; thus, when the Dutch attempted in 1636 to fish without them they were attacked and compelled to pay £30,000 for leave to remain.⁹

In the XVIII century, though England is found upholding her title to the British seas so far as the salute to her flag is concerned, a difference in the degree of proprietary rights over the open sea, takes place. Denmark's pretensions to the northern

⁷ *De Jure Naturae et Gentium*, lib. IV. Cap. 5. §7.

⁸ *Droit des Gers*, lib. i.; Ch. 23. §§279—286.

⁹ From Hall, *International Law*, viii. Ed., p. 183.

seas are found shrinking and the seamen of England and Holland disregarded the Danish ordinances.

In the nineteenth century, the Russian Government's pretensions were resisted by U. S. A. and Great Britain. The Russian Government published an Ukase in 1821 "prohibiting foreign vessels from approaching within a hundred Italian miles of the coasts and islands included in that ocean north of the 51st degree of latitude on its American and of the 45th degree on its Asiatic Shore." These assertions were given up by conventions made between Russia and U.S.A. and Great Britain in 1824 and 1825. Even as late of 1875, Russia seems to have asserted a claim to property in a considerable extent of water. Mr. Fish, the American Secretary of State, wrote in reply in 1875:—"There was reason to hope that the practice which formerly prevailed with powerful nations of regarding seas and bays usually of large extent near their coast as closed to any foreign commerce or fishery not specially licensed by them, was without exception, a pretension of the past, and that no nation would claim exemption from the general rule of public law which limits maritime jurisdiction to a marine league from its coasts."¹⁰

In the Behring Sea Arbitration, U.S.A. claimed by virtue of cession from Russia a space 1500 miles long and 600 miles wide, and jurisdiction over the high seas for the purpose of safeguarding property and of protecting itself against acts "threatening invasion of its interests." But this territorial claim was tacitly dropped at an early stage of the proceedings.

In a review of the points in controversy, Wheaton adduces two decisive reasons applicable to the question. The first is physical and material; and the second is purely moral:—

- (i) Those things which are originally the common property of all mankind can only become the exclusive property of a particular individual or society of men, by means of possession. In order to establish the claim of a particular nation to a right of property in the sea, that nation must obtain and keep possession of it, which is impossible.
- (ii) In the second place, the Sea is an element which belongs equally to all men, like the air. No nation

¹⁰ Expected in Hall *International Law*. VIII Ed. ,p. 186. Footnote.

then has the right to appropriate it, even if it might be physically possible to do so.

While these reasons are unquestionable, it is doubtful if theoretical considerations of the sea being "insusceptible of occupation" had any serious influence with the practice which had become consolidated by the beginning of the present century. As Hall, one of the high authorities, puts it, "the true key to the development of the law is to be sought in the principle that maritime occupation must be effective in order to be valid." This is to be read along with the rule that "the proprietor of territorial waters may not deny their navigation to foreigners."¹¹

With regard to the question of national appropriation of open seas, it is best stated, that such a right rested solely on "a kind of prescription." It is certainly a bad usage, which no evidence of the time or the nature of use, can make legal.

Maritime Territory.

By generally accepted usage of nations forming the basis of international law, the maritime territory of every state extends

- (i) To the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea enclosed by headlands belonging to the same state.
- (ii) To the distance of a marine league or as far as a common shot will reach from the shore, along all the shores of the state.
- (iii) To the spirits and sounds, bounded on both sides of the territory of the same state, so narrow as to be commanded by cannon shot from both shores and communicating from one sea to another.¹²

Sir Cecil Hurst states the rule of international law from the British authorities on the status of the bay thus:—

A bay means "a defined inlet penetrating into the land, moderate in size and with both shores subject to the same sovereign. An inlet at the mouth of which one can see clearly from shore to shore may be presumed to have been appropriated as part of the national territory and will therefore constitute a

¹¹ Hall, VIII Ed., p. 189.

¹² Wheaton-Dana's Edition, §187.

treat them as territorial and high juristic opinion is in favour of such a view.¹⁶

Ship—a floating territory?

Some French writers carried away by their characteristic logical acumen were in favour of certain Zones round floating vessels to be treated as the temporary territories of the flag-states. This is too pleasant a fiction to be accepted. It is quite another matter that men of war can demand inspection of ship's papers of suspected vessels to rid the high seas of pirates.

The Open Sea in War-time.

During war-time rights of visit and capture may be resorted to throughout the "regions of war." Mines can be laid only in the "theatres of war." During the world war 1914—1918 the regions and theatres were coextensive. The wholesale planting of mines by belligerents outside their territorial waters and the treating of vast portions of the high seas as "barred zones" or "danger areas" constituted grave infringements of freedom of the seas.¹⁷

Further during war, men-of-war can "blockade parts of the open sea adjoining enemy ports and waters." Neutral merchantmen attempting to break the blockade are liable to confiscation. Likewise, belligerent men-of-war can "visit, search and eventually seize neutral merchantmen for the carriage of contraband."

Submarine Cables.

So far as^{17a} submarine cables in time of war are concerned, it is necessary to import analogies on the footing of "bridge" or "ship" theories. As P. Higgins put it "cables are a means which a belligerent has of keeping open his communications with the world. Though no case has so far happened, 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.

U. S. A's latest moves.

The determination of U.S.A. to help the cause of democracy by sending help only to Britain and her allies into the "combat

¹⁶ Opinions of Hall, Oppenheim and Lauterpacht.

¹⁷ Sastry—*International Law*, p. 401.

^{17a} International Submarine Convention of 1884.

zones" could not be justified under the tenets of neutrality as they existed in 1931. U. S. A. was obliged to extend her *Zone of defence* as far as Iceland at one point and Singapore in the Far East.

As Mr. Cordell Hull stated in his letter to Mr. M. C. Carmack "in the circumstances of today we must be free to arm our merchantships for their own protection and we must be free in the event for a particular and extreme emergency to use these ships for the carriage of supplies to the nations which are resisting a worldwide movement of conquest headed in our direction."

The indiscriminate submarine menace by Germany has touched such different parts of the world as the whole of the Atlantic. The Nyon Arrangement adopted by nine states on September 14th, 1937, had characterized the acts of submarines during the Spanish "pocket international war" of 1937 as those "contrary to the most elementary dictates of humanity which should be justly treated as acts of piracy." When U. S. A. was in the "twilight region" of non-belligerency, shooting at sight of the German pocket submarines in defence by defensively armed American merchantmen could for all practical purposes draw a curtain over the freedom of the open Atlantic.

Tentative Conclusions.

Four centuries ago big maritime powers took it for granted that the sea could be appropriated. Fantastically extravagant pretensions were indulged in by one maritime country after another till as late as 1910. Later, large claims disappeared through silent abandonment and they crystallised into possessing such extent of the sea "as was necessary to the safety of a state or which was thought to be within its power to command."

The living present is a fateful period of "unreality of International Law and unlawfulness of international reality." As Gerhart Niemeyer has well diagnosed the malaise, in his ("*Law without Force*"), international law in its present form "neither serves the need nor appeals to the moral sense of the world" because of the "inadequacy of its concepts, the obsolescence of its standards, and the unreality of its rules."

ROLE OF PRESIDENT WOODROW WILSON IN THE EVOLUTION OF THE MANDATES SYSTEM

BY

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The pressure of the military situation, combined with the command of the seas, had brought all of Germany's overseas possessions and the provinces of the Turkish Empire under the occupation of the Allies and, hence, when the Peace Conference assembled in Paris, the Allied and Associated Powers were "virtually unhampered" in affecting a colonial settlement based on the principles that they had widely proclaimed during the course of the war. All the past decisions and declarations had their due effect on the Political Settlement arrived at in Paris after the War in 1919. In spite of that, the situation was a complicated one as conflicting and contradictory interests had to be accommodated. It was natural, therefore, for the final decision to be in the nature of a compromise. However, all were agreed from the very beginning that the colonies should not be returned to Germany. The outlying territories and provinces of the Porte should no longer remain under Turkish rule. The undesirability of the first was recognised even by President Wilson, "in the commentary on the Fourteen Points, approved by Wilson, and later published by Colonel House, Point 5 is interpreted to mean that the colonies would not be returned to Germany, but that whatever Power managed them must act as the trustee for the natives under the League of Nations."¹ At the time of the Peace Conference Mr. Lloyd George made a brief statement in the council of Ten strongly criticising the German colonial administration—"in South West Africa they had deliberately pursued a policy of extermination."

All he would like to say on behalf of the British Empire as a whole was that he would be very much opposed to the return to Germany of any of these colonies.

President Wilson said that he thought all were agreed to oppose the restoration of the German colonies.

¹ Bullock, *Germany's Colonial Demands*, Ch. II.

M. Orlando, on behalf of Italy, and Baron Makino, on behalf of Japan, agreed.

(There was no dissent and this principle was adopted.) The brief nature of the discussion amply shows that the Allied and Associated statesmen were not serious about restoration of the colonies. Moreover, a general propaganda campaign in the Allied countries, directed against pre-war German colonial administration contaminated the whole atmosphere and considerably influenced the trend of public opinion which demanded the taking away of colonies "in the interests both of world peace and of the colonial populations." There was another course left open to the delegates of the Peace Conference. The German colonies and other Turkish territories might be given independence. But this proposition too was considered impracticable. It was hardly possible to expect a charter of liberty from an assemblage sitting in an atmosphere surcharged with the ideas of victory and spoils of war. Besides, the colonies and territories were considered as yet too undeveloped to stand alone and it was thought that there was a great possibility of their exploitation by the trader and the planter without the protection afforded by a responsible government.

Only two practicable alternatives were left with regard to the disposal of colonies and territories. Either they should be annexed outright as had been done in earlier territorial settlements or they should be put under some international control. A great controversy centred round these two sets of viewpoints and considerable time of the Peace conference was taken up in discussions over these topics. However, joint international administration of the occupied territories of Germany and the Ottoman Empire was rejected without opposition. The reason was not far to seek. Joint administration had not succeeded in promoting the interests of the people concerned. "Even as a condominium between two powers only, it had given rise to friction in Egypt, Samoa and the New Hebrides."—"International government fomented intrigues amongst the governors and faction and disorder among the governed. The general result of such experiences has been paralysis of action with inevitable retrogression." In 1894, in connection with the tri-partite protectorate over Samoa, President Cleveland remarked that "the present government had failed to correct, if indeed it has not aggravated, the very evils it was intended to prevent." Lord

² *History of the Peace Conference at Paris*, Vol. II, p. 232 by H. V. Temperley.

Cromer also expressed similar views. "What has been proved is that international institutions possess admirable negative qualities. They are formidable checks to all action and the reason why they are so is that, when any action is proposed, objections of one sort or another generally occur to some member of the international body. Any action often involves a presumed advantage accorded to some rival nation." "Whatever the case may be the result of international administration is always 'paralysis tempered by intrigue'."

The dominant party led by the Ultra-imperialists in the Allied countries demanded total annexation of the colonies and territories concerned. The chief supporters of this view were the representatives of the Dominion Governments. First, Mr. Hughes of Australia who wanted to annex New Guinea and other islands; then, Mr. Massey of New Zealand, who wanted Samoa; and then General Smuts who wanted German South-West Africa advocated outright annexation and all of them based their arguments on similar considerations. The Dominion representatives contended that they had incurred heavy losses in subjugating those territories. They were therefore entitled to annex them. The strategic security and military necessity of the Dominions, according to them, also necessitated the same step. "Any strong power controlling New Guinea," said, Mr. Hughes, "controlled Australia." "Samoa," remarked Mr. Massey of New Zealand, "was of great strategic importance, and the key to the Pacific," and therefore there should be no objection to its annexation by New Zealand. Again stress was laid on the fact that the interests of the native population would be better safeguarded under the scheme of direct annexation. There would be ample scope for the redress of their grievances and every attempt would be made to improve their status and position. Already, "they were doing their best for civilization in that part of the world." General Smuts depicted South-West Africa as "a desert country without any produce of great value" and expressed the opinion that it would be better for all concerned if that colony were amalgamated with the Union of South Africa. Sir Robert Borden of Canada, though not directly connected with the occupation of any enemy territory, also supported the territorial ambitions of the dominions. In their demand to distribute the spoils of war, the dominion governments had the tacit assent of all other delegates at the Peace Conference.

¹ *Ibid.*

² W. Wilson and World Settlement by Baker, Vol. I, p. 1258.

President Wilson was the only exception. Baron Makino of Japan put forth the claim of Japan for (a) the leased territory of Kiachow together with the railways and other rights possessed by Germany in respect of Shantung province; and (b) all of the Islands in German possession in the Pacific Ocean north of the Equator. M. Simon, French Minister for the Colonies, did not lag behind other delegates and cited former British commitments with regard to the annexation of Togoland and the Cameroons in Africa. He was more outspoken and frank in pleading "annexation pure and simple, which he had come to support that day." Belgian and Portuguese spokesmen also expressed similar sentiments, but with no result.

Among the chief causes which prompted the Dominions to support annexation was a longing "for a reward for their labours. Far from believing in the control of the territories by a League in which they feared that European influence would be paramount, the Dominions wanted 'a new Monroe Doctrine for the East to protect it against European militarism'" Australia and New Zealand, being sparsely populated did not like the idea of giving equal opportunity to all members of the league with regard to immigration. In their extravagant claims for territorial aggrandisement, the Dominions found a strong supporter in Lloyd George. In his former statements, the British Premier had whole-heartily supported the policy of self-determination. But now when the time for test came he did not consider it below his dignity to fall back upon his declarations and supported the Dominions in their demand for direct annexation of the colonies. "He would like," he said, "the conference to treat the territories as part of the Dominions which had captured them." Lloyd George had another motive in his stand. He supported the Dominions so that when the time comes they may support his claim for "parcelling out the Turkish Empire," a problem nearer to his heart and also of great consequence in the strategy of the Empire.

The annexationist aspirations of the Allies stood in strong contrast to their professed aims and declarations made earlier during the course of the War. To President Wilson, who represented the moral ideas of the peace, they "negated his whole principle of peace: the principle that had been accepted by all the nations at the Armistice." "No annexations" and

³ *The Mandates System*, Van Mann-Helmer, Chapter II.

⁴ W. Wilson and World Settlement, Baker, Vol. I, p. 257.

"self-determination" had been the watchwords of the peace programme; not "mere phrases" but pledges of the most binding order." President Wilson had embodied this idea in his Fourteen Points on which the Peace was to be based. The fifth point declared:

"A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be considered."

President Wilson expressed similar sentiments in his other addresses and speeches in 1918. The Address of Feb. 11 runs as follows:—"There shall be no annexations, no contributions, no punitive damages. People are not to be handed about from one sovereignty to another by an international conference or an understanding between rivals and antagonists. National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase. It is an imperative principle of action which statesmen will henceforth ignore at their peril." In the same speech he further remarked, "The principles to be applied are these Second, that peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels or pawns in a game, even the great game, now for ever discredited, of the Balance of Power; but that, Third, every territorial settlement involved in this war must be made in the interest and for the benefit of the populations concerned, and not as part of any mere adjustment or compromise of claims amongst rival states." In his speech of July 4, he put a strong plea for "the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery."

The American President was not the only statesman who gave expression to such views. Other Allied statesmen had advocated the same principles in their speeches and addresses delivered during war time. In June 1917 Lloyd George, speaking at Glasgow on the German colonies, remarked: "The aspirations, the needs and the interests of the people themselves in these countries should be the dominating factor in determining their future."

This is the principle which will guide us." He reasserted the same principles on the 20th December, 1917, in the House of Commons and repeated the same sentiments before the Trade Union delegates. The speech of January 5, 1918, is remarkable in this respect. He says, "With regard to the German colonies, I have repeatedly declared that they are held at the disposal of a conference whose decisions must have primary regard to the wishes and interests of the native inhabitants of such colonies."⁷ Again, Lloyd George had once remarked about the subject lands of Turkey (Arabia, Armenia, Mesopotamia and Palestine) that these were entitled to a recognition of their separate national conditions.

These solemn and authoritative declarations "rang through the world as no speeches had rung since the days of Canning and the effect produced on the autocrats and peoples of Europe was not dissimilar."⁸ As Czernin remarked, "In the eyes of the millions of people this programme opened up a world of hope." (In the World War). In the face of such positive assertions it was very difficult for the Allied statesmen to get acceptance for their territorial schemes. Even then President Wilson had to face a lot of difficulties. The secret treaties stood in his way. During the course of the war, a number of secret treaties had been concluded between the Allied Governments involving the transfer of German and Turkish territories in the event of an Allied victory. The more important of these treaties were:

1. The Franco-British Notes of 20 March and 11 May, 1916, with regard to the division of Togoland and the Cameroons.
2. The agreement between the Allies and Japan, March 1917, over Germany's Pacific possessions north of the Equator.
3. The Treaty of London. Italy was brought into the war by the promise of Dalmatia and other territories (Trentino Trieste, Gorizia, Gradisca, Tyrol etc.).
4. The Rumanian Secret Treaty, August 18, 1916.
5. Sykes-Picot Treaty, May 1916.

⁷ *The Mandates System*, Mann-Helmer, Ch. II.

⁸ *History of the Peace Conference*, Vol. II, p. 227.

⁹ *History of the Paris Peace Conference*, Vol. I, p. 198.

The exigencies of the war situation had compelled the Allies to enter into such political commitments. Mr. Winston Churchill defended these treaties on the ground that they were necessary and justifiable to keep the Allies together. In his view, "they were in the main simply convulsive gestures of self-preservation."¹⁰ These secret documents upset all the calculations of President Wilson. Nothing could be clearer than the issue here joined: Self-determination versus Annexation. Under such circumstances the only feasible course was to arrive at some compromise which could accommodate both sides of the controversy.

In the meantime General Smuts had drafted a compromise formula in his book *the League of Nations—A Practical suggestion* which appeared in December 1918. General Smuts, developing his scheme of the Mandates System, says, "Europe is being liquidated and the League of Nations must be the heir to this great estate. The peoples left behind by the decomposition of Russia, Austria and Turkey are mostly untrained politically; many of them are either incapable of or deficient in power of self-government; they are mostly destitute and will require much nursing towards economic and political independence. If there is going to be a scramble among the victors for the loot, the future of Europe must indeed be despaired of. . . . Surely the only statesmanlike course is to make the League of Nations the reversionary in the broadest sense of these empires."¹¹ The concluding paragraph runs as follows: "The only compromise I make and make partly to conciliate the Great Powers and partly in view of the administrative inexperience of the League at the beginning, is the concession that, subject to the authority and control of the League, which I mean to be real and effective, suitable powers may be appointed to act as mandatories of the League in the more backward peoples and areas. That compromise will, I hope, prove to be only a temporary expedient."¹² In his pamphlet General Smuts made nine recommendations with regard to the territories in question. In the third recommendation he mentioned "that there shall be no annexation of any of these territories to any of the victorious powers and secondly, that in the future government of these territories and peoples the rule of self-determination, or the

consent of the governed to their form of government, shall be fairly and reasonably applied." The fifth recommendation authorized the League of Nations to delegate its authority, control or administration in respect of any people or territory to some other act to act as its agent or mandatory. In the 7th he stipulated conditions for the observance of the Open Door and laid down restrictions against the use of military force.

The above plan of mandatory government was not the original discovery of General Smuts. We have already given precedents for this type of colonial regime. Besides, there were very many political writers, societies and associations which had suggested some similar agency for the administration of backward areas. C. E. Fayle in his book called the *Great Settlement* published in 1915, deprecated the idea that "commercial influence would grow into political control" and condemned the exploitation of weaker peoples by the controlling authority.¹³ J. A. Hobson expressed similar ideas and put forward a scheme which Potter describes as "the clearest anticipation of the Mandates System among English students prior to the appearance of Smut's book."¹⁴ He suggested the idea of a League of Nations, "concerned primarily to keep the peace and to substitute co-operative for competitive action on the part of the constituent nations." He favoured the reservation of certain spheres of influence for a particular country with the condition that there would be an equal opportunity for the capital and trade of other nations. He, however, ignored the paramountcy of native interests, though his plan embodied many essentials of the Mandates System. P. H. Kerr in his *The Relations between Advanced and Backward Peoples* went a step further and boldly asserted that the only real justification for alien rule is that it should lead to the elevation of the backward people in the scale of civilization more rapidly and at less cost of needless suffering than any other way; and that elevation is illusory unless it implies the development among them of the capacity to maintain a civilized society for themselves. He further stated that "the government of dependencies is a trust. Dependencies, therefore, cannot properly be treated as the preserve of the ruling Powers. All other nations have an equal title to trade and communicate with them, subject to whatever restrictions are necessary to the welfare of the inhabitants." Socialists in all Allied countries condemned the evil effects of economic imperialism and while opposing the policy

¹⁰ Bullock's *Germany's Colonial Demands*, Ch. II.

¹¹ *Drafting of the Covenant*, D. H. Miller, Vol. II, Document 5.

¹² *Ibid.*

¹³ *The Mandates System*, Mann-Helper, Chap. II.

¹⁴ *Ibid.*

President's principles.²¹ The American President had to fight his battle single-handed. All the Allied statesmen were opposed to his views. During the course of discussions Lloyd George remarked, "This was for the first time that they had heard an exposition of the (mandatory) principle. . . . A new principle had been put before them, and he would like to have it examined." Under such circumstances the whole struggle in the council on behalf of the new principle fell upon W. Wilson. "Even his own Secretary of State, Mr. Lansing, was secretly opposed to him."²²

The discussions in the meeting of the Council of Ten proved a test of Wilson's sincerity and firmness of convictions. Had he shown the slightest deviation, his whole programme would have been thrown overboard. But President Wilson had full faith in his principles. He stood firm like a rock and pleaded his cause boldly and honourably as the chief representative of the great American nation. On January 28, there was a possibility of an open rupture. R. S. Baker refers to the proceedings of the meeting of that day as follows:—

"President Wilson (as the minutes narrate) observed that the discussion so far had been, in essence, a negation in detail . . . of the whole principle of mandatories. The discussion had been brought to a point where it looked as if their roads diverged."²³

Had it not been for Mr. Balfour, called by Barker "the mollifier of difficult situations," the matters would have gone still worse. He pacified the situation a little. However, this became apparent to every body that President Wilson would stick to his guns to the last and would never yield. Such being the situation, it was for Lloyd George, a shrewd statesman, to resolve the deadlock and create a favourable atmosphere for the discussion of further problems. The British Premier understood the value of American co-operation in the work of reconstruction. He did not want that America should stand aloof in any way. Lloyd George again changed his ground and became a supporter of the mandates system applicable to all colonies. Here Baker very aptly remarks, "One knew where Clemenceau stood and what he intended to do; one never knew where Lloyd George stood: he never stood twice in the same place." Lloyd George held a separate meeting of the British Empire delegation and placed before them his compromise formula of a mandates system which

²¹ R. S. Baker.

²² *Ibid.*, W. Wilson and World Settlement, Vol. I, p. 266.

²³ W. Wilson and World Settlement, Vol. I, p. 268.

went a long way to satisfy their aspiration. What dominions wanted was possession. It did not matter much whether they got it directly or indirectly. Lloyd George attended the meeting of the Council of Ten on January 30 and said:

"Great Britain had deliberately decided to accept the principle of mandatory: but that decision had not been wholly accepted by the Dominions. The Dominions, however, were prepared to accept the conclusion reached in the document as a compromise, because they fully realised that there could be no greater catastrophe than for the delegates to separate without having come to a definite decision. It had been decided to accept the doctrine of a mandatory for all conquests of the late Turkish Empire and in the German colonies."²⁴

The resolution then presented by the British Premier was generous so far as territories now known as A & B class mandates were concerned. But the third class, including South-West Africa and the Islands in the Pacific, "was defined in terms coming as near to the outright annexation demanded as was possible while preserving any appearance of the system." Those territories were to be governed as the integral portions of the sovereign states and the safeguards provided for were definitely in the interest of indigenous population. Even the German practice of the Open Door had been deleted. President Wilson, though he called the resolution a gratifying paper, was not fully satisfied. According to him, "the mandates must wait for the League, but the League would be rushed."

The allies did not like this idea. Again there was a bitter controversy which "filled him with despair" (Lloyd George's own words). There was a hot exchange of arguments and objections between Mr. Massey and Mr. Hughes, on one side, and President Wilson on the other. During discussions Wilson remarked:

"President Wilson asked if he was to understand that New Zealand and Australia had presented an ultimatum to the Conference. They had come there and presented their cases for annexation of New Guinea and Samoa. Was he now to understand that this was the minimum of their concession?"²⁵

After some more discussion the matter was smoothed out and the Dominions accepted the resolution. The final result was the famous article 22 of the covenant, with slight variations here and there. Thus came to an end the great diplomatic battle

²⁴ W. Wilson and World Settlement, Vol. I, p. 272.

²⁵ W. Wilson and World Settlement, Vol. I, p. 274.

which took so much precious time of the Peace Conference. Thus "a new principle of the highest importance in the relations between civilized and primitive peoples had been internationally proclaimed and adopted." (Harlow.) However, as circumstances could not help it, the spirit of compromise runs throughout the new arrangement. "The imperialists got what they wanted and the idealists succeeded in qualifying such grants by providing for securities for the due performance of the trust created."²⁶

Here we cannot help writing that it was mainly due to W. Wilson that the Mandate System saw the light of day. We may not quite agree with David Hunter Miller, legal adviser to Wilson during the Peace Conference, who asserted that Wilson took from Smuts nothing but his phraseology. Similarly we may dissent from the opinion expressed by Ray Standard Baker, a close confidant of President Wilson, giving all credit for the establishment of mandatory principle to General Smuts. But we cannot deny the fact that the greatest credit for the establishment of mandatory regime goes to the American President. His dominating personality was a wholesome influence in the conference. Margalith is fully justified when he says, "The credit for the inclusion in the covenant of the League of this mandatory principle with respect to the administration of backward areas, and of making the covenant an integral part of the Treaty of Versailles is due almost solely to President Wilson, who fought for it bravely, stubbornly and single-handed. It is this fight that entitles Wilson to share equally with Smuts the honour of introducing this new principle into international law. Not only must he have influenced Smuts through his many speeches and messages during the war, but to him goes the credit of carrying them into realisation. Reading the writings of the time of the Peace Conference, as well as the official and personal accounts of what went on at the meetings of the Supreme Council, one can understand why President Wilson is considered to have been the father of the League, and, more than any body else, to have presented to the world at large a hope for a new world order."²⁷

²⁶ *International Mandates*, Margalith, Ch. II.

²⁷ *International Mandate*, Ch. IF.

REVIEWS

Clash of Three Empires by V. V. Joshi, pp. 207, Kitabistan, Allahabad.

Mr. Joshi essays a critical review of two crowded centuries of Indian History within the brief compass of 169 pages of bold print and liberal margins. With a supreme contempt for the tribe of the "parchment-hunters" he totally discards their methods and relies on the less objectionable race of secondary authorities for his facts and theories. It is not easy to analyse his arguments for he offers none and the reader has no alternative but to accept or reject *in toto* such conclusions as Mr. Joshi cares to present. Many of his conclusions are neither new nor original. We do not know why he describes the Maratha State under Shivaji as a "peasant kingdom." Ranade discovered in the saints of Maharashtra a band of bold social reformers who raised their protest against the rigidity of the caste system and the injustice of Brahmin ascendancy. Less imaginative critics might have contended that the Pandharpur movement was nothing but an off-shoot of that wider cult of *bhakti* that found able exponents all over India; but Mr. Joshi espies in this purely religious movement a peasant awakening and a "vindication of their Dravidian heritage," forgetting that non-Brahmin saints and untouchable preachers were by no means rare outside the blessed land of Maharashtra. What about Nanda of South India and Kabir of Hindusthan? He harps upon the familiar argument of Sir Jadunath that the decline and fall of the Maratha empire were due to the caste rivalry between the Marathas and the Brahmins and asserts that "the principal offices and Government whether civil or military were either in the possession of Brahmins or disposed as to be under their control." It is difficult to reconcile this theory with well-known facts. Why, for instance, such extensive principalities in Central India were granted to the Maratha Sindhia, to the Maratha Parwar, to the Dhangar Holkar while the Brahmin Raja of Sagar had to be contented with a comparatively small *jagir*? But such inconvenient facts are not permitted to vitiate Mr. Joshi's philosophy though the unhappy tribe of parchment-hunters may puzzle about them. The only sober part of the work is the foreword contributed by Sir Shafaat Ahmad Khan; but he finds himself in disagreement with the author on most questions of importance.

S. N. SEN.

Parliamentary Debates, House of Lords, Vol. I of 1940-41, comprising the period from 21st November, 1940, to 10th April, 1941.

In its Editorial of 28th February, 1942, the *Times* has said that 'lack of imagination, insufficient flexibility, and too much attention to past traditions and established interests have prevented that revolutionary and whole-hearted change of British policy and outlook which alone would have equipped us to meet the hurricane.' The latest volume of the official proceedings of the House of Lords debates, which has just arrived in India, enables a review in this light of British Government's policy during the period from November 1940 to April 1941. Although the war had already gone on for over a year, the volume under review reveals an utter lack on the part of the British ruling classes of understanding of the exact nature of the present conflict, of the new outlook which must be brought to its fighting, and of the enormous sacrifices that it was inevitably going to call forth from every citizen of Great Britain, more particularly from the proper-tied interests which find expression in a body like the House of Lords.

In point of interest the volume under review is quite comprehensive and interesting. The subjects it deals with are quite wide in their range. The debates reported are on such matters as the admittedly difficult shipping situation on account of the sinkings by the enemy (date 11th December, 1940), the need for the fullest utilisation of the industrial and labour resources of the country for the war effort (date 22nd January, 1941), the necessity for assuring an unfailing supply of food to the warring population of Great Britain (date 18th February, 1941), the desirability of rehabilitating the economic policy governing the colonial empire (date 17th December, 1940), the urgency of forming an Imperial War Cabinet (date 2nd April, 1941), the need for a thorough reorganisation of the system of administration during the War (date, 19th February, 1941), and a host of other subjects. But all these debates reveal on the part of the Government a policy of slow adjustment, inclination to face issues as they arise, but hesitation from adopting a really new outlook or a really new machinery to make it operative.

For instance, Lord Strabolgi insisted in his motion on the shipping situation that "the losses during the worst period of this year had been at the rate of four million tons a year," but that the remedy employed to overcome the situation had not been 'sufficiently exhaustive.' "That had", he proceeded to say, "been our history in all wars. I am told that in the Crimean War there were great complaints that the methods of the Napoleonic Wars were being used, in the South-African War that the methods of the Crimean War were used, and so on. The same thing applies possibly to Navies." Lord Strabolgi made a strong criticism of the Government policy, which, he said, had been "too timid, too slow, for a long time past in buying or chartering available neutral tonnage other than American." But the Government

spokesmen, Lord Templemore, contented himself in his reply with merely pointing out that it was not quite correct to make a comparison between "the present time and early in 1917 when the shipping losses reached such enormous proportions that if they had not been checked we, a few months afterwards, could not have continued the struggle," and not even referring to some of the criticisms which the mover had made of the Government policy.

In another debate Lord Faringdon drew 'the attention of the Government to the situation of the British and Allied colonial possessions and to the need for co-ordination of economic policy between them.' He particularly referred to "the most inspired and the most inspiring gesture which this country had produced in the Prime Minister's offer of common citizenship with the people of France," and wanted to know whether the Government had taken any further steps in the direction of establishing a union of the British empire with the colonies under the Free French or the Belgian and the Dutch governments, making the point that "the combined colonial territories of this country and our allies constituted a colossal bloc and that neighbouring colonies under different flags having the same problem, not only economic but also administrative, would undoubtedly benefit enormously by the closest possible relations, leading to an exchange of experience and active co-operation." The reply of Lord Lloyd, Secretary of State for the Colonies, mentioned that although the Colonial Office was doing all it could in this direction, 'our main relations with the colonies of our allies are the responsibility of my noble friend the Foreign Secretary.'

The fact that a statement like that could be made by a responsible member of the Government showed an inherent defect in the scheme of British governmental organisation; and this was pointedly brought out by Lord Strabolgi in his motion on Industrial and Labour Resources and by Lord Perry who made a trenchant criticism of the administration of Government departments in war-time. Lord Strabolgi said that "committees in this country have run riot and have become a curse. There are far too many committees. What my friends in another place and my noble friends here have been advocating is that for the economic side of the war we should have a general staff with a whole-time Minister with no other duties as its chief." But Lord Perry went to the very heart of the problem when he said that "probably never before have there been so many changes of Ministers and in the High Command as have occurred during this present war. We are now led by a second Prime Minister . . . we have had four War Ministers, three Secretaries of State for Air, plus one Minister of Aircraft Production, making four in all, three Ministers of Supply, three Presidents of the Board of Trade, three Ministers of transport, the Secretaries of State for the Dominions, three Ministers of Shipping, three Ministers of Information, and so forth. There have been numerous changes in the officers holding high positions in the Fighting Forces." The purpose of these changes, it must be assumed, is to secure greater efficiency by using men with the best brains and experience; but

that purpose never gets achieved. The trouble, Lord Perry went on to point out, consisted in this that "Ministers are served by the same permanent officials."

"It is probably impossible" said Lord Perry "to escape the necessity of delegating powers in circumstances like the present. But it is imperative that executive functions should be exercised only by those who can adapt themselves to the changing conditions and needs of the nation in war time. Peace-time methods of the civil service obviously cannot be expected to meet war-time conditions; still less are they adequate for such a war as the present one . . . Some have suggested, and probably not without justification, that more effort is directed towards the acquisition of bureaucratic powers than to the prosecution of the war. It is a bureaucracy controlled by men of remarkable ability, quite capable of carrying out their duties in a leisurely, unimaginative and prescribed manner, but quite incapable, by inclination and training, of exercising initiative and taking responsibility, as is indicated by their method of communicating with the outside world. Correspondence always commences "I am instructed" and finishes "Your obedient servant," neither statement being in fact true. The general administration is cumbersome and procrastinating; short-sighted and opportunist; swathed in forms, ceremonies and red tape. Such a body must be at a serious disadvantage when undertaking functions far removed from those originally intended, especially when it attempts to grapple with the problems connected with the conduct of modern warfare. Unfortunately this has not been sufficiently realised by those outside and still less has it been realised inside the Service itself . . . The country is now engaged in a stupendous conflict. Our soldiers, our sailors, our airmen, our guns and equipment, our ships and our aeroplanes were all submitted to some description of emergency training and testing . . . Not so the Civil Service . . . So as to obtain greater supplies of munitions of war and to ensure food for the Forces and non-combatant citizens, the State has taken over and controls many branches of industry, transport and food supplies. All the work of securing these munitions and supplies falls upon the Civil Service. Obviously the peace-time establishment is insufficient and help is needed; not assistance to carry on and perpetuate leisurely, procrastinating, obstructive methods of peace-time government, but something quite different. Instead of leisure, intense application is now required; instead of exchange of inter-departmental opinions, it is quick action which is of paramount-importance. An entirely new job has to be done. To create instead of obstruct, to loosen instead of tighten the purse-strings is now necessary."

It is perhaps unnecessary to labour the point that if Lord Perry's language was often a little too strong, the main thesis of his argument was quite well-founded. It is true that 'the constitution and the habitual methods of work of our permanent Civil Service are not adapted to the rapid discharge of responsibilities called for in war time! But the Lord Chancellor, Viscount Simon, who replied to Lord Perry's motion, "rebuked" the mover

for using hard language about the Civil Service and assured their Lordships' House that everything was all right with the administration of Government departments.

The same attitude of do-nothing dictated Lord Cecil, Secretary of State for Dominion Affairs' reply to Lord Elibank's motion regarding the formation of an Imperial War Cabinet 'to co-ordinate action upon major questions of Imperial policy arising out of the war and in the settlement of the peace.' In his reply Lord Cecil said that "a point may be reached in the war when we are able to look a little more into the future than we can at the present time, and at such a moment an Imperial Conference might not only be important but essential. Up to now, for reasons which your Lordships' House appreciates, in the view of the Government that moment has not yet come."

It will be clear from all these debates that in April last year the view of the British Government regarding the war was quite unrealistic. The Government liked to think in terms more of post-War reconstruction than of more effectively fighting it. Lord Reith, Minister of Works and Buildings, made a comprehensive statement on the Government's post-War planning in reply to Lord Samuel's motion on the 26th of February, 1941, but in this planning there were hardly any traces of desire or even preparedness to disturb established interests. The emphasis on post-War reconstruction in the midst of a war the like of which England has not had to face in her history was anyhow misplaced and unrealistic. Even as a propaganda expedient it unduly belittled the seriousness of the conflict. The recent admission of the Prime Minister that 'we must prepare for the evident prolongation of the war' and the removal from the War Cabinet of Mr. Arthur Greenwood who was responsible for the future plans of post-War reconstruction, together with his own relinquishment of the leadership of the House of Commons, do possibly mark the end of this unrealistic phase of the British war policy. The fact that the *Times* is emphatically cognisant that 'in the future scheme of things there is no place for the Britain of the past' is a hopeful augury that the British ruling class has after all come to see the light and made up its mind to fight the war with a more grim resolve and a more satisfactory imperial and war policy than hitherto.

BOUL CHAND.

of annexation, strongly supported the measures to safeguard the interests of the native populations. At the International Labour Conference held in London in February 1918 the British Labour Party put forward the demand that "every territorial settlement involved in this war must be made in the interest and for the benefit of the population concerned, and not as part of any mere adjustment or compromise of claims among rival states"¹⁵ and suggested a system of control under the League of Nations to be established for the colonies of all belligerents in tropical Africa. In a similar way the National Council of the Socialist Party in France also recommended "the establishment, by international agreement, of a regime which, while respecting national sovereignty under the control of the guarantee of the League of Nations, is inspired with a wide degree of economic freedom and safeguards under the best possible conditions the rights of the natives."¹⁶ The followers of the Round Table group also expressed identical views. In this connection Professor Vincent Harlow remarks, "The attitude of mind which had rejected monopoly and territorial acquisition in the middle decades of the nineteenth century and which had wrested in the post-1870 period with the uglier aspects of expansion among the coloured races was powerfully reinforced during the years of war. The Round Table group, leaders of the labour party, and prominent publicists of varying political persuasions, led a campaign to replace aggressive nationalist imperialism with a doctrine of trusteeship that would harmonise with the central concept of an international comity, designed to draw the teeth and pare the talons of nationalism itself."¹⁷ All these viewpoints, suggestions, resolutions and recommendations of various groups of persons and societies must have influenced General Smuts in sketching his plan of the Mandates System.

Although the idea of trusteeship had been applied for long in the colonial practice of the United States of America, President Wilson does not appear to have considered the incorporation of such a principle in the League of Nations. Before his coming to Europe he had already prepared the first draft of the Covenant. In this draft there is no mention of the Mandates System.¹⁸ In Paris President Wilson read the scheme of General Smuts as outlined in the League of Nations. A practical suggestion. The

¹⁵ Quoted in Van Mann Holmer's *Mandates System*, Ch. II.

¹⁶ *Ibid.*

¹⁷ Bullock, *Germany's Colonial Demands*, Ch. VIII.

¹⁸ W. Wilson and World Settlement, Vol. I, p. 285.

Smuts' plan created a favourable impression in the mind of the American President and he resolved to act upon it. Baker states that "President Wilson was greatly impressed by the statesman-like suggestion of General Smuts—and the idea of the mandatory system as a part of the responsibility of the League at once joined up with the American principles already in his thoughts and became his own."¹⁹ But there was one great difference. The Smuts' Plan, embodying the Mandates System, was intended to be applied only to territories formerly belonging to Russia, Austria Hungary, and Turkey. As for the German colonies, Smuts wrote, "The German colonies in the Pacific and Africa are inhabited by barbarians who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of political self-determination in the European sense."²⁰ President Wilson did not like the annexation of the vast territories in Asia, Africa and the Pacific and extended the mandatory regime to all of these territories. In the words of Baker, "He universalized it," and embodied the same in his second draft of the covenant. Meanwhile, the British colonial office had also drawn up a plan of their own, which, in many points, differed from that of Wilson. In his third draft President Wilson went still further and stipulated that the territories in question should be governed with a view to the progressive realisation of independence of the peoples of those territories.

It was at this time that the question of the disposition of colonies came for discussion before the Paris Peace Conference. We have already written that Dominions, with the tacit assent of other Allied Powers, were determined upon annexation. Lloyd George did not think, records the Secret Minutes, "that a special exception in favour of the Dominions would spoil the whole case. According to Mr. Hughes the mandatory system would be applicable to other parts, but it could never apply to New Guinea." Mr. Massey of New Zealand did not want to overburden the League in the beginning. President Wilson had to carry on his fight against heavy odds. He gave a detailed description of his mandatory plan in the Council of Ten on January 27, 1919, before a distinguished gathering consisting of the representatives of the British Empire, France, Italy, Japan and China. In all, with the experts, secretaries and interpreters, there were thirty-two persons in the meeting of the Council of Ten and out of these, twenty-five were openly hostile to the

¹⁹ W. Wilson and World Settlement, Vol. I, p. 265.

²⁰ *The Drafting of the Covenant*, Vol. 2, Document 5.

THE INDIAN POLITICAL SCIENCE CONFERENCE

THE THIRD ANNUAL REPORT OF THE INDIAN POLITICAL SCIENCE ASSOCIATION, FOR THE YEAR 1941

*(Presented by the Secretary to the Fourth Session of the
Conference at Bombay, January 1942)*

I have great pleasure in presenting on behalf of the Executive Committee the third annual report of the Indian Political Science Association.

The total membership of the Association stands at 106, 2 less than what it was in 1940. The number of life-members has increased by 4, making the total number of life-members eleven.

From the audited statement of accounts it will be seen that only Rs. 55-8-9 have been spent throughout the year on the work of the Association and not a single pie has been spent upon clerical assistance although Rs. 60 were budgeted. Out of the total income of Rs. 1633-2-9 Rs. 1204 were paid to the Journal and Rs. 217-4-9 for the printing of the synopsis of paper for the Mysore Conference. Rs. 150 are in the Reserve Fund and Rs. 6-5-3 is in the cash in hand.

The Managing Editor of the Journal will present to you a report on the working of the Journal. Here it is sufficient to mention that the Journal has made a profit of Rs. 227-2 in the year ending June 30th, 1941 which has been devoted to the reduction of the deficit of 1939-40 along with the contribution made by the Association of Rs. 100 for the wiping out of the Journal debt. It is hoped that the Journal will be in a position to wipe out the remaining amount of the debt before the end of June 1942 and to show a net balance at its credit next year.

The Secretary has addressed a letter to the Dean of the Faculty of Arts at each of the eleven Universities where Political Science is not an independent subject of study. Copies of letters were sent to the Vice-Chancellors and conveners of the Board of Studies in History and Economics in these Universities. The Secretary has received replies from several of these Universities—some state that steps have already been taken to frame Pass and Honours Courses in Politics while some hope that it will be possible for them to do so in the near future. Some

have not yet replied. At Bombay the question is still under consideration. The Teachers of Political Science in the University are meeting on the 3rd January to discuss the ways and means of improving the status of Political Science and developing its study in the Bombay University.

The Secretary made a representation to the Government of India and to the Federal Public Service Commission with a view to secure for Political Science an equal position with other subjects such as Economics, History, Physics and Chemistry, in all the competitive examinations in India. However, the reply received is not satisfactory. It reiterates the views of the Government without making any attempt to meet the arguments of the representation. Political Science has been added to the Syllabus of the Indian Police Examination. "As regards Indian Audit and Accounts and Allied Services," writes the Under-Secretary to the Government of India, "I am to say that the Government of India are not convinced that there is any real necessity for the inclusion of this subject in the Syllabus of the examination for those services. I am to reiterate the view above-expressed in paragraph 3 of the Home Department letter mentioned above, that whenever it is considered that a knowledge of this subject is useful to the class of officers for whom an examination is conducted, steps will be taken for its prescription as a subject for that examination."

In conclusion I wish to express my thanks to the President and members of the Executive Committee for their co-operation, guidance and assistance. May I also take this opportunity of expressing the deep debt of gratitude of the Association to Mr. R. P. Masani, the Vice-Chancellor, members of the Syndicate of the University of Bombay and Prof. C. N. Vakil, for inviting the 4th Conference to Bombay at the same time as the Indian Economic Conference and thus making it possible for members of the two associations to attend both the Conferences?

GURMUKH N. SINGH.

THE FOURTH INDIAN POLITICAL SCIENCE CONFERENCE, BOMBAY

BY
PRINCIPAL GURMUKH NIHAL SINGH.

I

The fourth Indian Political Science Conference met at Bombay on the 31st December, 1941, and 1st, 2nd, and 3rd January, 1942. About 50 delegates and members of the Association attended. Delegates from Agra, Aligarh, Andhra, Delhi and Travancore Universities were not able to join.

The opening session of the Indian Political Science Conference was held jointly with the Indian Economics Conference on the 31st December, 1941, at 10-30 A.M. in the University Convocation Hall. Mr. R. P. Masani, the Vice-Chancellor of the University of Bombay and the Chairman of the Reception Committee, welcomed the delegates of the two Conferences in a speech which is printed elsewhere in this issue. Sir Purshotamdas Thakurdas, Kt., then delivered the Inaugural Address, which appears in another place in this issue, and declared the Conferences open. A vote of thanks to Sir Purshotamdas Thakurdas was proposed by the Secretary of the Indian Economics Association and seconded by the Secretary of the Indian Political Science Association, after which Sir Purshotamdas Thakurdas left the meeting. Dr. J. P. Niyogi then read his presidential address to the Economics Conference. He was followed by Dr. V. S. Ram, the President of the Indian Political Science Conference, who spoke on the subject of his Presidential Address, which is printed elsewhere in this issue. The opening session was concluded at 1 P.M.

The afternoon session was also a joint one and began at 2-30 P.M. It was devoted to discussion on papers on "Development of Economic Thought in India" (Ranade Centenary). At 5-0 P.M. Sir Chunilal B. Mehta, President, Federation of Indian Chambers of Commerce, and Industry, gave a Tea-Party to the members of the two Conferences in the University Gardens which was largely attended.

II

The Conference met on January 1st, 1942, at 10 A.M. in the Lecture Hall of the School of Economics and Sociology to discuss papers on "Mediaeval Political Theories." Prof. S. V. Puntambekar (Benares) summarized his paper on "St. Augustine & Marx." It was followed by discussion in which the following persons took part:—

1. Prof. H. K. Sherwani, Osmania University.
2. Mr. D. K. Garde, Nagpure.
3. Dr. Gyan Chand, Patna.
4. Mr. D. N. Bannerjee, Dacca.
5. Prof. Shri Ram Sharma, Lahore.
6. Principal G. D. Sondhi (Punjab).

Prof. S. V. Puntambekar briefly replied to the points raised in the discussion.

Next, Dr. Asirvatham (Madras) and Mr. H. Krishna Rao (Mysore) summarised their papers on "The Moral Authority of the Church in the Middle Ages: Can it be revived?" and "John Wycliffe" respectively. In the discussion which followed Principal R. P. Patwardhan (Ahmedabad), Mr. D. N. Bannerjee (Dacca), Dr. J. N. Khosla (Lahore), Mr. M. V. Krishna Rao (Mysore), Principal Gurmukh N. Singh (Ahmedabad) and Mr. N. A. Ahmad (Bombay) took part. Dr. Asirvatham gave a brief reply.

Dr. B. M. Sharma (Lucknow) and Mr. M. V. Krishna Rao (Mysore) next gave brief summaries of their papers "Machiavelli's Debt to Kutilya" and "Machiavelli and Machiavellism" respectively. The following persons participated in the discussion:—Prof. H. K. Sherwani (Osmania), Dr. Asirvatham (Madras), Dr. K. N. V. Sastri (Mysore), Mr. D. N. Bannerjee (Dacca), Mr. D. K. Garde (Nagpure), Mr. V. D. Mahajan (Lahore), Mr. H. Krishna Rao (Mysore) and Dr. Beni Prasad (Allahabad). Dr. B. M. Sharma replied briefly to the points raised in the discussion.

Next, Dr. Yusuf Hussain Khan (Osmania), Dr. K. N. V. Sastri (Mysore) and Mr. N. A. Ahmad (Bombay) summarised their papers on "The Political Significance of the Doctrine of Tauhid in Islam," "The Political Theory of Mysore as a Deccan Power," 1700—1800, and "Babar's Conception of kingship" respectively. In the discussion that followed Prof. S. V.

Puntambekar (Benares), Prof. H. K. Sherwani (Osmania), and Mr. N. A. Ahmad (Bombay) took part and after Dr. Yusuf Hussain Khan had briefly replied to the points raised, the morning session was concluded.

The following papers were taken as read:—"Machiavelli on Just and Wise Laws" by Principal T. K. Shahani (Bhavnagar); "Morals, Politics and Machiavelli" by Mr. V. K. N. Menon (Lucknow); "The Nature of Islamic Political Theory" by Dr. M. A. Ahmad (Aligarh); "The Place and Importance of Marsilius of Padua in the Medieval Political Thought" by Mr. I. D. Sharma (Lahore); "The Place and Importance of Dante Alighieri in the History of the Medieval Political Thought" by Messrs I. D. Sharma & Nandlal Gupta (Lahore); and "Kautilya's Theory of State" by Mr. J. C. Sharma (Lucknow).

III

After lunch and the Conference photograph the Indian Political Science Conference met in joint session with the Economics Conference in the University Convocation Hall at 2-40 P.M. The topic for discussion was "The Economic Activities of the State." The session opened with a brief summary of the joint paper of Drs. V. S. Ram & B. M. Sharma (Lucknow) on "The State in relation to Labour in India" given by Dr. B. M. Sharma. The discussion was inaugurated by Principal D. R. Gadgil of Poona in which the following persons participated:—Dr. V. K. R. V. Rao (Ahmedabad), Dr. Beni Prasad (Allahabad), Prof. K. T. Shah (Bombay), Dr. E. Asirvatham (Madras), Dr. Gyan Chand (Patna), Prof. D. N. Bannerjee (Dacca), Dr. Lokanathan (Madras), Prof. P. A. Wadia (Bombay), Prof. Keshav Ranga Iyer (Hyderabad-Deccan), Prof. S. V. Puntambekar (Benares), Mr. Suba Rao (Bombay), Mr. V. D. Mahajan (Lahore), Dr. Krishna Swamy (Madras). The session came to a close at 5 P.M. with a few remarks from the President, Dr. S. V. Ram.

A Tea-Party was given by Mr. R. G. Saraiya, Chairman, The Bombay Provincial Co-operation Bank Ltd., to the members of the two conferences in the University Gardens, which was attended largely. After the Party there was a meeting of the Executive Committee of the Association in the Research Students' Room of the School of Economics and Sociology.

IV

The morning session of the Conference on the 2nd January, 1942, was devoted to the discussion on the subject of "Constitu-

tional Law and Development in British India," but as the discussion could not be completed before 1 P.M. it was continued after lunch till 3 P.M., after which members joined in the discussion on "Finance of Local Bodies" at the Economics Conference.

The session on the 2nd January, 1942, started with a brief summary given by Mr. D. N. Bannerjee (Dacca) of his paper "Should the Indian Legislatures have any powers of Retrospective Legislation?" Mr. N. S. Pradasani (Bombay) then summarised his paper "The Type of Executive Suitable to India's Constitutional Development." In the discussion that followed the following persons took part:—Mr. S. V. Kogekar (Sangli), Mr. Khanchandani (Hyderabad—Sind), Prof. Gulshan Rai (Lahore), Dr. J. N. Kholsa (Lahore), Dr. Beni Prasad (Allahabad), Prof. S. V. Puntambekar (Benares), Prof. Shri Ram Sharma (Lahore), Prof. H. K. Sherwani (Osmania), Mr. V. R. Virmani (Annamalai), Dr. Asirvatham (Madras), Mr. D. K. Garde (Nagpur), Mr. N. A. Ahmad (Bombay), Mr. N. R. Deshpande (Poona), Dr. K. N. V. Sastri (Mysore), Mr. Sushil Chandra Sinha (Lucknow), Principal Gurmukh Nihal Singh (Ahmedabad), Messrs D. N. Bannerjee and N. S. Pradasani gave brief replies to the points raised.

Prof. D. G. Karve (Poona), Mr. S. C. Sinha (Lucknow) and Mr. A. Sharma (Lucknow) next summarised their respective papers "Making Democracy Safe for India," "India and Dominion Status in Action," and "The Nature and Composition of Provincial Executive in the Punjab." In the discussion that followed Mr. V. D. Mahajan (Lahore), Dr. Beni Prasad (Allahabad), Mr. Shri Ram Sharma (Lahore), Dr. J. N. Khosla (Lahore), Mr. Gulshan Rai (Lahore), Mr. D. N. Bannerjee (Dacca), Mr. V. D. Rao (Bombay), Prof. S. V. Puntambekar (Benares), and Mr. Pran Nath Malhan (Lahore) took part. Prof. D. G. Karve replied briefly to the points raised in the discussion.

Dr. J. N. Khosla (Lahore), Mr. L. R. Sethi (Lahore), Mr. E. P. Chowdhry (Lucknow), Mr. P. N. Malhan (Lahore), Mr. R. P. Bhargava (Lucknow) and Dr. J. N. Khosla gave brief summaries of their respective papers "How Far are the Proceedings of the Legislative Bodies Published without Their Authority Privileged in India?," "Privileges of the Members of the Legislatures in India in Matters of Freedom from arrest," "The Second Chamber in the U. P.," "The Authority of the Speaker in regards to Contumacy Committed by a Member," "Paramountcy under the New Constitution," (1935 Act), and "The Authority of A Speaker to Declare a Bill Ultra Vires." In the

discussion that followed the following persons participated:—Mr. D. N. Bannerjee (Dacca), Mr. P. N. Malhan (Lahore), Mr. V. R. Virmani (Annamalai), Mr. V. D. Mahajan (Lahore), and Mr. L. R. Sethi (Lahore). Dr. J. N. Khosla gave a brief reply.

The following papers were taken as read:—"Agreement as a Prerequisite of Indian Constitutional Development" by Prof. Venkatrangaiya (Andhra); "Responsible Government in India, Present and Future" by Mr. B. N. Bannerjee (Calcutta); "Constitutional Relations between the Court of Directors and the Board of Control with special reference to the Dispute over the Fort William College" by Dr. A. K. Ghosh (Dacca); "Second Chambers in Bengal" by Dr. N. C. Roy (Calcutta); "Civic Rights of Women in British India" by Mr. P. N. Khera (Sholapur); "The Working of the Local Bodies in the U. P." by Mr. S. C. Sinha (Lucknow); and "The Indian High Courts and the Writs of Certiorari and Prohibition" by Mr. A. K. Mukherjee (Dacca).

After the conclusion of the joint session on "Finance of Local Bodies" the members of the two Conferences paid a visit to the Reserve Bank, where they were taken round by Sir Manilal Nanavati, Deputy Governor of the Reserve Bank, and by the Manager of the Reserve Bank. The members of the two Conferences were also entertained at a sumptuous tea-party in the Reserve Bank.

On the 3rd January, 1942, at 10 A.M., was held the Annual Business Meeting of the Indian Political Science Association under the chairmanship of Dr. V. S. Ram, President of the Association, at which the office-bearers and members of the Executive Committee for 1942 were elected and other business was transacted. The Annual Report of the Association, which is printed in another place in this issue, was adopted.

The following subjects were selected for discussion at the next Conference, the dates and venue of which will be settled finally by the Executive Committee:—

1. Socialist Theories and Their Applicability to India;
2. Functional Representation;
3. Types of Executives;
4. Constitutional Law and Development in India since 1935.

The Executive Committee of the Association for 1942 consists of:—

Principal Gurmukh Nihal Singh (Ahmedabad) President; Prof. H. K. Sherwani (Osmania) and Prof. S. V. Puntambekar (Benares) Vice-Presidents; Dr. V. S. Ram (Lucknow) Vice-President, ex-officio; Dr. J. N. Khosla (Punjab) Secretary and Treasurer; Dr. Beni Prasad, Mg. Editor of the Journal, ex-officio; The Honorary Local Secretary, to be appointed by the Executive Committee after the venue of the next Conference is finally settled and Messrs Shanti Narayan Sharma (Agra), A. Halim (Aligarh), Mr. Venkatrangaiya (Andhra), S. Srinivasachari (Annamalai), R. P. Patwardhan (Bombay), B. N. Bannerjee (Calcutta), D. N. Bannerjee (Dacca), S. L. Popley (Delhi), E. Asirvatham (Madras), H. Krishan Rao and K. N. V. Sastri (Mysore), D. K. Garde (Nagpur), Gyan Chand (Patna), G. D. Sondhi (Punjab), and C. V. Chandrasekharan (Travancore) as members.

The Fourth Indian Political Science Conference concluded with a vote of thanks proposed by the President of the Association to Mr. R. P. Masani, the Vice-Chancellor, Prof. C. N. Vakil, the Local Secretary, Messrs Pradasani and Anjaria, the Joint Local Secretaries, Dr. Pinto, Asst. Local Secretary, the volunteers and the members of the Reception Committee for making excellent arrangements for the stay and hospitality of the delegates and for holding the 4th session of the Conference at Bombay.

Many of the delegates to the two Conferences were able to go on the sea trip arranged by the Reception Committee to Uran. The Scindia Steam Navigation Company made excellent arrangements for this sea trip on the "Jaylaxmi" and entertained the members to a sumptuous tea-party on the return journey.

All those who attended the Bombay Conference took away with them pleasing memories of their stay in Bombay to meet again at the 5th Conference to be held on the dates and at the place which will be announced later.

INAUGURAL ADDRESS

SIR PURUSHOTAMDAS THAKURDAS, Kt.

On the Occasion of the Opening of the All-India Economic and Political Science Conferences held in Bombay, 31st December, 1941.

It is an honour to be asked to inaugurate a session of this Conference of Indian Economists, but the honour is all the greater inasmuch as this session is unique in the history of your Conference for several reasons. In the first place it is the Silver Jubilee Session of your Conference, and thus marks an era of useful work; in this period your contribution in building up economic thought and influencing economic opinion in the country has been of no mean order. In these laudable efforts we are reminded to-day of the inspiring work of the pioneer of Indian Economic literature, the late Justice Mahadev Govind Ranade, whose centenary you propose to celebrate by discussing at one of your sittings the whole subject of the development of Indian economic thought. Further, it was a happy idea to have the Political Science Conference in a joint session with the Economic Conference. This joint meeting emphasizes the close interdependence of Politics and Economics.

The Economic Conference meets for the fourth time in Bombay during its existence of 25 years. It is perhaps a good coincidence that Bombay is chosen as the venue of the Conference for this session. Bombay combines in its economic life both the practical and theoretical aspects in an eminent degree. In its commercial activities typified by the Great Port and the large Commodity Exchanges; in its industrial activities reflected in the great cotton industry; in its monetary activities found in the Stock Exchange and in the banks, now headed by the Reserve Bank; and in many of its other spheres of economic life, you have an abundance of economic data on which to build correct economic thought for the country. As against such practical economic aspects of life in Bombay, in the University School of Economics and Sociology, we have under the able guidance of such a distinguished economist as Professor C. N. Vakil, a well-equipped institution which makes excellent use of the opportunities provided by this City to study economic problems in a scientific manner. I happen to know from personal knowledge that the School undertakes valuable research in problems of practical importance, and

has attracted students from different parts of the country. In the learned Vice-Chancellor of the University, we have the somewhat exceptional combination of the scholar and the man of affairs, and I have no doubt that he is keenly interested in advancing the cause of higher studies in Economics in this University.

I referred to the close interrelation between the practical and the theoretical aspects of the work of the economist. This work assumes unusual importance at the present juncture when the world is passing through a period of grave stress and peril. The war has swept over the countries of Europe and has engulfed us in the East. But for the heroic resistance put up by Great Britain and the U. S. S. R., with material help from the U. S. A., we would have seen the end of Democracy and of all those ways of life which constitute civilisation. That this terrific struggle should cause unprecedented strain and suspense in all countries of the world is only natural. That hostilities of this nature amongst the most important and the most powerful countries of the world should upset all normal economic life in every corner of the world is inevitable. That stringent and unexpected restrictions on ordinary trade and commerce are the corollary of a totalitarian war like this is obvious. That India should be exposed to the full effects of this upheaval is only natural. That India is doing her best to help the British Empire with men, material and her limited resources in this titanic struggle is recognized by all. An Economic Conference of this nature, in the midst of such a world war, is best qualified to take an unbiassed view as to the effect on India of the extraordinary conditions under which the world is living. There are many who have been thinking of post-war conditions and how the world can settle down after the war, without the grave shocks which characterised the period after 1918. In India, the thoughts of many, both in the academic and commercial spheres, have been moving towards this great problem of late. There is, however, one aspect of the problem in India which is wholly exceptional to it, at any rate in the British Empire, an aspect which cannot possibly be overlooked, and that is, the political future of the country after the war. It is recognized that India cannot reconcile herself after the war to the subordinate status of a mere dependency in the British Empire. Until, therefore, this one question is definitely settled, the work of economic regeneration in India cannot be envisaged with anything approaching either clarity of thought or finality of results. Even those who are not politically-minded consider a fundamental change in India's political position inevitable for the economic regeneration of India.

Such, in brief, is the background to the conditions in which this joint Conference of Economists and Political Scientists meets to-day. It will not be inappropriate, if I take this opportunity to refer to a remarkable feature of the industrial effort in India since the war broke out which has both economic and political aspects. We have been given figures which are supposed to be impressive as to the capacity of India to cater for the war requirements of the British Empire and the Allies since the war broke out. Industrial production of various articles and forms of equipment required for the prosecution of the war, and, in some cases, even for the civil requirements of the country, is reported to have gone up to a surprising degree. Of course, no one has raised at this juncture the question of the comparative cost of these industrial products. Whether this increased production has impressed the layman or not, the question naturally arises in the minds of the thinking public as to why no effort was made to produce in India the various articles required for the defence services in normal times or at least since 1920. The honest explanation of this can be found mainly in the anxiety of the Government of India under direction from Whitehall to see that the Indian market for British products was not allowed to be narrowed. India is said to have enjoyed fiscal autonomy since 1923. One may concede that at best it was in some sense a limited fiscal freedom as compared to what existed before, but as everybody knows, this fiscal autonomy was so hedged in by all sorts of conditions either from the international or the Empire point of view, that it did put a severe restriction on the development of industries in India.

During the last Great War, a Commission went round all over India under the Chairmanship of Sir Thomas Holland and presented a useful report. Hopes were raised that on the recommendations of that Commission, effective and comprehensive action would be taken for establishing industries in India, especially those for which raw materials were available in the country to meet her own home demand at least. But immediately after the Armistice in 1918, the recommendations of the Holland Commission were not only neglected, but they were completely overruled under pressure from quarters which the Government of India could not control; the full details of the pressure were never divulged to the Indian Legislature. In fact, between 1920 and 1930 there was a continued struggle between Indian industries and the vested interests of industries abroad, prominently, of course, British industries. Wanton and unjustified appreciation of the value of the rupee was resorted to for

this purpose in the teeth of continued and resolute opposition from the public at large. Later, at the Ottawa Conference of British and Empire interests, a delegation of a few nominated non-officials was sent. This delegation agreed to what are known as "Ottawa Preferences," which was a further brake on the pace of industrialisation in India. The last blows which the Indian industries received were what are known as the Mody-Lees Pact, and the Indo-British Trade Agreement of 1935, when the most arbitrary decisions were taken by the Government of India in spite of the opposition of both the Indian Commercial Community and the Indian Legislature. This, I think, summarises the efforts of the Government of India to benefit by the experience of the Great War, and to prepare India for the holocaust of the sort that the British Empire is going through to-day. The pace, therefore, of industrial production in India since the war broke out should be regarded more as a matter for admiration than for criticism, and if the productive capacity of India does not come up to what her natural resources warrant, the blame must be sought in other quarters than in India; in any case not in the capacity and talent of the Indian, either the industrialist or the workman, to produce more. Let me give one instance in passing. The idea of sending a few workmen from India to be trained in England—known as Bevin Boys—sounds good. But why was this method not resorted to during the twenty years between the two wars? Various commercial bodies in India have been consistently complaining for almost half a century at least, that even ordinary training to Indians in British factories was denied. It is common knowledge that whilst foreign purchasers of British manufactures could, and indeed did successfully, insist upon a certain percentage of their nationals being trained in British factories as a consideration for their orders, is there any instance that can be quoted of Indians having been similarly trained? In fact, Indians were kept out; and, as the largest purchases of Indian machinery were through official Government channels, was any pressure brought to bear on the British manufacturers by anybody in India? Another point to mention in this connection is the hoary question of the policy pursued in the purchase of stores on which the various Chambers of Commerce consistently and firmly pressed the Government of India for a change with a view to promote industries in India. I mention these facts not with a view to evoke further criticism of the policy of the Government of India and the British Government in the past, but to draw attention to various acts of omission and commission which require to be scrupulously avoided hereafter.

The above account shows why complete freedom is necessary for the Government in India to enable the country to start planned industrialisation. So much for the insistent demand of which one has heard over the last 20 years for a sane and effective policy of industrialisation in India with a view to her economic development. That the result has not been by any means satisfactory in spite of the experience of the last war is evident. That the result will not be satisfactory until India is allowed to manage her own affairs and Indian Ministers responsible to the Legislature are in charge of what are known as Commerce, Communications (including railways) and Finance Departments at present, cannot but be accepted without dissent.

In the interregnum, the attention of our economists may be usefully concentrated on every feasible effort to increase the purchasing power of the masses of India. India has so far been a preponderantly agricultural country which has therefore to depend mainly on the prosperity of her agriculturists. If one tries to take stock of the situation, one cannot but come to the conclusion that the efforts of the various Provincial Governments and the Central Government during the last three-quarters of a century have not resulted in any appreciable advance in Indian agriculture, either in the yield per acre, or in the quality of its produce, or, what is most important, in the standard of living it affords to the Indian farmer. It is true that stray efforts have been made regarding some of the staple crops of India. That is, however, like scratching the surface. What is called research work has been done to a certain extent, but I do not think that it can be claimed that such modest research work as has been done is either sufficient or has been followed up with any determined and long-range policy to bring the results home to the agriculturist in India. In short, the efforts so far made have been so meagre as to leave the standard of life of the Indian farmer as low as before. He lives on in his poverty, in his hovel, and on a diet bordering on starvation.

Besides this, the marketing of the agriculturist's crop, or making available to him the best price to which his produce is entitled, is another step which makes for the prosperity or otherwise of the agriculturist. In this matter also, whilst some work may have been done, it will be admitted that much more remains to be done, and he will be a bold man who can say that we in India have achieved anything like efficiency in helping the agriculturist to market his crop. To name only one instance, for an agricultural country like India to enable the agriculturist's crop to be marketed swiftly and with the least over-head expenses, the

provision of reasonable transport is a *sine qua non*. Whilst railways and good motoring roads may be available in certain parts of India, the rural areas, where the masses of India live and toil, cannot be said to be reasonably provided with transport. The Bombay Economic and Industrial Survey Committee has pointed out that during the monsoon as much as one-third of certain districts in the Bombay Presidency are cut off from the rest of the world. In spite of this, one of the first forms of new taxation to be introduced after the outbreak of the present war was increase in railway freights, including freights on agricultural produce. This cannot but involve a more or less indirect tax on the grower. And this was carried through by the Government in spite of protests from the public at large, who pointed out that in some cases the growers were in fact getting less than their cost of production.

It is a pity that even to-day no data accepted as reliable are available regarding the cost of production of the major raw staples of India, to enable one to compare the same with the average price of the raw materials available to the agriculturist in the primary markets, so that the real condition of the agriculturist from season to season can be realized. The conclusion cannot be avoided that the agriculturist is the beast of burden of the Indian economic structure, and whilst both the Government and men in public life claim to have the interests of the agriculturist at heart, comparatively little has been done to ameliorate the condition of the bread-winner of the mother country. I would, therefore, like to emphasize that during the interregnum which must elapse between now and the period when the post-war condition in the world and in India may be clear, everyone interested in the welfare of India should see that nothing is done, either directly or indirectly, to encroach upon a fair return to the agriculturist for his raw produce. I will give an instance of what I have in mind. Since the war broke out, groundnuts and linseed have been bought by His Majesty's Government, presumably at rates on a parity with world rates for the seeds exported. Freight was allotted for this purpose on the basis of exports of private firms before the war, and it transpires that about 80 per cent of the exports went to non-Indian firms in India. At a meeting of the Export Advisory Council about a year ago, a non-official member raised the question whether the prices paid to the producers for the commodities exported from India were actually what His Majesty's Government were reported to have paid to the middlemen between India and the United Kingdom. A most astonishing state of affairs was revealed, and it was admitted that

very substantial amounts—£100,000 + £15,000—had been unjustifiably pocketed by the middlemen-exporters from India. Thanks to the firm and impartial attitude of the Honourable Sir Ramaswamy Mudaliar, Commerce Member of the Government of India, it is now understood that a refund of this amount has been obtained from the exporters concerned, and it is to be utilised for the welfare of the growers of this raw material. The more serious thing, which has not been dealt with in the Government communique in this connection is the depreciation in price not merely for the quantity exported, but for the total quantity marketed by the Indian grower owing to this deliberate manipulation by the erring exporting firms. The surplus seeds in the Indian markets were bought at a price lower than the world price, as a result of the monopoly which was created by the arrangement between His Majesty's Government and the export firms in India. This is but one instance which has been brought to light, but you will easily realise that, owing to such indifference to the interests of the Indian grower, the whole of the crop in the season concerned depreciated in value, and to that extent the grower suffered. I mention this only to bring home to you one direction in which things can be tightened in the interest of the grower in India. The initial action has to be taken by the Government in India, but the commercial community and the public in general can usefully take a more sustained interest so as to prevent this sort of manoeuvring of the market of the Indian grower, by interested parties taking advantage of the international conditions which prevail. It would be a truism to repeat that the purchasing power of the masses of India forms the foundation of the prosperity of India—even of commercial and industrial India, and, I am glad to note that you propose to discuss the problem of Rural Co-operation. This will, no doubt, give you an opportunity to consider some of the pressing problems of rural life. As stated in the excellent Review of the Co-operative Movement in India by the Reserve Bank, the magnitude of these problems altogether is stupendous. In the words of the concluding paragraph of that Review, "Raising the standard of life of the masses of the Indian population—for that is the rural problem—is an uphill task. The standard of living is the whole manner of living to which a certain class of people are used, and no ready-made remedy of cheap credit is likely to raise it permanently: a widespread effort of educational as well as social and economic improvement alone may avail."

The few general observations regarding the economic policy of the country now and in the immediate future that I have

ventured to make have their counterpart in economic thought. Economic thought is sometimes in advance of policy and influences the latter considerably. Often, however, the reverse happens. Like many other things, economic ideas were imported in our country and applied without reference to local conditions. One such is *laissez faire* which was imposed on India but did not remain without a challenge for long. Even before academic economists were in the field, Ranade, Dadabhai, Dutt and Gokhale were among those who took the lead in pointing out how economic policy in this country should be more progressive and national in outlook, and demanded vigorous initiative and organization on the part of the State. The teaching of Economics in the country was at the time either non-existent or restricted and what existed was dominated by the Free Trade School of thinkers, mainly the then members of the Indian Educational Service. It must be admitted that economic thought in the country was thus influenced mainly by non-academic workers first by Ranade, and then by politicians like Dadabhai, Dutt and Gokhale. Since the days of the stalwarts I have named, the Economist has come into his own not only in our country but throughout the World. The fundamental principle of social justice and adjustments as between individuals and individuals, classes and classes, and nations and nations, appears, however, to have been lost sight of. This is a problem on which students of Economics and Politics, will, I am sure, throw much light.

I wish to make one appeal as a businessman to the professional economists who are assembled here. It has been the complaint of many economists that their counsel is neither availed of by the business community nor by the political parties. There is considerable truth in this complaint. I agree that it will be in the interest of the business community, the political parties, and, in fact, of the nation at large, if more attention is paid to the opinions of economists on problems of Indian policy. At the same time, may I remind the economists that the businessman's lack of readiness to accept their advice is born not so much of indifference as from a sense of bewilderment? Often the economist talks in a language which a businessman is not able to understand, and oftener the illustrations the economist uses and the conclusions which he draws appear to the businessman to be so far removed from the practical realities of the commercial and industrial world, that he does not know what to make of the economists' opinions. This difficulty on the part of the businessman, let me assure you, is a genuine one, and it would indeed be helpful if the economists would also on their part try and understand

the point of view of the businessman. While I agree that the businessman in conducting his practical affairs is not perhaps so much concerned with theoretical considerations, the economist in putting forward his academic conclusions does not always appear to take into account either their practical background or their practical consequences. This kind of difficulty might largely disappear if Indian economists were to undertake studies of concrete problems and come into actual contact with industrial and rural conditions, subject them to a scientific analysis and then put forward their conclusions. I believe this kind of work on their part would be at least as valuable as, if not more valuable than, their study of broad questions of general economic policy in this country. I also wish that some means would be found by which closer personal contact would be established between the business community and the professional economists. Need I assure you, Ladies and Gentlemen, that I am not under-rating the importance of the contribution which you have made to the development of Indian economic life. All that I am suggesting is that your contribution and its influence on Indian economic affairs should be far greater than it is to-day, and the one way of securing that is to give a more practical bias to economic studies.

One is glad to find that due to a large extent to the impetus and the inspiration given by this Conference, Indian Economic literature has now grown to weighty proportions and compels attention both from the Government and the public. Unlike academic conferences in other subjects, your work has an immediate practical importance because it can influence and mould public policy for the benefit of the people at large, for what the economist thinks to-day may become a practical issue to be implemented in action by the politician tomorrow. I am aware that in the discharge of your duties as scientists you have not ignored the realities of the situation in the country and have often frankly criticised Government policy and suggested alterations suitable for the country in many cases. I am also aware that because of this very legitimate attitude on your part, you have been often blamed by persons in authority as being politically minded and therefore deserving to be ignored. This attitude of indifference towards your work reached its climax only a few years ago when the last Finance Member of the Government of India Sir James Grigg thought fit to ridicule your work, in the Legislative Assembly. The recent innovation of the Honourable Sir Ramaswamy Mudaliar in inviting some of the leading members of your Conference to work as a Consultative Committee in con-

nection with the very important problem of post-war reconstruction indicates a welcome change in the attitude of the Government of India towards the rôle of the Economist. I have already expressed my views regarding the difficulties of considering this problem at the present moment, and the important limitation due to the uncertainty regarding our political future. Apart from this, however, I consider this to be an important departure for the Government that the place of the Indian economist in the formulation of Government policy should be thus recognised. I need hardly emphasize that the members of the Committee have undertaken a great responsibility—not only for doing the work for which they have been called together, but also for establishing the necessary tradition for the economist in the country and for proving that the academic man has a worthy contribution to make in shaping our future.

For the members of the Political Science Conference, the scope for their deliberations would appear to be exceptionally large and inviting under the existing circumstances. A representative committee of theirs, examining the question of what constitution would be suitable to India with her existing variety of thoughts, sentiments and economic conditions can supply the political leaders and the lay public with an impartial and well thought out basis for serious thought and relief from communal and party bias. Such spade-work by students of Political Science must command consideration of all in the country, and may serve as the basis for discussion between political interests in the country at large. I may not enter into the erudite discussions of political theories to which you will rightly devote some of your time, but I note with satisfaction that you will discuss in a joint sitting the Economic Functions of the State. I am sure you will agree with me that the expansion of the functions of the State in our country with a view to ameliorate the condition of our masses has long been overdue, and that such expansion cannot be effectively thought of except by responsible Ministers elected by the people of the country. Your discussions on this important subject cannot but be characterised by that broad and practical outlook which is necessary in handling such a subject; and the close inter-dependence of your respective subjects will thus be brought out in its proper perspective as required by the realities of the situation in the country.

Even in the midst of war, these annual gatherings and exchanges of views are most useful. A distinguished Professor has said that the academical economist is "the custodian for Society of the long view in economic matters," and the

Vice-Chancellor of the Mysore University last year said that "this long view is entitled even in troubled periods to a full hearing." I have no doubt that you will, as a result of your discussions during this session, make valuable contribution both to Economic and Political thought, and in that confidence it is my privilege to wish you all success in your work, and declare this joint session of the Economic and Political Science Conferences open.

WELCOME SPEECH

BY

R. P. MASANI Esq., M.A., J.P.,

*Vice-Chancellor, University of Bombay, and
Chairman, Reception Committee.*

It devolves on me, as Chairman of the Reception Committee of the Indian Economic and Political Science Conferences, to extend to you our cordial welcome. Allow me to say, on behalf of the Reception Committee and the University of Bombay, at whose invitation the joint session of the two Conferences is held in this city, how gratified we are at this brilliant assemblage of distinguished academic representatives from all parts of India. Even experts can learn something from one another, and during these four days they will have ample opportunities to get to know one another or to renew old contacts, and to profit by an exchange of views on many problems concerning which you, with your knowledge and experience, are privileged to give sound advice to the madly disordered world of to-day.

The Economic Conference, which celebrates its Silver Jubilee meets, this year, for the fourth time in Bombay. We are very proud of the honour done to us by repeated visits eagerly awaited. We offer the Conference our warmest felicitations on the completion of twenty-five years of memorable work and wish it a prolonged career of usefulness and distinction.

The Political Science Conference, which is holding its fourth session, honours Bombay for the first time. We hope it, too, will favour us with many more visits and we wish it all success in propounding and disseminating sound views concerning the organization of human society and the position of individual states in the general comity of nations.

I am afraid, owing to our limitations, the Reception Committee has not been able to make such adequate arrangements for your physical comfort and needs as we should have wished; but I am sure our deficiency in this respect will not prevent you from reaching the intellectual heights expected of you in your discussions. In overcrowded Bombay, there are not such spacious guest houses or hostels for students as some Universities can resort to for accommodating visitors. It is appropriate, nevertheless, that Bombay should have been chosen as the venue

of this joint session for the celebration of the Silver Jubilee of the Economic Conference and of the centenary of Mahadeo Govind Ranade, the Father of Indian Economics and the Guru of Gurus of our social and political reformers.

It might perhaps appear vainglorious for a Bombayite to sing the praises of the sons of Bombay, but a bare recital of a few names of Bombayites of the past generations who have played an illustrious part in the development of the political and economic thought in this country will, I trust, be immune from such criticism. Dadabhai Naoroji, Ranade, Gokhale, to whose work you will be paying a well-merited tribute during this session, were among the pioneers of economic thought in India long before your Economic Association was started. Similarly, in the field of politics, Dadabhai, Tilak, Mehta, Wacha and Gokhale, all from the Province of Bombay, have given the greatest impetus to the study of politics and political reform. They were not mere theorists or arm-chair philosophers; they were men of action, moving close to reality. May these sons of India of revered memory, to whose inspiration we owe so much, be the guiding lights in your deliberations!

The celebration of the centenary of Ranade in this city and in this very Hall moves me to recall at the outset the stirring advice given by him for the improvement of the political and economic condition of our country by our own effort.

"We should be unworthy of ourselves if we are not hopeful with our traditions, which transcend the tradition of every other nation in the world. You may take the map of Asia, Europe, Africa, or America, and you will find that there is no other country in the world which presents such a continuity of existence over such a long period of time. Races and creeds have risen, thrived and decayed in other lands, but India is favoured, for, notwithstanding its abasement in many other particulars, the people of this country have been preserved from dangers, as though they were a people with a special mission entrusted to them. We, of the present, or those of our ancestors of the immediate past, may not be worthy to bear the standard of that mission, but still there is the fact that we represent a continuity of creed, of traditions, of literature, of philosophy, of modes of life and of forms of thought, which are peculiar to this land, and which have been carried to other countries by our illustrious ancestors in the past from this land. It cannot surely be for nothing that this particular favour has been

shown to us under Providential guidance. If the miraculous preservation of a few thousand Jews had a purpose, this more miraculous preservation of one-fifth of the human race is not due to mere chance. We are under the discipline of a high purpose."

Progress in the political sphere was to be attained by the provision of a common platform on which members of the different communities might stand together as Indians first and Hindus, Muhamadans, Christians, Parsis and the rest afterwards. Obviously, in a country with a diversified population such as ours, progress could only be possible along all lines of human activity and for all classes and ranks of the people.

As regards economic development, it was Ranade's advice that we should avoid pursuing impracticable ends, husband our resources and not exhaust them by vain complaints against the drain of India's wealth from the country or by "battling Free Trade." The work that lay before Indians was to correct the disparity between the production of raw material and the production and distribution of manufactured goods. "We have rusticated too long," said he fifty years ago, "we have now to turn our hands to new work and bend our muscles to sturdier and honester labour. . . . Natural aptitudes, undeveloped but unlimited resources, peace and order, the whole world open to us, our marvellous situation as the emporium of all Asia, these priceless advantages will secure success, if we endeavour to deserve it by striving for it." Such was the creed he preached and such was his faith in the economic future of the country.

As this University's humble contribution towards the economic advancement of the country stands, in close vicinity of this Hall, our School of Economics and Sociology. Well-staffed and well-equipped, it has during the last two decades attracted a large number of research students from different parts of the country and trained them in methods of research, under the guidance of two talented Directors, Professor K. T. Shah and, after him, Professor C. N. Vakil to whom we are greatly indebted for valued services as Local Secretary to these Conferences, and who as you know was for some time General Secretary of the Economic Association and also its President for the year 1934. The work done by the students has elicited the approbation of experts in the subject who have visited the institution or examined their theses. The School has built up a library believed to be unique in India, and I have no doubt that, funds permitting, the University will expand the activities of the School, enhance the

facilities afforded to post-graduate students for research and render it possible to have greater specialization in the different branches of Economics and Sociology.

Our Department of Chemical Technology, instituted to form a link between science and industry, may also claim to have rendered useful assistance in the economic development and industrialisation of the country. University graduates in pure science desiring to adopt an industrial career obtain here the necessary technical training in textile chemistry or chemical engineering.

May I take this opportunity to acknowledge gratefully the co-operation of eminent persons in the business life of Bombay in connection with the work of both these branches of study? The sustained interest, which you, Sir Purshotamdas, and a large number of other prominent businessmen, have taken in the work of our School of Economics and Department of Chemical Technology and in the work of Conferences such as these, is in itself evidence of such co-operation. On behalf of the University I tender to you and the business community generally our warmest thanks for the encouragement thus given to the students and the Professors. I am sure that in course of time the ties will be closer and that the institutions will always obtain that support from the commercial and industrial concerns of Bombay which they deserve.

We have no separate Department of Politics in this University. Political Science is, however, included in the curricula of studies for the B.A. and M.A. Degrees. At the instance of Principal Gurmukh Singh, General Secretary of the Political Science Association, the Board of Studies in Economics and Politics has now under consideration the question of giving greater importance to the study of this important subject in the University syllabus.

Delegates to this Session! in these hectic days when the whole world is shaken to its foundations, our country is face to face with economic and political problems of far greater magnitude and importance than those confronted before. At such a juncture the discussions of experts of your standing will surely provide material, ideas and concrete proposals helpful to the statesman and the administrator in the adjustment of these problems. Nay, in this most crucial moment in the history of the world, when people's minds and hearts are opened to the need for a radical revision of the social and political systems in vogue, the whole world looks to conferences such as these for the best basis on which to build a new social and international order. When you

discuss either the economic functions of the State or the economic reconstruction of India after the War, you will, I am sure, point out how the statesmen and economists of the world may profit by mistakes made in the past and deal not only with theoretical issues, but also with those numerous and complicated problems which are awaiting solution in this country as well as in other parts of the world.

If I may be permitted to make an observation regarding the diverse world conferences held after the last War to solve the same problems that confront us to-day, I should like to submit, with due deference, that they failed to indicate lines of peaceful progress for the nations of the world, because they failed to grasp the supreme lesson of the last struggle—the need for a revision of the constituent principle of social organization. The fundamental basis of society—the unity of man—was lost sight of. This basis, although accepted and even stressed in dissertations and discussions, was scarcely taken account of in actual practice. Utopian as it may seem, necessary though it is to bear in mind the chances of survival of a new order under twentieth-century conditions, it is, I suggest, imperative to devise a scheme of organization of society under which the sanctity of human brotherhood will be respected and the study of politics as well as economics will be linked with ethics. The world Economic Conferences and Peace Conferences held after the last war failed because the end they had in view was not the right one. To what end do we wish for a new world order? Is it for the mere multiplication of the sources of material enjoyment or political power for our own people? Unless the end is human solidarity, world citizenship, world community, better human intercourse and better association of individuals and nations, all our conferences and congresses will be of no avail. Henceforth an agreed frame-work of international society should underlie all our schemes for educational, social, economic and political progress.

At the last session of the Economic Conference its accomplished President, Professor D. R. Gadgil, pointed out that at one time it was a fashion to rail at the attention paid by economists to the political aspects of the problems with which they were confronted, and he urged that the charge, if true, merely showed that such economists had a proper sense of realities. From that point of view the joint session of the Economic and Political Science Conferences was doubly welcome; and it would be thrice welcome if you, gentlemen, by your deliberations show that the study of the two sciences cannot be divorced from ethics.

Now, to come to the principal object of this gathering, I am sure, ladies and gentlemen, I am echoing the sentiments of all of you when I say that we are fortunate in having in our midst on this occasion so distinguished a citizen as Sir Purshotamdas Thakurdas to inaugurate this joint session to which the Silver Jubilee of the Economic Conference and the Centenary of Ranade lend special interest. The unique occasion demanded a unique personality to bless the proceedings of the Conferences, one who combined intimate knowledge of economics and politics with the outlook of a practical man of affairs. Our choice could not, indeed, have fallen on a more capable or more eminently qualified man. We are very grateful to him for readily accepting our invitation. Such a busy and successful businessman of many-sided activities, the head of several important concerns in Bombay and the prop and support of important commercial and financial organizations, is in a position to appreciate fully the work of the Conferences and their contribution to the study of vital problems affecting the social, commercial, industrial and political well-being of the people of this land. Although Sir Purshotamdas is not now an active politician, very few in this country are in a position to influence the course of politics in India as he is; very few whose advice is sought so eagerly as his, alike by Government and the leaders of political parties. But more important than his contribution to the political advancement of the people is his contribution to the economic development of this country and the currents of economic policy, as a member of the numerous boards and committees and commissions dealing with economic and financial problems, such as Railways, Public Finance, Currency, Banking, and Trade Agreements. Anxious as you all must be to hear his inspiring message, I will now request Sir Purshotamdas to favour us with his address and to declare this joint session of the Indian Economic Conference and the Indian Political Science Conference open.

PRESIDENTIAL ADDRESS

BY

DR. V. SHIVA RAM,

Professor of Politics, Lucknow University.

The following is the Presidential Address delivered at the All-India Political Science Conference held at Bombay on December 31, 1941.

Fellow-delegates, Ladies and Gentlemen,

Allow me to thank you for the great honour you have done to me by electing me to a chair adorned in the past by eminent scholars. I know the honour is meant more as a recognition of the fact that the Lucknow University was the first Indian University to start Political Science as an independent subject for the degree and M.A. courses as early as 1922. Since then, almost all the North Indian Universities have followed suit, except the South Indian group. We hope that in time, they will also recognise the importance of this growing subject.

Let me on your behalf offer our cordial greetings and congratulations to the Silver Jubilee Session here of the Indian Economic Conference which has done such splendid work in the past. It is a happy augury that our joint sessions begun in Mysore last year may in time lead to an Indian Social Science Conference which would bring together scholars of Anthropology, Social Psychology, Sociology, Jurisprudence and History. Such a consummation will enrich the deliberations of all, help to endow learned periodicals and research institutes and keep them all true to the synthetic principle. Such a synthesis would facilitate the research, none too easy, into the root causes of the present distempers and their remedies. Never was the need for a rational and dispassionate comprehension of affairs so urgent as at present.

The World Today.

Science has profoundly changed the conditions of man's life upon this earth. These changes have come more rapidly within recent years, changes which have annihilated time and space by steam, electricity, radio and the airplane. These agencies have produced our modern industrial civilization, with its increasing

competition for markets and raw materials, and its pressure for the industrialisation of backward areas. Within the past century the population of the earth has more than doubled because of the application of Science to production and health. Of this population the continent of Asia alone, contains more than half. While these great changes were taking place, man discovered the last acre of land. Consequently, in the future, he must adjust his problems to an earth whose geographical limits have been explored. There are parts of the world like Canada, Australia, Africa and South America that can support additional population, but migration presents difficult economic and political problems, which are also fruitful source for friction.

But the same science which has harnessed nature to man's peaceful progress has now harnessed it to his destruction. The invention of the airplane, submarine, tank, motor transport, electrical communication and poison gas has made it possible for larger proportions of the population to be mobilized for war, for military operations to be coordinated over larger areas, for destruction to be more easily visited upon civilians on land and sea, in fact for the entire life of nations to be organised for war even in time of peace. Geographical division of labour has created economic dependence of one people upon another, rendering each vulnerable to starvation or industrial disorganisation by blockade and trade restrictions. Under such conditions war has assumed a totalitarian character. Only by organisation to develop and uphold the law of nations can civilisation stand up against the ever advancing machinery of modern scientific warfare. The only sure defence is the enforcement of the law made by the community of nations; and that law can be enforced only if the power of the community, overwhelmingly greater than the power of any of its members, is brought to bear when and where lawlessness begins.

The World of Tomorrow.

The ceaseless changes wrought in human society by science, industry and economics, as well as by the spiritual, social and intellectual forces which impregnate all cultures, make political and geographical isolation of nations hereafter impossible.

As the frontier of continents has disappeared, its place has been taken by the frontier of science, and no one can foresee the effect which the indefinite extension of its borders will have upon mankind. But no matter how much his life will be changed by invention and discovery, man will continue to want from this

world freedom, social justice, economic and political security. He wants a world in which human intelligence will organise and distribute the ample resources of nature so that all can live abundantly; a world in which intelligence will be devoted to human progress rather than to destruction; a world in which a man's labour may be directed towards his own advancement. This is largely a problem for local and national governments, but they cannot solve it alone. The labouring man knows that his living standards are affected by the living standards of other countries; the agricultural man must face the fact that he can dispose of his crops only in a worldwide market; the industrial man may find his factory idle because of inability to secure needed raw materials, or markets in other lands. These, and many other matters upon which the happiness of the individual rests, are problems which can only be solved internationally. The world has so shrunk that the loose economic and political organisation of the past, is no longer adequate to meet the needs of the day.

In a recent speech to Congress, the President of the U.S.A. defined with his habitual eloquence, the ideals we look forward to as four essential freedoms:—i.e., freedom of speech, freedom of every person to worship God in his own way, freedom from want and freedom from fear and this last freedom, he added, translated into world terms, means a worldwide reduction in armaments to such a point and in such thorough fashion that no nation will be able to commit an act of aggression against another anywhere in the world. Out of the present conflict, is growing a stronger conviction in the rightness of the League idea than ever before, a more profound belief in the need to establish an effective means for the preservation of the peace, once peace is won, and an absolute and irresistible determination to defend these principles which are contained in the Covenant of the League of Nations. As I see it, the battle of the League to-day is being fought out in Europe, Asia and Africa. The League of Nations is the concrete expression of the will to peace, of the will to secure that last freedom of President Roosevelt's once victory has been attained. It was the first great experiment, and like all great experiments it was imperfect as originally designed. It requires constant improving and perfecting, after all, all new machines are imperfect. For my part I feel convinced that the League of Nations of, let us say 1950, will bear the same resemblance to the League of 1919, as the motor car of 1942 bears to the motor car of 1900. But more important than the machine itself, is the human mind that controls it and the human will to perfect it. That will, alas, has been lacking on certain occasions in the past

but I believe it has never been stronger than it is today, never more widely and more firmly held.

What sort of life are our children going to have? Is it going to be a repetition of our own lives, with two major wars within the space of a single generation? Or is it going to be a life in which means will be found for the preservation of peace?—a peace so secure that one can achieve a life such as Aristotle contemplated, in which all are free to develop to the full the faculties with which God endowed them? To win that Greek freedom we have to show the courage and determination that the Greeks and the Russians are showing today. We must have the courage, amongst other things, to acknowledge the failures of the past and to profit by the lesson we learn from them. The *London Times* on December 5, 1940, wrote in a leading article as follows:—

“The great twin scourges which have mostly deeply touched the imaginations and seared the conscience of our generation are the scourge of war and the scourge of unemployment. For those who feel the need to think beyond the end of the present struggle, the abolition of war and the abolition of unemployment are the most urgent and imperative tasks of our civilisation. To abolish war means to create an international order in which good faith will be preserved, and in which the unchecked pursuit of national interest will be tempered by consciousness of loyalty to some wider community. To abolish unemployment means to create a social order in which the ideas of 19th-century democracy are extended from the political to the social and economic sphere—in which liberty will imply not so much freedom from interference as a chance for all; equality, not only equal access to the pooling booth and the courts of law, but equal access to the more restricted field of social and economic opportunity; fraternity, not mere formal recognition of common citizenship, but a lively sense of common responsibility for the well-being of the least fortunate.” These are the two basic problems confronting humanity today. The solution of the latter will be found by our colleagues in the Economic Conference, while I propose to devote this address towards the discussion of the larger problem of world peace and collective security and my brief association with the League of Nations Secretariat at Geneva gives me added interest in this most difficult and complex problem. All of us want law and order in the world, and to the average citizen this desire is sharply pointed, by the roar of war all around him, into a more specific demand—we want to get rid of war. Probably neither can be done without the other, and certainly international organisation is required to

accomplish either. This conclusion would be accepted by most persons; but having gone thus far, they are then faced with the question; must this international system have behind it sufficient coercive power to compel acceptance of its authority? After the experience of the last ten years, it would be hard to give other than an affirmative answer to this question; and all of history gives the same answer. Law has always been maintained by force. A nation, to-day like individuals in the past, must choose between continuous and probably incompetent self-defence against aggressors or collective action against them. In the former case it may claim complete freedom, but will probably not be able to maintain it, in the latter case, it must give up some of its freedom and sovereignty in order to secure collective support for the rights which the community agrees that its members should have. This is the explanation of law and government among human beings.

This lesson is first learned by the weak and small; the strong state learns it more slowly as is the case with Great Britain and the U.S.A., particularly when, as in the case of the U.S.A., there is added to confidence in its own might, geographic and other aids. But states in the past have felt it necessary to combine; to meet this threat others must combine; and against such combinations maintained by law, not even the most powerful and most fortunate state can stand. Even the U.S.A., which for the moment, escapes war, nevertheless, feels its impact and suffers as much as if it were in war.

The Nation State.

We have come to regard the nation state as the primary unit in international society, in the same way that we have come to regard the individual as the primary unit in domestic society. The nation sums up much of political history for five hundred years. No one can predict when this concentration upon the nation state shall have run its course. Whatever the outcome of the present war, it is unlikely that there will again be 27 independent national sovereignties in Europe, each having the right to make war, to surround itself with tariff walls and to maintain a different currency.

Nevertheless, we must continue to assume that the nation state is the unit of the world society. Any federation of such states must be flexible and capable of adjusting itself to continually changing conditions. Clearly the organisation of international society with the greatest chance of success will be that one which will assure a dynamic peace with the minimum sacrifice of

national sovereignty. As a civil community gives to the individual a security in his rights, a richness of social life and an economic surplus in which he can share, more than compensating for the freedom he sacrifices, so any future federation of nation must offer to its units political and economic security, cultural intercourse and the opportunity of a high plane of living that will more than compensate for the sovereignty sacrificed.

National governments, limited in their jurisdiction to local geographical areas, can no longer satisfy the needs or fulfil the obligations of the human race. Just as feudalism served its purpose in human history and was superseded by nationalism, so has nationalism reached its apogee in this generation and has to yield its hegemony to internationalism. Nationalism, moreover, is no longer able to preserve the full independence of the territorial integrity of nations, as recent history so tragically confirms, and individuals wherever found will be the sovereign units of the new world order. But this does not mean unrestricted national sovereignty.

Man, the source of all political authority, is a manifold political being. He is a citizen of several communities, the city, the state, the nation and the world. To each of these communities he owes inalienable obligations and from each he secures enduring benefits. Communities may exist for a time without being incorporated but, under the stress of adversity, they disintegrate unless legally organised. Slowly but purposefully through centuries civilization has united the world, integrating its diverse local interests and creating an international community that now embraces every region and every person in the globe. This community has no government, and communities without government perish. Either this community must succumb to anarchy or submit to law and order.

Governments can only be established through the deliberate efforts of men. At this hour two elemental forces are struggling to organise the international community, i.e., Totalitarianism and Democracy. The former, a recent version of repudiated militarism and tyranny, is predicated upon the principle of compulsion, rules through dictatorship and enslaves man; the latter with all its defects is a proved bulwark of the rights of man as a human being and as a citizen, derives its authority from the consent of the governed, embodies the will of free men and renders their collective judgments supreme in human affairs. The corner stone of totalitarianism is the ethnographic state, whose restricted interests define the scope of its forces. The foundation of democracy is man whose integrity is inviolable and whose welfare

is its primary concern. The motivating power of the former is violence, of the latter freedom. One feeds upon unscrupulous ambitions, the other upon an enlightened sense of obligation. One or the other of these forces will now triumph and govern mankind. If totalitarianism wins this conflict, the world will be ruled by tyrants and individuals will be slaves. If democracy wins, the nations of the earth will be united in a community of free peoples.

International peace means not merely the absence of war, but justice and order in international relations. Justice is not to be achieved by yielding to each what he demands nor by preserving for each what he has, but by submitting every controversy to a fair and adequate procedure for dealing with claims upon their merits. The problem of peace may, therefore, be approached from the political, economic, the social and the legal points of view. The desire of states to augment national power relative to others is the immediate cause of many wars. This danger will persist so long as it is not controlled by the superior power of the family of nations, properly organised, giving greater security to all. The lack of such organisation encourages the hopes and therefore the ambitions of aggressive minded governments, and sustains the popular opinion identifying the individual's welfare with the power of the state.

Of course non-aggression and sanctity of treaties are elements of peace, but they are by no means its totality. Peace must also take account of the fact that the life is essentially dynamic, that change is inevitable, and the transformations are bound to occur violently unless there are provided ways of peaceful change. Any world system is doomed if it identifies peace and morality with a mere maintenance of the *status quo*. To do this is to breed, as we have bred, the forces of revolution and revolt. Change will then assume the violent form which it always assumes under conditions which do not countenance peaceful change. There are, broadly, three different kinds of a world order which permit peaceful change: One is the League system; another is the Federal system; the third is the Voluntary system. Under the League system, we do not fundamentally alter our concept of sovereignty. We leave each state possessed of exclusive power within its domain; but we seek by treaty or covenant to bind each state, in advance, to accept such changes in its domain as may from time to time seem necessary for peace. Thus Article 19 of the League Covenant gave to the Assembly power to advise with respect to revision of treaties and change of international conditions, the continuance of which would endanger the peace of the

world. Under this system, the unit is the sovereign, and its domain is made subject to change.

The Federal system treats the individual as the unit and seeks for him a system under which he can, though availing of opportunities elsewhere, change his own status to his advantage. It does this by taking certain powers away from the existing sovereigns, and vesting them in a body which derives its authority from and has a responsibility toward, all of those affected. The powers which have broad repercussions beyond national lines, are, particularly, those over money and the movements of goods and people. Such powers the federal system would vest in a body having a base much broader than any existing nation. This would not necessarily mean free trade or unrestricted immigration or a common money. It would mean that power in these respects would be exercised by persons charged with the welfare of all concerned. The U. S. A. adopted this system successfully as long ago as 1789 and other states followed the lead. The British Commonwealth is another such example. An organisation known as the "Federal Union" was recently formed in London by Sir William Beveridge and others with the following objects:

1. To obtain support for a federation of free peoples under a common government, directly elected by and responsible to the peoples for their common affairs, with national self-government for national affairs. According to them, the Federation would control foreign policy, armed forces and armaments. It would have substantial powers over tariffs, currency, migration, communications and similar matters. It would also have power to ensure that colonies and dependencies were administered in the interest of the inhabitants and not for the benefit of any particular country.

2. To ensure that any federation so formed shall be regarded as the first step towards ultimate world federation.

3. Through such a federation to secure peace, based on economic security and civil rights for all.

Federation organises consent on the international scale while empire organises coercion on that scale. Though coercion of the part by the whole is the essence of government, in the system of federalism that coercion can only be in accord with law, to which those bound have directly or indirectly consented. World federation, balancing the autonomy of the nation state with the authority of the family of nations was the system implied by the founders of modern International Law after the break-up of the medieval empire. Organisation to make international law effective was, however, hampered by exaggerated developments of the idea of

sovereignty. A sovereign state, at the present time, claims the power to judge its own controversies, to enforce its own conception of its rights, to increase its armaments without limit, to treat its own nationals as it sees fit, and to regulate its economic life without regard to the effect of such regulations upon its neighbours. These attributes of sovereignty must be limited in the interests of the "General Will" applied to the community of nations.

Relinquishment of national sovereign powers and establishment of effective international authorities must proceed together.

The "Voluntary" system relies upon the nations which are dominant in the world to exercise their power with a sense of moral responsibility and with intelligence. It is a universally accepted doctrine that all men are of equal worth in the eyes of God, and should be so regarded by men. Also, that power should be coupled with a sense of responsibility coextensive with the power. It is practical wisdom to recognise that attempts at arbitrary restraint and the monopolization of natural advantages in the long run defeat themselves and are self-destructive. The "Voluntary" system relies upon nation's following a course upon which both morality and expediency coincide.

It is difficult at the present time to be specific, and to seek to define the best way to achieve a new world order. A new structure cannot be intelligently planned when the foundation area is still in eruption. We can only examine the principles involved, and we can tentatively explore how best to implement them. The Atlantic Charter of August 15th, 1941, may provide such a basis for discussion, but only a basis as it excludes half the world's population.

A League system, historically, has never proved long successful. Sovereign states, even though bound by covenant, are seldom willing to shirk their domains because others think this necessary for the cause of world peace. But we need not, in advance, reject the possibility of again trying a League system. For the alternatives also face practical difficulties and limitations. For example, it may be that the federal system will not operate successfully unless based upon a population which is homogeneous. If this limitation be accepted, the federal system may merely develop the world into groups which, while larger than any present nation, will still, as between themselves, be exclusive and resistant to change.

Also, it may be that we cannot confidently rely upon a voluntary system. It is a weakness of the democratic process that it tends to exaggerate short-range planning. Political leaders need to be elected, and re-elected, and the voters are neither

satisfied by the promise of things to come nor frightened by dangers which do not appear immediate. It is day-to-day factors which are too often determining. This tends to exclude true statemanship from public office. Such problems we must explore and study. But the indispensable for any progress is a clearer public understanding of the principles involved. It is never possible to achieve reforms through political devices which outdistance popular understanding. It is important that experts should be concentrating upon political formulæ which may prove adoptable to conditions we shall face. But it is more important that people everywhere should come to understand the true nature of peace and of the fact that it can be achieved only by a world order which will permit of peaceful change. With this understanding, the task of the political expert becomes a possible one. Without it, it is impossible. The organisation of peace must have back of it the force of a unifying ideal. The sovereignty of the nation-state is no longer adequate. The alternatives are world empire achieved by conquest, or some form of association, such as world federation, achieved by consent. The former cannot be a permanent or just means for organising the world for peace. Historical experience is against it. The alternative to organisation by conquest is organisation by consent. This implies a society in which nations participate through law to maintain the necessary curbs upon national sovereignty and the establish international institutions to preserve human freedom, social justice, economic progress and political security.

Collective Security.

Security, whether economic or political, results from confidence in the stability and continuity of the whole by the all or nearly of all its parts. In the present interdependent world, security both for individuals and nations, depends on confidence in the stability and continuity of the world order as a whole. The powers of individuals, groups and nations must be so limited that the function of each in the world society, and the procedures which will be used to effect changes are known in advance. Security implies the existence of a society and that implies the existence of a law. National security, therefore, depends upon a general respect for and confidence in international law, and the establishment of such respect and confidence requires a better organisation of the world community.

The experience of human history shows that political institutions do not flourish if wholly lacking the support of custom.

New institutions may establish themselves in time, if they serve essential interests, but those will do so most rapidly which avoid radical breach in continuity with the past; evolutionary changes are more likely to be lasting than revolutionary changes. Thus, institutions to improve the organisation of the world community should, so far as possible, be natural developments from those that already exist. The League of Nations is two things; it is an ideal and an institution. As an institution time has shown that it must be considerably modified. As an ideal, however, it must abide if civilisation is to endure. We have to build upon past experience. The failure and mistakes of the past should provide us a solid foundation to build upon. Everything that has happened since 1935 is a complete vindication of the principle of collective security upon which the League was based; and this principle though it may be embodied in a different expression and with machinery which will be a product of twenty years of disastrous experience will have to be the guarantee of future world peace.

All the lessons of human experience, especially of the League of Nations, point towards the necessity of an international organisation, which would reserve to itself the monopoly of the use of force, and forbid any nation the right to use force for its own purposes. The experience of the League of Nations shows—as does also, of course, that of national governments—that without proper and adequate sanctions, no law and order of peace can be established. These sanctions in the international field have been classified as positive or negative in character. Positive sanctions imply a military or police force, permanently constituted or developed and have through contribution of contingents by the members, capable of subduing the law-violator and thereby inducing him by threats or by coercion to desist from wrongdoing and to remedy injuries due to his acts. Negative sanctions imply a withholding from the law-violator of advantages which he would otherwise have received, particularly of the economic requirements essential for carrying on his aggression. The two sanctions may be combined, as in a naval blockade, which may contribute on the one hand to disarming the enemy and occupying his territory, and, on the other hand, to withholding from the enemy the materials of international trade which would contribute to his aggressions and even to his life. Positive sanctions always imply action against the law-violator's territory or armed forces, while negative sanctions may be carried out entirely by commercial or other regulations within the territory of sanctioning governments. The League had only economic or negative

sanctions which it could use, and not even these were sufficiently obligatory upon its members.

Consequently, when Mussolini, in the Ethiopian affair, threatened to make war in reply to economic sanctions, there was no answer to him. Economic sanctions can thus be completely nullified by the use of force; they cannot, therefore, hope to be effective unless backed by military force. This is the great lesson to be learned from the use of sanctions by the League of Nations. Such a military force would have to be enormous unless states were disarmed; if they were disarmed, it need not be so great. Here we find ourselves in a vicious circle; no state will disarm unless it feels that the international system can give it security; but the security will be difficult to assure until states are disarmed. It is probable, therefore, that the international military force will at first have to be composed of contingents from national armies, navies and air forces. Granted faithful support by members, such a force should be able, in most cases, to overcome any state.

Pre-requisites of World Peace.

Such a system would not be the most satisfactory one. Its chief defect would be that each state retained its own military power, thus making more difficult the task of coercing it and making more easy a combination of states which might be able to defy the joint authority of the community. It would be much easier to maintain order and peace if states disarmed. Thus we come to the crux of the problem, namely, that this involves a limitation of National Sovereignty. The minimum limitation of national sovereignty to be of any use as a safeguard for peace must embody the following propositions: The national sovereignty of each state must be so limited as to secure the safety and the well-being of the community of nations.

1. The supremacy of International Law founded on justice must be accepted as the fundamental principle of international relations. A peaceful world order cannot be established if force is held to be the only thing that counts in international affairs and if any nation, powerful enough to do so, may set at defiance every principle of justice and even its own international engagements.

2. All international differences which cannot be settled by negotiations must be submitted to some kind of third party judgment which may be either by way of judicial decision, arbitration or authoritative mediation. Nations, in other words, must renounce the claim to be the final judge in their controversies with other nations and must submit to the jurisdiction of international

tribunals. The basis of peace is justice; and justice is not the asserted claim of any one party, but must be determined by the judgment of the community.

3. National armaments must be the subject of reduction and limitation by international agreement. Nations must renounce the use of force for their own purposes in relation with other nations except in self-defence. The justification for self-defence must always be subject to review by an international court or other competent body.

4. The use of force must be restricted to action approved by the international authority. It will be recollected that under the Locarno Agreement, provision was made for self-defence in an emergency provided approval of the international authority was obtained.

5. Each of the states members of the international community must be ready to accept its fair share of responsibility for preventing and stopping aggression.

The reduction and limitation of national armaments also requires that an international authority shall have power

(a) To supervise such reduction and limitation.

(b) To protect a state which has limited its armaments from a state which has not done so.

The right of nations to maintain aggressive armaments must be sacrificed in consideration of an assurance of the security of all, through regional and world-wide forces subject to international law and adequate to prevent illegal resorts to international violence.

6. Nations must accept certain human and cultural rights in their constitutions and in international covenants. The destruction of civil liberties anywhere creates danger of war. Peace is not secure if any large and efficient population is permanently subject to a control which can create a fanatical national sentiment impervious to external opinion.

7. Nations must recognise, that their rights to regulate economic activities is not unlimited. The world has become an economic unit; all nations must have access to its raw materials and its manufactured articles. The effort to divide the resources of the world into sixty or more economic compartments is one of the causes of war. The economic problem arising from this effort has increased in gravity with the scientific and industrial progress of the modern world. For this and other reasons an international authority is essential for any scheme of world order. Its form and powers will be the subject of discussion at the peace

conference after the successful conclusion of the present war. In practice the international machinery of the League has not been very inadequate where its members have used it. In my humble opinion, the League should be taken as the basis of the new order, amended and strengthened where necessary.

Various approaches to the problem of organising the world for peace have been made in recent years. These include the following proposals among others:—

1. The establishment of an international police force and an international equity tribunal to solve respectively the problems of collective security and peaceful change.

2. A federal union of the democracies of the world providing a nucleus for gradual development of a democratic world union, such as the one proposed by Clarence Streit and Sir William Beveridge.

3. A European Union to establish government in the most difficult continent as proposed by Briand with the expectation that this would pave the way for organization of the other continents and regions.

4. Modification of the League of Nations' Covenant in the direction of regional and functional decentralisation.

5. Implementation of the Pact of Paris through a system of consultation to prevent hostilities, of conferences to adjust political and economic problems, and of "Locarnos" to stabilise the areas of greatest tension.

6. A world constitutional convention representing peoples rather than governments to frame a universal federal union.

These proposals recognise in varying degrees the problems of reconciling the need of universality with that of regionalism; the need of sufficient rigidity to assure stability, with that of sufficient flexibility to assure progress, the need of assuring cultural variety with that of developing human unity. Most of them have sought to provide for both collective security and peaceful change; for representation both of governments and of peoples; for securing the rights of both individuals and of nations.

It must be borne in mind, however, that effective world organisation in the present stage of world history requires in addition to national and local governments, which should continue to have primary legal authority within the territory of the respective states, (a) certain universal principles and institutions, (b) certain regional organisations, and (c) certain functional organisations.

A universal organisation of the nationals must necessarily be supported by internal public opinion since it cannot be supported

by external menaces. To establish the necessary universal principles and institutions all states should be invited to become parties to a pact which, in addition, should be incorporated in each national constitution thus rendering its terms at the same time international obligations between states, and obligations of individuals and governments within the states. The following obligations are suggested for incorporation in this pact; (a) An International Court with adequate jurisdiction to deal with all International disputes on the basis of law; (b) International legislative bodies to remedy abuses in existing law and to make new law whenever technical progress requires the adjustment of international practice; (c) To respect certain human rights protecting life, liberty, and the pursuit of happiness as binding international obligations and to protect the rights of minorities. The protection accorded by the Minorities Treaties to religious, racial and linguistic minorities in certain countries should be extended to all countries including India and made more effective. The persecution of the Jews and the cry of Pakistan has greatly increased the urgency of dealing with the problem.

Institutions.

The following institutions are suggested to carry out the above objects:—

- (a) A World Assembly consisting of representatives of every considerable group with a distinctive public opinion, including not only nations but perhaps also regional organisations and world-wide functional organisations.

- (b) A World Council consisting of representatives of the Great Powers and of the important political regions of the world.

- (c) A World Secretariat to study world problems and to administer the decisions of the Assembly and the Council.

- (d) A World Court to adjudicate all questions compulsorily as in the case of the optional clause.

These institutions will have power to supervise regional organisations, and functional international organisations in the fields of labour, commerce, social problems, transit, communications, health, colonies, and other matters of world-wide importance.

To summarise, adequate police forces, world-wide or regional, and world-wide economic sanctions, to prevent aggression and to support international covenants are essential. In addition, international machinery with authority to regulate international communication and transportation and to deal with such problems as international commerce, finance, colonies, health, nutrition, and labour standards with regard to all of which the successful working of the constitution of the International Labour Organisation offers valuable suggestions, are needed.

Regional Organisations.

While universality is fundamental to world peace, there may be regional variations in any plan for world society, such as the Pan American organisation. These might be formed by groups of states with the consent of the World Assembly for promoting the security and advancement of the region. Among such regions might be Europe, the Danubian or Balkan area, the Near East, the British Commonwealth of Nations, India and the Indian Archipelago, the Soviet Union, the Americas and the Far East. The constituent members of a regional organisation might differ for different purposes. Each of these regions should develop its own institutions in its own way, each should have primary responsibility for maintaining order and facilitating political changes within the region, subject always to the competence of the universal organisation in matters covered by the universal covenant. While some rules of law must apply to all nations alike, in many matters variations must be provided within the distinctive regions.

Within the framework of the political institutions enumerated, functional institutions might be established to facilitate international cooperation in dealing with problem of health and nutrition, commerce and raw materials, transit and communication, labour, colonies and social problems. These already exist in some measure in the technical organisations of the League of Nations, the International Labour Organisation, the international unions. And further development was proposed by the Bruce Report. Each of these functional organisations might be adopted to give appropriate representation to the groups in the world most interested, as well as to the nations, as has been done in the constitution of the International Labour Organisation.

The Problem of Social Justice.

Economic prosperity and Social Justice are not less important for World Peace than political security. The international

authority or the World Assembly should establish agencies, acting in the interest of all peoples to promote the freeing of international commerce with due regard for standards of labour and wages, to promote increased consumption and better distribution of the world's resources, and to deal with common economic problems such as post-war demobilisation.

An economic organisation dealing with problems of commerce, raw material, and markets is particularly important and should be developed with such competence as to assure a moderate freedom of trade and access to raw materials on equal terms for all nations. It might advise the World Assembly with respect to economic legislation and in some cases facilitate special regional arrangements on economic matters. In other words, we must make deliberate efforts to advance the federal principle of cooperation in the economic sphere. The solution of this intricate problem will have to be found by our colleagues, the economists, who are meeting today side by side with us. Suffice it to say, that if a reasonably durable peace is to be achieved some day, certain economic essentials will have to be provided for. One is economic opportunity through trade as an alternative to the alleged need to conquer territory. Another is reasonable stability in the world's economic life. A third is progressive economic development. These complex problems cannot be solved by unilateral action but only through the devices of consultations and conferences on a world-wide scale.

Colonies in an Eventual World Settlement.

Today over the vast continent of Africa and in the far flung islands of the Pacific, exist more than 500 million people whose destinies are largely controlled by Britain, France, Portugal, Belgium, the Netherlands, Japan and the U.S.A. In addition, there are another 500 million people under the domination of Great Britain in India and the Indian Archipelago. These territories contain many valuable raw materials such as tin, rubber, cotton, etc., as well as possibilities for settlement and trade. Moreover, while the rights of the native populations are undoubtedly paramount they can hardly be adequately protected and permitted to develop naturally as long as their territories are made subject to the rivalries of national interests and to commercial exploitation so conducive to conflict and war. The world wars of 1914 and 1939 may be said to be the consequences of this conflict of interests.

It is for these reasons that many informed students of the colonial problem consider that the whole continent of Africa

(apart from the Union of South Africa and Egypt) and the whole of the Polynesian Island group now under colonial administration, should cease to be regarded as projections of Western Power interests and be placed under varying forms of international administration and supervision, using the best colonial experience and that of the League's Mandates Commission as a basis.

If colonial peoples and territories are to be regarded as a sacred trust of civilization, and not the special preserve of a limited number of powers, if the open door principle is to be fully and frankly applied in these undeveloped areas, and if opportunities for participation in the administrative services of these territories are to be made available to the nationals of all states, it will be useful to see what lessons can be drawn from the experience of the League of Nations mandate system. The experience of the last 20 years supports the contention that international supervision and responsibility to an international body afford greater security than unmodified national government for the well-being of the native peoples and for the policy of the open door.

There is today widespread agreement that the basic principles which govern the League of Nations mandate system—(a) protection of native population and (b) equality of economic opportunity for all nations, should be made more effective and given wider application throughout the remaining undeveloped regions of the world, colonies and mandated territories alike. Indeed, it became increasingly evident with each succeeding year since 1920 that the *status quo* in the mandate system was untenable. Either the principle of sacred trust as administered in certain territories under League supervision was a decided improvement over the older colonial policy and hence should have been applied to other than the former German colonies, or it was a sham and should have been dropped altogether, perhaps with compensation to their former owners.

It is true, of course, that the mandatory powers claimed that their unsupervised colonies were administered on standards as generous and enlightened as those required by the League mandates. If so, there should have been no difficulty in removing any doubt, by adopting the principle of League supervision in other territories. Either an extension of the mandates system or a reversion to the old colonial policy seemed necessary if the all too frequent charge of allied hypocrisy was not to gain ground. For instance even the British have done little so far to advance native education. Answering a question in the House of Commons about Kenya government expenditure in educating European and African children, the late Secretary of State for Colonies said that

the annual amount was for European children £17, 12sh. and for African children sh. 12, 3d. per head. Yet the greater part of the taxation of the country is derived from the natives. The distribution of the government revenue as between whitemen and natives shows grave discriminations. Natives are excluded from the holding of land in the best parts of the country, restricted in the crops which they can cultivate, excluded from industrial occupations except of the lowest kind, and allowed no direct part in representative political bodies.

Suggested Proposals.

Four proposals have been made for the future of the colonies, and they are as follows:—

1. The colonies should remain under their present national sovereignties, and should not be included as a subject for federal control or supervision, but each nation in the Federation should apply itself the enlightened principles of colonial administration, with the fixed condition that there should be equal economic access for the subjects of the members of the Federation. This is the proposal of Lord Lugard and is of course unacceptable to any but the governing powers.

2. The colonies should remain under their present national sovereignties, but the principles and institutions of the Mandate system, hitherto applied only to the former German colonial territories, should be extended to all areas dependent on Federated States which are not yet ripe for self-government. This is an advance over the present system, but the responsibility to a larger international body like the Federal Council is juster in theory and likely to be effective in practice. Moreover, experience has shown that certain changes of the present system of supervision by the Mandates Commission are needed for its more efficient working; and these changes should apply either to a Federal or a League organ. The Mandates Commission itself has expressed the wish that its members should be entitled to visit officially the territories under mandate in order to obtain a clear view of the conditions, whether in peaceful times or in times of unrest. There have been occasions of serious trouble in Syria, Palestine and Samoa when, in order to form a just opinion and to be able to give helpful advice, it would have been well if one or more of its members could have inspected the conditions. The commission has also recommended that petitioners to the League should, where thought fit, be entitled to state their case in person. At present the representative of the Mandatory is regularly questioned about the

matter of the petition. But the commission has to be content with his explanation and with what it can gather from the documents. Again, the experience of recent years has indicated the need for the international body to have fuller authority to implement recommendations.

3. The colonies of all members should be administered by a federal organ responsible not only to the central Federal Council or Parliament that is to be established, but also to the League of Nations working through its international organisation on the lines of the present Mandates Commission. This is a more radical measure involving the abandonment of the national government of the colonies by their present owners, making administration of colonies a federal subject. It is objected by Lord Lugard and others that this would mean a divergence in colonial policy of the chief colonial powers and that the native peoples under British or French control, would resent being transferred to a federal administration. That this objection is imaginary may be seen from the fact that the natives of Samoa, a primitive race, when discontented with the Newzealand Mandatory, asked for direct administration of the League of Nations. It would not be difficult to evoke a sense of personal loyalty to a federal body, if once that policy was decided. As to the divergence in colonial outlook, much would be gained if the colonial powers pooled their ideas. There is general agreement on the desirability of introducing technical officers from different countries into colonial administration.

4. The proposal for the internationalisation of colonies and their administration by an international civil service, not limited to persons who are the subjects of the federal states, is made by those who look to the more radical project of the world state. Some of the considerations in favour of federal administration apply equally to this more thorough-going change. Combined federal control and supervision of the League would be a double check against any national self-seeking in colonial administration.

Through a system of international supervision and later administration, an international development fund should be created and made available for the proper development of such territories so that their progress will not be too much retarded as in Portuguese African Colonies in relation to neighbouring territories. Other colonial territories outside Africa should also be brought under a system of international supervision and administration.

In all cases where international assistance is required whether in so-called colonial regions or among more advanced but

naturally weak peoples as in India and the Balkans, the social welfare of the native populations must be the first consideration. The International colonial commission should be held responsible for the social and economic development of the territories under their charge in such a way as to safeguard the long distant future as well as the immediate interests of the native populations and those who trade with them. Moreover progress must not be regarded too exclusively in the light of Western standards. In this respect, the lessons to be learned from the policies developed by the Permanent Mandates Commission are of immense value in any future settlement of the colonial problem. The Permanent Mandates Commission has laid down in the minutes of its proceedings during 1920-'40 important standards in regard to education, health and labour and also as regards justice, native customs, religious freedom and protection against exploitation. Due provision should be made for the strict and proper observance of these standards, and safeguards should be provided against their violation.

These foregoing recommendations will, therefore, require as a minimum the following machinery for the efficient working of the principle of trusteeship of the so-called backward areas:—

(a) Continuation of the Permanent Mandates Commission with new territories brought under its supervision and with improved machinery as regards (1) the right to make enquiries on the spot, (2) easier petitioning procedure, (3) representation of the peoples of mandated areas on the personnel of the commission, and (4) utilisation of administrative officials drawn in part from among nationals of states other than the mandatory power. (b) The creation of an international colonial commission with power to exercise direct administration in certain specified territories, the class B and C mandates to begin with and others added later. The commission should also contain representatives of the peoples of the mandated areas. (c) The creation of an International Development Fund which might be administered jointly by an International Bank and the International Colonial Commission. Investments might be made both outright or in the form of grants-in-aid. (d) It should be recognised that sovereignty resides in the mandated territory itself until such time as it is considered capable of standing on its own feet and becoming full member of the organised family of nations. Suitable machinery should be devised to adjudicate whether or not a mandated territory has reached such a stage or not. In making this decision, neither the mandatory nor the mandated state should have any voice, as otherwise one becomes judge in one's own case.

The creation of the International Development Fund will be of great importance at the end of the war in order to facilitate the conversion of war time establishments into peace time activity, and to take up the shock which will result when millions of demobilised men seek normal re-employment. It may also be seen in connection with the proper utilisation of the gold supply now so largely sterilised. Finally, it will enable the prosecution of large-scale public works particularly in those parts of the world where transport and communications are so necessary for the proper development of social and economic life.

All this machinery should be designed to operate within an international system where universal and regional (continental) organisation both in the political and technical spheres would be available. The two Colonial Commissions should, however, be largely autonomous and empowered to act in specific matters without reference to superior political organs. In other words, imperialism in its present form would disappear and in its place would arise the principle of true trusteeship and guardianship. Thus a powerful economic factor causing conflict would disappear, making world peace more stable and safe. Three checks are required to prevent the abuse and exploitation of the backward people by governing powers: (1) the check of the peoples themselves; (2) the check of the Parliaments of the governing countries, and (3) the international checks. The first can only be exercised effectively if the native peoples are increasingly responsible both for the legislative and executive organisation of government. The French have advanced more thoroughly in this respect. Their colonies send elected representatives to the French Chamber and Senate; and a native of Senegambia was Under-Secretary for the colonies in France. The British have not yet contemplated the presence in Westminster of coloured representatives of British Colonial Empire, much less of an Under-Secretary of State from among the coloured peoples. There is no compelling reason why single system should be applied. It might be found best to retain some colonies under national governments if that were the wish of the peoples who have attained a status where they can choose for themselves; to place others under federal administration, subject to the supervision of the League; and lastly to place one or more territories experimentally under international government directly appointed and responsible to the League. The experiments hitherto undertaken in direct international administration are too few and too small to allow us to form a sound judgement of its value. The commission of the League which governed the Saar region for fifteen

years, and was a genuine international body, executed its difficult task with credit. The International Commissioners which have dealt with the administration of Danube navigation and similar technical matters have a good record. But in the world order, to which we are advancing, experiments of a bolder kind are called for. Any experiment of the kind must be governed by one condition, that the native peoples should in some way express their willingness for the change.

One thing is certain, we cannot hope to establish a peaceful order with an approach to world citizenship, whether by Federal Union or any other way, unless the colonising powers are prepared, in deed as well as in word, to renounce their national advantages in the governing of territories inhabited by less developed peoples, and to let people in other countries have a part with the 'haves'. We cannot have a 'federal omelette' without breaking some national eggs. The criterion of a federal or any other system of colonial administration must be its capacity to fit the native peoples for self-government as rapidly as possible, recognising that colonies are not *possessions* of the governing power, but belong to their own people and should be developed for their benefit; and that their peoples should be helped 'to stand by themselves in the strenuous conditions of the modern world' and enter the Federal Union or any other world organizations as independent members.

Conclusions.

The movement toward federation is not something new, but rather another step in that development of International Law and institutions which must constitute the essential framework of future civilization. The League of Nations successfully performed many tasks in the field of international administration, such as the regulation of communications, international health, collection and publication of statistics and treaties, supervision of mandates and many other activities; it settled many disputes and prevented some wars; but the present conflict has taught us that something at once stronger and more adjustable than the League of 1919 is necessary. National sovereignty must yield more and more to the community of nations. The world must evolve from League to federation. But just as the League grew out of the development of international law and uncoordinated international institutions, so world federation will grow out of the experience of the League, the World Court and the International Labour Organisation.

There is no alternative to the federation of all nations except endless war. No substitute for the Federation of the world can organise the international community on the basis of freedom and permanent peace. Even if continental, regional or ideological federations were attempted, the governments of these federations, in an effort to make impregnable their separate defences would be obliged to maintain stupendously competitive armaments, thereby condemning humanity indefinitely to exhaustive taxation, compulsory military service and ultimate carnage, which history reveals to be not only criminally futile but positively avoidable through judicious foresight in federating all nations. No nation, not even Germany should be excluded from membership in the Federation of the World, that is willing to suppress its military, naval and air forces, retaining only a constabulary sufficient to police its territory and to maintain order within its jurisdiction, provided that the eligible voters of that nation are permitted the free expression of their opinions at the polls. Mankind must pool its resources of defense if civilization is to endure. The President of the U. S. A. should be authorised (as was Wilson at the conclusion of the last war) to call an International Convention to formulate a constitution for the Federation of the World, which should be submitted to each nation for its ratification. Thus and thus alone can civilization be preserved and the crime of war may be suppressed by reducing to the ultimate minimum the possibility of its occurrence.

SYNOPSIS OF PAPERS SUBMITTED*

I

MEDIEVAL POLITICAL THEORIES

1

ST. AUGUSTINE AND MARX

BY

PROF. S. V. PUNTAMBEKAR,

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Primarily I shall deal with the political theory of St. Augustine (354—430 A.D.) and shall only point out some striking resemblances between him and Marx in their approach to it and in their statement of it. St. Augustine was the first writer to set forth from the Christian, not from the feudal, point of view his ideas about history, politics, religion and society to cover the facts of the new medieval world—catholic—which was succeeding the old classical world of the Greeks and the Romans.

The outstanding political and social factors of Augustine's age were the invasions and conquests of barbarians and the conflicts and conversions of Christianity and its ultimate recognition by the Roman emperors in the fourth century. There was, therefore, a crisis in Augustine's contemporary history.

St. Augustine's is an outstanding attempt to interpret this age and the factors which brought it about. He does it on a comprehensive but generalised scale in his book '*De Civitate Dei*.'

The reason for its writing was to rebut the charge that the fall of Rome was due to the new Christian religion. It was a polemic and destructive criticism of paganism and its vices in one respect. But its more important and constructive side was to state a general theory of history and of the relations of State and Church as assumed and involved in the religion of Christianity.

* Papers Nos. 4, 8, 10 and 11 from section I, Nos. 1 and 2 from section II and No. 1 from section III are being published in this number of the Journal. Some of the other papers will be published in subsequent numbers as space permits (*Editor*.)

Postulates of his theory of history.

His political theory states that the state is necessary if not desirable. Its justification is that it arose after the fall as a penalty and also as a remedy for man's sin. Its value is therefore relative not absolute. Its function is limited and subordinate to promote righteousness under the supervision of the Church. Therefore its authority is limited to the function entrusted to it and to the purpose of righteousness which guides and controls it.

He discusses the relations of the State and the Church, and limits of their activities.

His debt to early writers and philosophers. He owes many of his ideas to (1) Plato and neo-Platonism, (2) Stoics and (3) The Bible, St. Paul and early fathers.

Estimate of his theory of history and politics, defects and merits.

Similarities between St. Augustine's and Marx's thought.

- (a) Both are in search of a righteous commonwealth.
- (b) Both have a philosophy of history.
- (c) Their methods of historical approach are *a priori* to illustrate their own view of human life.
- (d) Both trace a plan and a law in historical development.
- (e) Both have a conception of two societies in eternal conflict till one is finally destroyed and the other ultimately succeeds.
- (f) The State, private property, and other institutions though historically necessary at certain stages, are evil in themselves and are to be ultimately destroyed and will not be necessary.
- (g) Both believe in Communism as the ideal condition of Society, where all are equal, where there is no state, no private property, no slavery, no ruler and ruled, but all are brothers, and there is peace and plenty and righteousness.
- (h) Both have no distinct outline of any human Society but a vague ideal of *Repubblica Christiana* or *Marxiana*.

Though ideologically different—one is an idealist, the other is a materialist—and opposed, their credology has much in common.

2

THE MORAL AUTHORITY OF THE CHURCH IN THE MIDDLE AGES: CAN IT BE REVIVED?

BY

DR. E. ASIRVATHAN,
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1. Secret of the Moral Authority of the Mediæval Church.

In spite of serious defections, the Church reached its highest moral authority in the Middle Ages. The reasons were:—

- (a) The Unity of the Church such as it has never known since.
- (b) The superstitious fear and pagan reverence of the times when the Church could call to obedience recalcitrant members by extreme disciplinary measures.
- (c) The positive accomplishments of the Church with its championship of light and learning. The deep learning and the long disciplined life of the priests opened for them offices not only in the Church but also in the State.
- (d) The acts of service and charity of the monastic orders under strict vows of poverty, chastity and equality.
- (e) Its championship of order and unity amidst the darkness and disunity around.
- (f) The glorious conception it had of its place in the world, which brightened every aspect of its work.
- (g) Its influence on the economic life of the people through the guilds which it fostered.

2. Can the moral influence of the Church be revived today?

Religion does not dominate the mentality of the people as it did in the Middle Ages. The Catholic Church thinks that unity could be obtained under it alone. However desirable such an end may be that does not seem to be practicable. The part of wisdom seems to be to work towards a federal union of Churches and religions on a basis of mutual respect and equality. The means adopted to enforce discipline should be thoroughly moral, and not

appeal to fear like that created by excommunication, interdict, and absolution from sins.

Is such a federation possible? In the past the failure to achieve anything like it was due, (1) to the fact that they were confined to a select few and the masses were left untouched, and (2) to the way tried, *viz.*, to the facile argument that all religions were alike and led to the same goal. The best way would be to emphasise the practical applications of every religion to the manifold problems of life and to bring them together on a federal platform. In this endeavour the Catholic teaching seems very suggestive. The Pope's authority is final in matters of faith and morals, in which sphere he compels obedience by his *ex-cathedra* judgments. In all other matters he exercises an indirect control through *counsels* and *directions*. Such a distinction can be wrought under the proposed federal union of the faiths of the world.

Are we ready for such a union? The fear that orthodox Catholics may object to it because it does not proceed from unity in faith is negatived by the facts that, (1) recently the Heads of the Catholic, Anglican and the Free Churches in England have issued a conjoint statement setting forth the conditions necessary for the creation of a new world order after the war, and (2) there are enlightened and progressive people in all religions who are eager to call a halt to religious bickering and use the fervour and enthusiasm which are to be found in all religions to the creation of a better world order. What is needed is only the mobilisation of their influence.

The uses of such a federation are numerous. Some of them are as follows:—

- (a) In India it can help to overcome communalism and, by bringing all together, promote mutual respect and understanding.
- (b) The moral influence and authority of such a body on great many questions of the day will be so immense that a Hitler or a Mussolini will not easily brush it aside.
- (c) It will draw a much needed line of distinction between "faith" and "work."
- (d) It will go a long way in enlightening the priesthood and, by broadening their outlook, make them more useful to humanity.

- (e) It will free the Church from the chariot wheels of the State and, by making it independent of the authority and support of the State, enable it to make a vital contribution to the new world order.

3

MACHIAVELLI ON JUST AND WISE LAWS

BY

PROF. T. K. SHAHANI,

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Machiavelli's State is man-made—the product of man's reason and passions, why should not Italy of his time attain the status of a State, when there were in Machiavelli's mind the illustrious examples of Rome and Greece of ancient times? The union of Power and Justice—this dualism—will make the State. For this purpose wise and just laws are the real foundation of the State—Examples of Rome, ancient Egypt, Sparta, Venice and medieval France—limitations on the efficacy of laws:—for a completely corrupt people a continuous vigorous enforcement (not merely persuasion) of law necessary: in these circumstances alone Machiavelli is in favour of one man's rule—Laws must be amended and their scope enlarged according to the growing needs of the State: guard against stagnation and against mere class interest as distinguished from general interest—Rule of Law: Law is no respecter of persons: the king himself is not above Law: the executive must be held responsible for all violations of law: therefore the judicial tribunal should be strong and impartial—provision against Calumny—Machiavelli's Laws are linked with Morality: Judged by his views on Laws, Machiavelli is not the creator of Machiavellism.

4

JOHN WYCLIFFE

BY

PROF. H. KRISHNA RAO, M.A.,

Maharaja's College, Mysore.

(Published in this number pp. 372—379)

5

MACHIAVELLI'S DEBT TO KAUTILYA

BY

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In this paper an attempt has been made to compare the chief views of Nicolo Machiavelli (1469—1527) and Acharya Vishnugupta (more popularly known as Chanakya or Kautilya) who guided the destinies of Magadh for a number of years, more than eighteen hundred years before Machiavelli was known to politics.

The paper narrates the historical background in which Machiavelli was born, the practical work he had done at the court of the life president of Florence, and his subsequent expulsion from office, all of which contributed to his mental make-up as gleamed through his writings, *The Discourses* and *The Prince*. The latter was his present to Lorenzo Di Piero De Medici from whom the author expected favour in order to regain his official position. *The Prince* idealizes Cæsar Borgia as a ruler. A comparison is then made with Kautilya's circumstances, how he guided the destinies of Magadh as the chief adviser of King Chandra Gupta Maurya for whom the former wrote his celebrated work the *Arthashastra* which deals with all aspects of the art of government, beginning with the duties and daily life of the King to the minutest details of administration. Both Kautilya and Machiavelli represented the types of thinking of their ages. Both were staunch supporters of strong monarchy. And while Machiavelli was concerned with only practical problems of government and how the Prince should handle them, Kautilya dealt with these as well as the principles which should guide the King in his activities as the ruler of men.

While both thinkers adopted the historical method, rejecting largely theoretical considerations, Kautilya did pay enough consideration to the aim of life and, therefore, did not reject ethical considerations in the formulation of policies or the basing of administrative behaviourism. Machiavelli had no regard for ethical principles unless these served the purpose of the Prince, whereas Kautilya was definitely concerned with the three-fold objects, *Artha*, *Dharma* and *Kam*, of which he gives to *Artha* the first place, for, according to him, the other two depend on *Artha*.

Machiavelli views human nature only in its highly mean aspects, whereas Kautilya, although requiring the ruler to be ever vigilant even about the loyalty and character of his nearest advisers, does attribute nobler qualities to men. To Machiavelli, religion had no interest, but Kautilya enjoins on the ruler to respect religion and appoint as his Priest the person well versed in the Vedas, the Angas, etc.

Machiavelli would not care for the means so long as the end was achieved, but Kautilya rejects ignoble means although he suggests adoption of crooked methods in watching the course of administration. While Machiavelli wishes the Prince only to avoid hatred, Kautilya requires the ruler to "endear himself to the people by bringing them in contact with wealth and doing good to them." While Machiavelli asks the Prince not to care for reputation or liberality and not to fear the reputation of being mean, Kautilya definitely advises the King that he should "avoid not only lustfulness, even in dream, but also falsehood, haughtiness and evil proclivities; and keep away from unrighteousness and uneconomical transactions." Both stand for the institution of the Council of Ministers—Kautilya actually put his scheme into operation while Machiavelli died before realising his ambition of getting into office. While Machiavelli exercised considerable influence on later European thought, the writing of Kautilya not only influenced political thinking but also were held out as the best and the most scholarly treatises on polity.

It is then shown that while both possessed the art of literary writing, Kautilya, due to his great scholarly achievements, was head and shoulder above the Florentine. In conclusion, it is shown that although writers on political science consider both as counter-parts of each other, Kautilya was a giant and Machiavelli only a dwarf. Much of the views of Machiavelli appear to have been based upon a knowledge of the writings of Kautilya whose fame had travelled to the West through Greek contact with Magadh.

6

MACHIAVELLI AND MACHIAVELLISM

BY

PROF. M. V. KRISHNA RAO, M.A.,

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The meaning of the term—Machiavelli a child of the times—His vision of a perfect state. Machiavelli's problem of reconciling

the dualism of power and justice—His theory of power—the three evil counsels in *The Prince*—extenuating circumstances—the chief weaknesses of his system—estimate.

7

MORALS, POLITICS AND MACHIAVELLI

BY

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This paper examines, on the basis of Machiavelli's writings, the two questions: (1) Can a political action be morally wrong? (2) How far did Machiavelli separate politics from ethics? It is argued here that the first question is badly posed, inasmuch as the subject-matter of the two sciences is different; and, as regards the second, that the separation effected by Machiavelli has been over-estimated because he did not completely get away from the attitude of judging political actions from the moral angle.

8

THE POLITICAL SIGNIFICANCE OF THE DOCTRINE OF TAUHID IN ISLAM

BY

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9

THE NATURE OF ISLAMIC POLITICAL THEORY

BY

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Islam is not only a religion or a name for beliefs or certain forms of worship, it is, in fact, a way of life, a complete code for

the guidance of the individual's entire life—from the cradle to the grave, and from the grave to the yonder world. Islam is all-embracing in its nature and affects all aspects of human activity—a transformation of the individual, of the family, of the society, of the people, of the country and of the humanity; an awakening, material, intellectual, moral and spiritual; and an attainment of the highest pinnacle of civilisation from the lowest depth of degradation. In Islam, state, *millat*, *Imam*, individual and government cannot be treated of separately; again the various aspects of man's life, social, political, religious and economic cannot be isolated in water-tight compartments. It is not possible to retain Islam as an ethical ideal or to reject it as a polity. It is both—an ethical ideal plus a certain kind of polity.

Philosophically speaking, Islamic Political Theory is normative in its character. It deals with a specific ethical ideal. The chief formative factor in the life-history of Mussalmans is the ethical ideal that Islam puts forth and a definite type of polity that it establishes. Islam sets forth a standard of conduct, 'enjoin right and forbid wrong.' The end, therefore, is the perfection of humanity. In Islam the individual and society both have the same end—to obey the will of God by enforcing the law of God. Islamic Political Theory is concerned with the specific ethical ideal—the raising of humanity to the highest well-being. The life of Islam has a peculiar cultural force, and is distinguished by a complete organization and a unity of will and purpose in the *millat*. Thus, Muslim society achieves its remarkable homogeneity and inner unity under the pressing influence, of the laws and institutions associated with the culture of Islam.

Islam postulates a universal polity founded on fundamentals or the first principles revealed to the Prophet. It was the Prophet's religious experience which created a distinct social order. It was again this social order that developed into a polity with implicit legal precepts, whose civic significance can be determined from the fact that they were revelational. The religious ideal of Islam is organically related to the social order and the social order to the Islamic polity. Islam is not a church; it is an organised life conceived as a contractual organism, long before Rousseau thought of it, and animated by an ethical ideal which regards man as a spiritual being possessing rights and duties under a social mechanism. The Islamic State is the state of Almighty God. The sovereignty of Allah extends to the entire universe, the whole humanity, and all organizations. What is the position of the Mussalmans in the State of God? They are called

the best people created to act as His *Khalifa* on earth. They are the leaders of the rest of humanity. The Mussalmans being the best *millat* and guide are directed to strive hard to achieve this ethical ideal for which Islam stands.

The idea of sovereignty in Islam is one of the most prominent factors of Islamic Political Theory.

The first principle of Islamic polity is that the *Amir* and the *millat* are both deprived of making legislation in order to preserve their liberty, which is ensured by the Divine Law. The *millat* is to submit to the Apostle and the *Amir* because they proclaim and enforce the Divine commandments as his agents or deputies. Thus, the supremacy of the Divine Law is one of the fundamental tenets of Islamic polity, and the *Amir* as well as the members of the *millat* have to submit to the *shariat* for their guidance considering it as the will and command of Allah.

The Muslim millat is a politico-religious unity.

The *Amir* will carry on the administrative work with the help of a *Majlis-i-Shura* (Consultative body). This body must, in any case whether selected or elected, enjoy the confidence of the *millat*. The *Amir* is not bound to accept their advice, if he thinks their view is contrary to the Divine Law. There cannot be any party system—no question of majority or minority in the *Majlis*. The constitution of the Islamic State is written and rigid. It cannot be amended or modified. It is fixed for all times and can be adapted to all conditions of life.

10

THE PLACE & IMPORTANCE OF MARSILIUS OF PADUA, IN MEDIEVAL POLITICAL THOUGHT

BY

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11

THE POLITICAL THEORY OF MYSORE AS A DEKHAN POWER (1700—1800)

BY

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12

PLACE AND IMPORTANCE OF DANTE ALIGHIERI IN THE HISTORY OF MEDIEVAL POLITICAL THOUGHT

BY

PROF. INDRA DATTA SHARMA, M.A., and NAND LAL, M.A. (Final),

D. A. V. College, Lahore.

The purpose of the paper is to estimate the place and importance of Dante's political philosophy in the history of the medieval political thought.

It begins by examining the conditions prevalent in Europe and their influence over Dante's political conceptions and goes on analysing his political philosophy.

It examines the solution suggested by Dante for the problem facing Europe at the time.

Further it considers his conception of the relations of state and church.

The paper concludes with determining the place of Dante and whether his philosophy could present a solution for our own problem of the present day.

13

KAUTILYA'S THEORY OF STATE

BY

MR. JAGDISH CHANDRA SHARMA, M.A.,

Research Scholar, Lucknow University.

Kautilya, like various other ancient thinkers of Hindu Polity, also thinks that the state is the result of Matsya-Nyaya or the

logic of the fish prevalent in the society. When the people find this state of nature as unbearable and inconvenient, they abandon it through the agency of a contract. The contract is made with a man to whom they surrender all their natural rights and who becomes responsible for the protection of life and property and gets in return taxes and obedience from the people. Thus it is a social contract made by the people with a man who is selected to be their sovereign. The powers of the sovereign are, however, limited in many ways. They are: (1) The peoples voice in choosing their king. (2) The preliminary qualifications prescribed for a king. (3) The King's dependence on his Ministry; and (4) The prosecution of the Government according to the Shastras. If King overlooks these limitations and acts arbitrarily, he is to be removed. The Governmental authority, if it is to be legitimate, must rest on the consent of the Governed. The justification of the state lies in the regulation of human conduct and purging of the vices by compulsion or coercion if necessary. For a happy and prosperous life the existence of state is essential. The ends or functions of the state according to Kautilya are: peace, progress and preservation.

II

CONSTITUTIONAL DEVELOPMENT AND CONSTITUTIONAL LAW OF BRITISH INDIA

1

AGREEMENT AS A PRE-REQUISITE OF INDIAN CONSTITUTIONAL DEVELOPMENT

BY

PROF. M. VENKATARAMAIAH, M.A.,
Andhra University, Waltair.

(Published in this number pp. 405—414)

2

SHOULD THE INDIAN LEGISLATURES HAVE ANY POWER OF RETROSPECTIVE LEGISLATION?

BY

PROF. D. N. BANERJEE,
*Head of the Department of Political Science,
University of Dacca.*

(Published in this number pp. 391—404)

3

THE TYPE OF EXECUTIVE SUITED TO INDIA'S CONSTITUTIONAL DEVELOPMENT

BY

PROF. N. S. PARDASANI,
Elphinstone College, Bombay.

Recent events have served to emphasise the advisability of reconsidering the question of the type of executive best suited to Indian conditions. So far, the general trend of thought has throughout been so over-whelmingly in favour of the parliamentary executive that the other types have not had any chance of serious discussion at all. Even such important bodies as the Simon Commission and the Joint Parliamentary Committee of 1933 did not give the question more than a passing recognition.

II

The working of the new constitution in the provinces has shown that judged by the criteria of stability of tenure, unity of action and smooth relations with the legislature, the parliamentary cabinets have, on the whole, proved a success; but they appear to have foundered on the rock of the question of Communal Minorities. Those who have levelled criticism in this regard against the Governors or against the Congress have not realised the absurdity of reconciling joint responsibility with a fair share of offices to minorities when the latter were returned on communal electorates, had reserved seats with appropriate weightage and had organised

themselves on frankly communal lines. While it is possible that a more generous treatment of the minorities by the Congress in the matter of admission to office might have put the former in a better frame of mind, it would be a mistake to look upon Coalitions as providing any permanent solution of the problem. A plea for coalition ministries is at best an appeal to the party in power; and as long as the parliamentary type of executive is retained, and the rule of the majority party in the legislature is given constitutional sanction, the formation and continued functioning of Coalition Ministries would depend largely on the sweet will of the majority party. Further, Coalitions do not only make for weak government but, under the present methods of composition of the legislature, will lead to intensification of Communal feeling. A new type of executive, outlined below, has greater chances of success.

III

The Council of Ministers in the provinces should be *elected* by the legislature *as a whole*. The Governor should assign appropriate number of seats in the Council to each *party* (not community) *in proportion to* its strength in the legislature. The tenure of the ministry should be *fixed* at three to four years. The Ministers should continue to be members of the legislature. The chief merits claimed for this scheme are: (1) that a ministry representative of all parties in the legislature would be formed and would not be, either for its introduction or for its continuation, at the mercy of the majority party; (2) that it will not give any *permanent* recognition to *communal* divisions in the Cabinet; (3) that it will not be easily amenable to domination by a Single All-India party; and (4) that fixity of tenure will conduce to stability of administration and to freedom from preoccupation with the 'management' of the legislature.

Three main objections against the scheme are anticipated: (1) that it will make for weak government; (2) that it will lead to disharmony between the executive and the legislature; and (3) that it may not satisfy the aspirations of the minorities. It is shown that the government will be definitely stronger than a Coalition Ministry; that provisions could be made to minimise the chances of friction with the legislature and that this scheme will offer to the minorities a more satisfactory guarantee of share in offices, than they can get even under the scheme of Coalition Ministries.

4

RESPONSIBLE GOVERNMENT IN INDIA: PRESENT AND FUTURE

BY

PROF. BENOYENDRA NATH BANERJEE,

Calcutta University.

The paper is concerned with analysing the implications of ministerial responsibility in the future. The discussion in the Commons of the proposal to have a Prime Minister in 1935 and the observations of Messrs Churchill and Amery, are noted. Though swearing by British analogies, only certain aspects of the British system had been reproduced, while keeping the leading-strings in the hands of the "Authorities." The analysis leads to the conclusion that responsible government, as introduced by the Act of 1935, has been so hedged about with reservations that 'responsibility' was bound to become a difficult plant to be nurtured; and further, both the surrounding climate and the Indian soil proved inhospitable.

In the background of recent reactions certain suggested alternatives are considered. (1) The 'non-party' or coalition government proposal, mainly to accommodate the Muslim League, (2) composite Executive proposals repudiating British model by Srinivasa Iyengar, Dr. Reddy, Dr. Latif, etc.; (3) Proposals for a division of governmental functions and creation of communal guilds made by Dr. Percival Spear.

The paper concludes with suggesting certain lines of approach modifying the Spear proposals and taking into account the proposals for international federal co-ordination after the war, and the developments in federal practice in U.S.S.R.

5

MAKING DEMOCRACY SAFE FOR INDIA

BY

PROF. D. G. KARVE,

Poona.

Recognising that the communal and religious heterogeneity of India coupled with a strong feeling of communal consciousness

Bombay. It would be indispensable if the system of joint electorates with a reservation of a majority of the seats for Muslims is introduced in Bengal and the Punjab.

8

INDIA AND 'DOMINION STATUS IN ACTION'

BY

MR. SUSHIL CHANDRA SINHA, M.A.,

Research Scholar, Lucknow University.

Lord Curzon's Declaration. The Montagu Report. For the first time an Act of Parliament clearly mentions the goal of British Policy in India.

However, it is not long before doubts are seriously entertained whether the implications of responsible government are the same as those of Dominion Status. Sir Malcolm Hailey's statement in the Central Assembly creates bad impression towards British intentions in India. India is unanimous in her demand for Dominion Status. The Nehru Report accepts it. Lord Irwin is compelled by force of circumstances to declare in 1929 that the natural course of India's constitutional progress is the attainment of Dominion Status. The Viceregal pronouncement is hailed as the dawn of a new era in Indian politics. Responsible British statesmen like Mr. Wedgwood Benn declare, that India is enjoying 'Dominion Status in Action.'

The political situation in India is again disturbed. The Statute of Westminster and its effect on India. Some British statesmen declare that Dominion Status of the Westminster variety should never be applied to India. The deliberate omission of a Preamble to the act of 1935 confirms Indian suspicions and explodes the theory of 'Dominion Status in Action.' Professor A. B. Keith, Mr. C. R. Attlee and Colonel Wedgwood condemn the unwarranted omission of the Preamble.

The unanimous opposition of Indian public opinion to the deliberate omission of the Preamble forces Sir Samuel Hoare to change his ground. Finally Lord Linlithgow, while addressing the Orient Club at Bombay on January 10, 1940, reassures India of full Dominion Status and that too of the Statute of Westminster variety. Mr. L. S. Amery declares in Parliament that the issue of

Dominion Status has now passed outside the field of controversy.

The international situation has changed the whole aspect of Indian politics. Now Indians do not want Dominion Status as a distant goal. What is wanted is 'Dominion Status in Action.'

The views of Ramsay Muir, J. A. Williamson and Nawab Yar Jung about sovereignty of British Dominions. All the characteristics of a Dominion constitution are non-existent in India. The provisions of 1935 Act relating to provincial autonomy amply shows the limitations put upon provincial legislatures. No control over Imperial services, the pivot of administration.

The federal scheme strikes at the root of responsible government. Dyarchy already discredited in the provinces will now be introduced at the centre. The Viceroy will still monopolize most of the functions of the Central Government. Indians will be in charge of minor departments such as the Post Office and the Radio. Communal Award will vitiate the entire administration. Does all this constitute 'Dominion Status in Action?'

As regards the present state of affairs, the whole situation is most disappointing. What to say of 'Dominion Status in Action' even provincial autonomy is at stake. The August offer certainly marks a change—a change not in the constitution but in the personnel of the Viceroy's Council. The distribution of the portfolios explodes the whole theory of 'Dominion Status in Action.' Major departments like Finance, Defence, etc., still belong to the British members.

In conclusion, we can say that the only course left to the British Government is to take a step forward towards defining British designs in India. Delay on its part will only complicate matters and will give a fillip to the demands of extremist politicians who declare that Dominion Status is nothing but mere provincial status. The policy of jingoism proved disastrous in the New World and alienated catholic Ireland. "A cup of tea broke the British Empire." (Lord Acton.) "India is the last and the most important citadel of Imperialist jingoism, we can therefore understand how painful it must be to the representatives of this class to renounce their domination, but that is the way of saving the Empire." (Sir P. S. Sivaswamy Aiyer.)

PARAMOUNTCY UNDER THE NEW CONSTITUTION (1935 ACT)

BY

MR. R. P. BHARGAVA,
Lucknow University.

The Paramountcy of the British Crown in India is a fact not open to challenge. According to the Indian States Committee the 'Paramount Power' means 'the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain.'

The Paramount Power has defined its authority and right to intervene with no uncertain voice on many occasions, e.g., Baroda case, Manipur case, etc.

The Indian States delegation attached fundamental importance to the clear definition of Paramountcy at all the three Round Table Conferences in England.

In constituting the Federation the Act does not derogate from the Paramountcy of the Crown. Under the Act all powers relating to the States exercised in the past on behalf of His Majesty by the Governor-General in Council, are to revert to the Crown. The functions of the Crown in connection with British India and the Federation are to be exercised by the Governor-General while the functions in connection with the States are to be exercised by 'His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian states.'

The more serious is the position with regard to defence and Paramountcy. It is evident from Section 286 that by the transfer of Defence to the Federal authority, the Crown Representative would virtually cease to be able to fulfil the obligations of Paramountcy in affording protection to the States. That authority will remain with the Federation to whose forces the Crown Representative will have to appeal in order that he may be put in a position to fulfil his obligations to the States. Thus in effect the present Scheme has created for the Princes a dual Paramountcy, the Paramountcy of the Crown and the Paramountcy of the Federation.

SECOND CHAMBER IN BENGAL

BY

DR. N. C. ROY,
Calcutta University.

When the unicameral legislature constituted under the Act of 1919 had been at work for half a decade, the vested interests became anxious to see that in any new scheme of government for the province the legislature is bi-cameral.

Not merely the landed and commercial interests but also a few politicians who believed that in the new dispensation the popular chamber would be over-weighted in favour of some particular community became advocates of a revising chamber which would be a check upon the communal vagaries of the first.

The Legislative Council actually established under the Act of 1925 is, however, so composed as not to provide any real protection against those decisions of the Assembly which involve either economic or communal injustice.

It should be emphasised that the upper house contains representatives of the different communities more or less in the same proportion as the lower chamber. In all communal questions the two houses naturally see eye to eye. The Calcutta Municipal Bill for instance which was adopted by the Assembly in the teeth of Hindu opposition was also passed by the Council.

An analysis of the membership of the Council shows that although some independent members with rather conservative views have found it possible to be returned, they have no real influence upon the decisions of the house. The parties which have a majority in the Assembly and decide its policy have also together a comfortable majority in the upper house. The result is that whenever any radical legislation involving any injustice to any particular Indian interest has been undertaken, the Legislative Council has been of no protection to it.

In respect of drafting defects in bills also, the Council has not proved a very efficient revising Chamber. Acts passed recently have required repeated amendments for the rectification of drafting defects.

But while the Legislative Council has belied the hopes of those Indian interests which had advocated its establishment as a revising chamber, it has proved very active as a deliberative body. In the number of resolutions moved, in the number of questions asked and in the number of bills which private members have introduced one may notice considerable activity on the part of the Council. But it was not primarily for such work that the Council was set up. Besides it is doubtful if much of this deliberative activity is not a mere duplication of the efforts of the Assembly and as such of not much use.

The writer is not exactly prepared to say that the Legislative Council has been altogether useless as a legislative chamber and is a mere fifth wheel in the carriage. But still if it is to justify its existence, both the members of the Council and the Government will be required to pay more attention to it.

11

CIVIC RIGHTS OF WOMEN IN BRITISH INDIA

BY

MR. P. N. KHERA, M.A., LL.B.,

D.A.V. College, Sholapur.

Beginnings of the women's movement in India in the early years of the 20th century.

Effects of the war (1914—18) and the suffragist movement in England in giving an impetus to the movement.

Mr. Montague's visit, Women's deputation waits on him. Attitude of the Indian National Congress and the Muslim League favourable.

Provisions under the Act of 1919. Defects and criticism of these provisions. Women's organisations, their aims and agitation. Recommendations of the Statutory Commission regarding female Franchise. Views of the central and provincial governments. They were all opposed to extension of the franchise.

The R. T. C. and the sympathetic attitude of Mr. Ramsay Meedonald.

Discussion of the problem, 1932 to 1935. Women opposed to communal electorates. Franchise under the Act of 1935.

Criticisms of the provisions under the Act of 1935.

12

THE WORKING OF THE LOCAL BODIES IN THE U.P.

BY

MR. SUSHIL CHANDRA SINHA, M.A.,

Research Scholar, Lucknow University.

The present age is an era of specialization and is more concerned with efficiency in every department of human activity. The policy of decentralization has proved a failure everywhere. Barring a few countries like Switzerland and Britain, the results have been almost identical in all places. The people of these two countries have a consciousness of common interests and are ready to sacrifice their time for the public good. On the other hand, our city fathers consider it a burden to attend the meetings of the local bodies.

~~It has now become conventional~~ to speak highly of the local self-government. Everywhere we find reference to Lord Bryce's statements on local government.

The brilliant statements of the learned Viscount are, however, inapplicable here. Local Bodies give local citizens a sense of narrowness of outlook. They always look to their selfish interests. We have seen similar results in the United Provinces.

"Permit me to say the man in the street has no confidence in the working of the local bodies." (Chodhri Triloki Singh). The result of the whole system is party feeling, nepotism, corruption with loss of economy and efficiency. "Attend to the members first and to the work afterwards, seems to be the motto of some of the most successful officers of the boards." (The Rani of Sherkot). The report of the U. P. Local Self-Government Committee and the recent government Resolution on the subject confirm all this. Under such circumstances, it is the duty of the proper authorities to curtail the powers of the local bodies as far as possible and to make them, if possible, advisory bodies. Control of larger cities should be in the hands of central or provincial government. The resolutions of the Mayor's Conference at Colombo about police rights and Mayor's Charter failed to see the spirit of the times. In the age of centralization the Mayors still

think of decentralization. Primary education should be taken out of local hands. The higher officers of the boards should be selected by the Public Service Commission. Strict measures should be taken with regard to no-confidence motions, embezzlement cases and neglect of duty.

In short, efficiency should never be sacrificed in the false name of civic rights. Democracy becomes an illusion if it does not pay due regard to the welfare of the citizens. The interests of the citizens should be paramount and no consideration whatsoever should be allowed to change this fundamental order. If local institutions instead of serving the cause of the people become arena of party politics, it is the express duty of the Government to take drastic steps against them. The Government should not tolerate any interference, internal or external, in the affairs of the boards. Only then there is any hope of the successful working of local bodies.

13

HOW FAR ARE THE PROCEEDINGS OF LEGISLATIVE BODIES PUBLISHED WITHOUT THEIR AUTHORITY PRIVILEGED IN INDIA?

BY

DR. J. N. KHOSLA, B.Sc., Ph.D. (Econ.) LONDON,
Barrister-at-Law, University Reader in Political Science, Lahore.

An attempt is made in this paper to analyse the law relating to the publication of legislative proceedings without the authority of the respective legislative bodies. The implications of Sections 28 and 71 of the Government of India Act 1935, have not been fully realised as was shown by the Ruling on the subject by the Speaker of the Indian Assembly on the 27th of February 1936. The Law in India and in England is substantially the same. Fair and accurate reporting without malice, of legislative proceedings, unless otherwise specifically ordered by the House concerned, is privileged in India as in England. That the legislatures in India unlike those in England cannot effectively enforce their privileges, is no argument to disprove my thesis.

14

PRIVILEGES OF MEMBERS OF THE LEGISLATURES IN INDIA IN MATTERS OF FREEDOM FROM ARREST

BY

MR. L. R. SETHI,
Lahore.

Definition of Privilege.

The Position in England. Privileges based partly on statutes and partly on the decision of the Law Courts. Only one specific statutory privilege—the freedom from arrest for civil causes. The position in India: different legally and politically. Freedom from arrest for civil causes granted by Legislature Members' Exemption Act 1925. Present position embodied in Section 71 of the Government of India Act, 1935. No specific mention with regard to freedom from arrest not already enjoyed, made in this section. Sub-section 2, however, states: "The Privileges of ~~members of a Chamber of a Provincial Legislature~~ shall be such as may from time to time be defined by Act of the Provincial Legislature and until so defined shall be such as were immediately before the commencement of this Part of this Act."

Before 1935 in response to specific situations arising out of arrest of members, freedom from arrest claimed by the non-official members of the Central Assembly in 1923, 1935 and 1940.

After 1935 freedom from arrest of members of the Legislatures claimed in the Punjab, and in Bengal in 1937 and 1938 respectively. Situation arose out of the detention members in the Punjab and in Bengal. In the Punjab adjournment motions for claim of freedom from arrest defeated. In Bengal a resolution moved by the Hon'ble Mr. Abdul Rehman Siddiqi resulted in the institution of the Committee of Privileges. Subsequent crystallization of the report of this Committee in the form of a bill at present before the Legislature.

The Bill proposes, *inter alia*, in clause 10 the freedom of movement:—"Every member of the assembly shall have freedom of movement in his constituency or any other place within the province for the purpose of discharge of his duties as member unless he is arrested, detained or imprisoned or otherwise dealt with on a criminal charge or in a criminal proceeding."

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SYNOPSIS OF PAPERS SUBMITTED

And in clause 7 the demand of information of arrest in criminal cases, "If any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, information of such arrest, detention, conviction or imprisonment together with the charges against such member shall forthwith be sent to Mr. Speaker by person or persons under whose authority or order the arrest, detention, conviction or imprisonment is effected."

Conclusion.

For India as a whole only freedom from arrest in civil cases, but in Bengal the privilege of receiving information regarding arrest even in criminal cases claimed by the Speaker in his ruling of 1938. Suggestions.

15

THE SECOND CHAMBER IN THE U.P.

BY

MR. L. P. CHOUDHRY, M.A.,

Research Fellow, Lucknow University.

In this paper an attempt is made to show that the case for a Second Chamber in U. P. is a very weak one.

The paper gives a short historical background of the establishment of a Second Chamber in U. P. The question of the establishment of second chambers in provinces was raised at the time of the Montague-Chelmsford Reforms.

The paper also suggests alternatives to meet the points advanced by the advocates of a Second Chamber.

The writer has tried to show that the Upper House is too expensive for the province. After examining the revenue and the expenditure of the province he cannot, on economic grounds, advocate the establishment of a Second Chamber in U. P.

The case for a Second Chamber has become still weaker when we consider the special powers of the Governor under the Act of 1935.

The working of the Second Chamber in U.P. has not proved to be an effective check on the Lower House.

But the writer is not prepared to accept the views that it is altogether useless as a legislative body.

16

AUTHORITY OF A SPEAKER IN RELATION TO
A CONTUMACIOUS MEMBER

BY

MR. PRAN NATH MALHAN, M.A.,

Research Scholar, University of the Punjab, Lahore.

(a) Procedure in England and other countries.

(b) Authority of a President in the Montford Regime.
Views of the various Presidents.

(c) Modification effected in the position by the Government of India Act, 1935.

(d) An issue raised in the Punjab Legislative Assembly on the 16th January 1939, whether the chair could employ force in expelling a member named by it. Examination of the legal position in light of that

(e) The appointment of a Marshal and his deputies in Punjab. The expedience and propriety of instituting that office in Indian Legislature.

(f) Conclusions.

17

THE NATURE AND COMPOSITION OF THE PROVINCIAL
EXECUTIVE IN THE PUNJAB

BY

MR. AVINASH SHARMA, M.A.,

Lucknow University.

There are more than two opinions in the country as regards the nature of the Provincial Executives in the Punjab, according to the different declarations made by the Punjab Government in *Indian Information Series* published by the Director of Information, Government of India. It was the formation of a coalition ministry of the Unionist, National Progressive and Khalsa National

THE AUTHORITY OF A SPEAKER TO DECLARE A BILL ULTRA VIRES

BY

DR. J. N. KHOSLA, B.Sc. (Econ.), Ph.D. (Econ.) (London),
Barrister-at-Law, University Reader in Political Science,
Punjab University, Lahore.

The position in the Dominions, U.S.A.

Division of Legislative authority in India under the Government of India Act, 1935.

Question arose in the Central Assembly in year 1937 whether the President could declare a bill to be *ultra vires* of the Assembly. The issue being raised by the Leader of Opposition in connection with the Manoeuvres Field Firing Artillery Practice Bill. The ruling of Sir Abdur Rahim of the 7th October, 1937.

Similar case arose in the Central Assembly with respect to a clause in the Motor Vehicles Bill of 1937. Mr. Satyamurti's ruling that the bill could declare an obviously *ultra vires* bill or a section of it as invalid and refuse it to be moved before the house.

The analysis of the constitutional position in India shows that the speaker can decide points of order arising only out of procedure, and is not within his rights to declare a bill *ultra vires*. The legislatures are competent to pass a bill or reject it, but the power of declaring any legislation *ultra vires* rests only with the courts.

III

ECONOMIC ACTIVITIES OF THE STATE

BY

DR. V. SHIVA RAM AND DR. B. M. SHARMA,

Lucknow University.

(Published in this number pp. 384—390)

parties; then a radical change in its policy that it was Unionist in principle but coalition in personnel; another marked change in its character that it was purely Unionist both in complexion and personnel.

The bogey of complete representation of all the communities in the ministerial cabinet; activities of the ministry contrary to the parliamentary system. Composition of the Unionist Government in the Punjab and the Congress Government in U.P., based on identical lines, though under dissimilar tactics.

Change in the avowed creed of the Unionists through the influence of the ulterior political forces; changing tactics to justify, establish the expenditure for appointment of the Parliamentary Private Secretaries.

THE INDIAN HIGH COURTS AND THE WRITS OF CERTIORARI AND PROHIBITION

BY

MR. A. K. MUKHERJEE, M.A.,

Research Scholar, Department of Political Science,
Dacca University.

In this paper I have examined the nature and extent of the power of the High Courts in India to issue the writs of certiorari and prohibition.

I have, first of all, explained the objects of these writs as they are issued by the High Court in England.

In the second place, I have shown, with reference to certain decisions of the High Courts in India as well as a ruling of the Privy Council, that the power to issue these writs has been inherited by at least some of Indian High Courts from the Supreme Courts.

In the third place, I have pointed out the present anomalies which are disclosed by the cases decided by the High Courts and the Privy Council.

Lastly, I have made out a strong case for a comprehensive legislation in this matter, and suggested the lines on which such legislation should be passed.

THE INDIAN POLITICAL SCIENCE ASSOCIATION

NOTICE

The New year of the Association began on January 1st, 1942. Kindly send your Annual Subscription of Rs. 10/- (by cheque Rs. 10/4/-) at your earliest convenience. The life-membership fee is Rs. 100/- and I shall be glad if you will agree to become a life-member by sending me a cheque for Rs. 100/4/-. In case your subscription is not received before the 31st March, 1942, the constitution of the Association requires that the next issue of the Journal be sent per V.P.P. Please note and send the subscription as early as possible.

The Fifth Conference of the Association will be held at Madras either at the end of December, 1942, or early in January 1943 (the exact dates will be announced later) under the Presidentship of Principal Gurmukh Nihal Singh.

The subjects for discussion shall be:—

- (a) Socialist Theories and their applicability to India;
- (b) Functional Representation;
- (c) Types of Executives; and
- (d) Constitutional Development and Constitutional Law of British India since 1935.

Papers not exceeding 10 typed foolscap pages should reach Principal Gurmukh Nihal Singh, H. L. College of Commerce, Ahmedabad, before November 10th, 1942. A brief synopsis should accompany the paper and both must reach Ahmedabad before the 10th November. This is most important.

Members are requested to write papers and make it a point to attend. It may be noted that papers which do not fall within the scope of the subjects selected and which do not reach Ahmedabad, before November 10th, 1942, will not be accepted. The Indian Economic Conference will also be meeting at Madras and the sessions will be so arranged that persons can attend both the Conferences if they so desire.

A member of the Association can attend the Conference without making any extra payment. Non-members can attend the Conference, read papers and participate in discussions on payment of a fee of Rs. 5/-. Bonafide students can attend on payment of Rs. 2/- only.

All those interested in the study and advancement of Political Science are requested to become members of the Association.

10th February, 1942.

Yours Sincerely,

J. L. KHOSLA,

Political Science,
University of the Punjab, University Hall,
Lahore.

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