

The Indian Journal of Political Science

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MORALS, POLITICS AND MACHIAVELLI*

BY

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I suppose that I need offer no apology for inviting attention once again to a consideration of Machiavelli's views on politics, especially its relation to morals. Lord Acton's judgment on him is well known: "He recorded the experience of his own epoch, but also foretold the secret of men since born. He illustrates not only the generation which taught him, but the generations which he taught." And after long catalogue of the views of good and great men who followed, if not always defended, Machiavelli's views, Lord Acton could conclude thus: "He is the earliest conscious and articulate exponent of certain living forces in the present world. Religion, progressive enlightenment, the perpetual vigilance of public opinion, have not reduced his empire or disproved the justice of his conception of mankind. He obtains a new lease of life from causes that are still prevailing and from doctrines that are apparent in politics, philosophy and science . . . He is not a vanishing type but a constant and contemporary influence . . . He is more rationally intelligible when illustrated by lights falling not only from the century that he wrote in, but from our own, which has seen the course of its history twenty-five times diverted by actual or attempted crime." Lord Acton wrote in the Golden Age of Liberalism. The world has travelled far, and sometimes backward too, since then. More than ten years ago, writing even before the contemporary Fascist counter-revolution had attained any serious or ominous proportions, Prof. Laski thought it worth while to emphasise how urgent it is that the effort to answer Machiavelli should be made.¹ To-day, therefore, in the light of what has happened since then, and also of the views which have been publicly expressed by some of the principal protagonists behind these events, the problem undoubtedly is at least as urgent as ever.

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December 1941—January 1942.

¹ *The Dangers of Obedience and other Essays*, p. 262.

The words of at least one of these protagonists are worth recalling in this connection. He has called *The Prince*, "the statesman's supreme guide." "I affirm," he has said, "that the doctrine of Mussolini is more living to-day than it was four centuries ago." And, "I want to preserve," he has characteristically added, "a direct contact between Machiavelli's life and my doctrines, between his and my thoughts on men and affairs, between his and my practice of government."²

I do not propose here to go into much of Machiavelli's philosophy or politics. *The Discourses*, of course, has also to be remembered when thinking of *The Prince*. And in the former, as Machiavelli shows a sincere passion for popular government, wherever possible, he also emphasises the importance of the rule of law and even the observance of moral principles in a stable government once it has been founded. Similarly, there is no evidence to judge Machiavelli's own personal character harshly, even if one condemns the method advocated in *The Prince*. I am more concerned with the question of the rightness or wrongness of his views on the relations between political and moral action. Of course, he discussed his characteristic views in the context of desperate circumstances. But these views are undoubtedly capable of a wider application.

Machiavelli's ideas on the relations between politics and ethics in action are indeed mainly set forth in *The Prince*. He has there explained that a ruler, who desires to maintain himself, must learn to be not always good, but to be so or not as necessity may require. He need not care about incurring censure for such vices, for, without acting so, the preservation of the State may be difficult. And, taking all things into consideration, he thinks it will be found that some things that seem like virtue will lead a ruler to ruin if he follows them; whilst others that are apparently vices will, if followed, result in his safety and well-being. "You have to understand that a prince, especially a new one, cannot observe all these things for which men are esteemed, being often forced in order to maintain the state contrary to fidelity, friendship, humanity and religion." Let the prince therefore look only to the maintenance of the State; the means will always be deemed honourable and will receive general approbation. But even in *The Discourses*, though that work is mostly concerned with another problem than that with which *The Prince* is concerned, he not infrequently returns to the same position. Where the safety of

² Quoted in *American Political Science Review*, No. 4, 1928, article on 'the Mentors of Mussolini.'

one's country is at stake, he writes there, one must not consider what is just or unjust, merciful or cruel, glorious or shameful; on the contrary, everything must be disregarded excepting that line of action which will save and maintain the life and independence of the State. "I believe that when there is fear for the life of the State, both monarchs and republics, to preserve it, will break faith and display ingratitude."

It is this point of view that what is morally wrong may be politically right which has of course given Machiavellianism its distinctive connotation in popular thinking. The more cautious or scientific view has been that this attitude is not so much immoral as non-moral or a-moral. But there has been the view even still more favourable to Machiavelli that he here discovered one of the basic principles of modern political theory,—that a government which is to survive must have power at its disposal and must understand the technique of employing that power.³ Or, as it has been put differently, government even at its best is a grim business; but grim as it is, government there must be.⁴

What one may be permitted to point out in this connection is that even the explanations most favourable to Machiavelli take for granted that what is morally wrong may be politically right; or to put it in a way more relevant to our purpose, what is politically right may be morally wrong, but it does not matter. Now, if we attempt to examine the validity of this point of view, we shall see, first of all, that many questions of politics do not involve any problems of morality at all. For example, shall the grade of a particular class of civil servants be fixed according to one scale rather than another? Here there is a question only of the results from the point of view of men likely to be secured for employment and of the efficiency of the work likely to be discharged by them under one scale than another. There are innumerable questions of a similar kind in politics,—the size of a cabinet, the term of a President, proportional representation *versus* the alternative vote, etc., etc. But, of course, there are other questions in politics which do apparently touch ethics. To take a simple example which can stand for many others, should a statesman always tell the truth? There was the recent striking instance of Lord Baldwin in England, when Prime Minister, confessing that he could not have told the electorate before the election of 1935 about the need to rearm without losing the election itself. A hundred years before a predecessor of his in

³ R.H.S. Crossman, "Government and Governed," p. 22.

⁴ Laski, *op. cit.*, p. 246.

the same office had put the same thing only in another way and in a different connection when he said that he was certainly a great lover of morality, public and private, but the intercourse of nations cannot be strictly regulated by that rule. The practice as well as the theory of other eminent leaders of State in recent years supply even more striking illustrations of this attitude. Here we have to remember first of all that the absolute obligation to tell the truth is not maintained even by ethics. In the oft-discussed case of A pursuing B with intent to murder him, B eludes the pursuit for a moment. C has seen which way B has gone. A asks C as to whether the latter has seen which way B was going. Is there any obligation on the part of C to tell the truth? Or, taking another case, should a doctor always give truthful replies to every patient's question? Even for ethics, these examples show that such questions are questions of consequences, questions whether greater harm on the whole will be done by telling the truth than otherwise. So, if in politics too there is no absolute obligation to tell the truth on the part of the statesman, there is not necessarily any conflict between politics and morals.

But the deeper problem remains and there is no way of solving it except by way of looking at politics and ethics as concerned with different kinds of subject-matter. Politics is concerned with the public relations of individuals. Ethics is concerned with their private relationships. Therefore, the question whether a morally wrong action, whether in the internal politics of a State or in the international sphere, may not be politically right does not arise. The question is badly posed. But it seems difficult to accept the view of Prof. MeIver, who also holds that there cannot be any conflict between the two claims, that this is so because these are all conflicts within ethics, within values, not between politics and ethics. To him the problem before a ruler or statesman seems greater because the values with which he is concerned are so great; but it does not differ in kind from the choice of values offered every day to the most obscure of men.⁵ This is certainly to enlarge the scope of ethics indefinitely and make politics a mere branch of it.

This, lastly, brings one to a question of method. Machiavelli is generally regarded as having been the first writer to make a self-conscious and scientific separation between the two sciences. Following this method he is also held to have made political power an end in itself. The latter position appears contestable.

⁵ MeIver, *The Community*, p. 320 fol.

There is nothing in his writings to make one conclude that political power was to him anything but a means to a stable and happy State. But this is only a secondary question. A more important one is another: how far did he really and completely separate politics from ethics? It is true that he did go in this direction more than any previous thinker. But the very fact that he could think in terms of a political action being morally wrong shows that he did not carry the separation far enough. The two things are not on the same level and one cannot, therefore, be used to judge the other.

TRENDS IN DEMOCRATIC GOVERNMENT

By

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Each age has to state the problem of its government anew. As the State has emerged from the classical antiquity type to the feudal, thence to the absolute monarchical, and from there again to the democratic type, the needs and the purposes of administration have greatly varied. The general character of administration has always been governed by 'the physical basis of state organisation, the prevailing level of social and cultural organisation, the development of technology, the theories of the functions of the State, and more immediate governmental and political traditions and ideals.'¹ The context of the present problem of government is broadly determined by three distinctive features of the modern age. The first of these is the development of technology and the extension, partly as a result of it, of the functions of government.

At the beginning of the 19th century, the **central government** used to be of importance chiefly in matters international. It used to be responsible for defence and used to regulate exports and imports, but beyond that it did not have many social functions to perform. There were, indeed, a few humanitarian services like poor-relief and education, which were carried on by the local bodies, but even they were few and far between. Positive public welfare was not supposed to be the duty of government as such. With the coming of the Industrial Revolution the character of government gradually changed. By the flocking of populations into the towns, there was occasioned a loss of local feeling, and consequently there grew up wider interests and wider loyalties. And, in England particularly, the extension of the Parliamentary franchise, by disturbing the undisputed hold of the landed gentry over seats in the House of Commons, led the governing class more and more to inquire into and seek to remedy the social evils which had become most pressing on account of the continuance of unregulated industrial competition, the over-

crowding of population in the new industrial urban centres, and the unchecked exploitation of labour. From being soldier and policeman alone, the State, thus, gradually began to become protector and nurse also. It began to act as 'insurance organiser, house-builder, sanitary engineer, chemist, railway controller, supplier of gas, water and electricity, town-planner, pensions distributor, provider of transport, hospital organiser, road maker, and in a large number of other capacities.'²

Some of these new functions that the government has come to perform are merely regulatory, but there are others that are organisational, as where the State assumes responsibility for the positive provision of public services by itself as State enterprises. The increase of the functions of government has been, therefore, both quantitative as well as qualitative, on account of the changed conditions brought about by mechanical and technological developments. Merely quantitative increase of functions has led to a number of difficulties as regards the working of parliamentary government, for in consequence the volume of legislation increased and Parliament, already hard-pressed for time, was not able to cope with the enhanced quantity of work. But as the extension of functions is also qualitative, the difficulties have become really great. For most of the new functions of government are purely technical, and in the formulation of laws concerning them expert knowledge becomes necessary, which Parliaments, constituted as they are, do not at present possess. In subjects like 'patents, copyright, trade marks, designs, diseases, poisons, the pattern of miners' safely lamps, wireless telegraphy, the heating and lighting values of gas, legal procedure, or the intricacies of finance,' much of the detail in the legislation passed by Parliament is so technical as to be unsuitable for Parliamentary discussion. Again, there are a number of matters today which effect peoples' lives so closely that elasticity is essential in their administration. "It is impossible, for instance, to pass an Act of Parliament to control an epidemic of measles or an outbreak of foot-and-mouth disease as and when it occurs. Also such measures as the Public Health Acts must be differently applied in different parts of the country. Besides, there are many subjects of legislation on which our knowledge increases from year to year, and here again some machinery for adapting the principles of the relevant statutes to novel conditions is desirable."³ In

² Memorandum of M A. Robson. Committee on Ministers Powers, Cond 4060, Lond 1932, Vol II. p. 52.

³ Gwyer, in Journal of Public Administration, V, p. 404.

¹ L. D. White, *Public Administration, Encyclopædia of Social Sciences*, I, p. 440.

such matters Parliament has, therefore, unavoidably taken recourse to a procedure whereby it merely lays down the general principles of legislation and leaves the formulation of details to experts and departments which specialise in them.

For the same reason, Parliament is occasionally delegating minor judicial authority also to administrative bodies. Justice in the courts is very expensive and in certain respects 'archaic, cumbrous and inelastic,' while for the adjudication of cases and claims arising under the newly acquired governmental functions there is need, besides expert knowledge in the judge of the subject-matter of cases, for speed and cheapness. Legal forms and legal procedures have further a tendency to become more and more complicated and complex, and therefore the volume of new business, unless some part of it is entrusted to administrative authorities, would greatly press upon the courts and produce congestion. In any case, the courts cannot, as the administrative departments may, settle cases coming before them both on their merits as well as with the avowed purpose of furthering a particular social or economic policy that has been initiated by the legislature. The traditional systems of law, intensely individualistic in their origin, are usually less concerned with social righteousness and more with individual rights. Judicial tribunals follow static principles and fail to apply them to dynamic political and social questions. For the successful administration of the new governmental functions, therefore, it has been necessary to invent the system of administrative adjudication, which combines the advantages of dispatch, flexibility and cheapness with the possibility of sanctioning or enforcing the inevitable infringement of individual legal rights as soon as they begin to clash with the claims of the community or the obligations of citizenship.

Thus, the remarkable development of the 20th century has been the progressive accretion of sub-legislative and minor judicial powers to the administration. In almost all Western countries these powers are now rapidly coming to be recognised as a veritable part of the administrative process. The new development, it may be mentioned, creates no very serious problem in countries, like France, which already possess a well-organised and competent system of administrative tribunals, but is looked upon in countries like Great Britain and the U.S.A. as likely to undermine the whole system of parliamentary government, founded upon the principles of Sovereignty of Parliament and the Rule of Law, as understood in these countries. Political scientists have pointed out that neither sovereignty of Parliament nor Rule of Law ever practically existed in England in that exclusive

sense in which Dicey, for instance, employed those terms. They were simply two legalistic fallacies invented by the individualistic constitutional lawyers of the 19th century to support their individualistic beliefs, in the same way in which the principle of the separation of powers was evolved, or rather revived, by the constitutionalists of the 18th century to check the growth of excessive administrative power. Nevertheless it is true that this new development marks a significant change in the operation of responsible government since Dicey's analysis of the underlying principles of the British constitution.

The second major feature of the present age is the new conception of the democratic ideals. Any civilisation, it has been said, may be reduced to two factors, a system of institutions and a system of ideas. By institutions is meant the collective behaviour patterns, the ways in which a community carries on the innumerable activities of social life; by ideas is understood that system of ethical norms, which serves as the guide, the determinant and the motivation of social conduct. For more than the last 150 years the Western world has lived under the spell of the democratic idea. There had certainly been democracies in the past, but they had only been institutional patterns. For the Greeks, for instance, democracy was merely a form of government to be compared and weighed as such against aristocracy and monarchy with reference to its value and usefulness in achieving the ideal of the city-state. Aristotle's judgment that the best form of government was polity in which some elements of each of the three primary forms existed, is clear evidence that for him the question remained on the plane of relative values. But with the French doctrinaires of the 18th century, with the American revolutionists and with the English radicals, democracy became the end and goal of human existence.

Of this new orientation, the ideology of political democracy was one aspect and economic individualism was the other aspect. They both represented revolt against the established order, they both rested upon similar or identical fundamental postulates. Political democracy, with its basic belief in *laissez-faire*, continued to be the sheet-anchor of the 18th and, to a large extent, 19th centuries. In the course of its progress, the idea gathered to itself a wide array of ancillary doctrines quite outside the field of political or economic thought—doctrines of social equality, of educational philosophy, of religious practice, of ethical conduct. These ancillary doctrines contributed to the glorification of the essential conception, but were really derived from it. In the original sense of the term political democracy, there was

assumption of a rational world, of a world in which each individual pursuing his own enlightened self-interest may be trusted to reach rational conclusions which serve as guides to his conduct. In the original sense, there was also the concept of natural law and its corollary, natural rights, and above all, the doctrine of human equality, although that was interpreted not in the sense that all men are equal in the sight of God or that every man should have an equal opportunity to the fullest self-realisation, but in terms of an actual present equality of capacity to share in the basic process of government. It led to the creation of the idea of public rights as distinct from the private rights of individuals, to the exchange of the feudal idea of freedom as the traditional privilege and monopoly of the few for the idea of freedom as a right common to all. But it always continued to emphasise the individual rather than collective or social elements in political life. It has conceived of freedom, on the whole, in negative terms, as absence of restraint rather than in terms of presence of opportunity. Even in the heyday of its power, this ideal aimed at assisting the individual to discipline himself and achieve his own moral progress.

The central doctrine in this democratic ideology was that of popular sovereignty, the theory that government rests upon the consent of the governed; but the concept of the 'people' was in the highest degree ambiguous, and anyhow the system of institutions, viz., parliamentary just improvised in order to operate the principle, did not conform with the system of ideas involved in this concept. The chasm between theory and practice perceptibly widened during the later decades of the 19th and the early quarter of the 20th century, when various winds of doctrines began to blow more or less tempestuously through the thought of the present age and a number of new basic rights came to be recognised as expressions or implications of the democratic doctrine. Among these new basic rights may be mentioned such things as (1) the right to creative work, to profitable and useful employment, (2) the right to an adequate standard of living, measured by the productive capacity of the nation and an equitable distribution of the national income, (3) the right of the worker, through collective bargaining with his fellows or otherwise, to a substantial share in the management of the industry to which he has devoted his labour and his life, (4) the right to security against the hazards of unemployment, accident, illness, and old age, (5) the right to leisure and the opportunity for its profitable employment. The guarantees of individual and personal rights, such as are embodied in the first ten amendments to the U.S.A. constitution—the right to freedom of speech, freedom of the press, freedom of association,

freedom of religion, and several rights which guarantee to every individual accused of a crime the necessary protective procedures and a fair and impartial trial, were part of the original theory of democracy, which must not only be preserved but actually strengthened. But the new theory of 'good life' needs a new system of political institutions for its effective fulfilment.

Of this new system of political institutions, the following fundamental principles may be mentioned: (1) The basic principle in the new economic thought implied by the emerging ideals of democracy is that of planned economy, and planned economy is impossible without the creation of a strong central authority. It, therefore, seems certain that there is going to be a more highly centralised administrative organisation in the modern State than has ever hitherto been known in democratic governments. The trend towards the accumulation of all governmental authority in the central executive is already noticeable in countries like England and U.S.A., particularly in the U.S.A. where the President has gathered to himself in recent years quite unprecedented powers. Uptil now they have been looked upon as mainly arising out of and limited by the emergency, but they are bound to indefinitely continue if the experiment of social control over business and industry is to go on. Indeed, the character of the chief executive is undergoing radical modification in every democratic government at the present moment, and the policy-forming function of government is being wrested from out of the hands of the legislature by the chief executive. (2) With the technicalisation of the functions of government and with the intensification of the process of administration, the rôle of the legislature, as the supreme law-making body, is also coming to an end. That does not, however, mean that the influence and position of the legislature will disappear in the future. The legislature will exercise increasingly greater influence in the modern democratic State, but it will do so not as the maker of policy or even of laws. Its functions are likely to be directed to investigation, review, inquisition and the enforcement of responsibility. This may necessitate a radical change in the constitution and form, perhaps the disappearance of the present-day bicameral system, of legislative bodies. (3) Further, the principle of local self-government as adjunct to the original ideology seems to be doomed to die on account of the pressure of technological improvements in means of communication and the increasing complexity and interrelatedness of social and economic life, although there is a possibility of regional administrative

areas developing to meet new needs. (4) In federal constitutions a tendency has already been noticeable towards federal centralisation; the future developments are likely to witness a further reduction of the independent position of the states and larger extensions of power being transferred from the states to the federal government both in the legislature as well as administrative matters. (5) The judiciary may continue to have much of its present character, but the philosophy behind its work is bound to get substantially changed. The courts are bound to recognise the dynamic character of civilisation, so that their function will become 'less that of a former judicial tribunal and more that of a board of political censors, an agency removed from the swirl of practical politics, unaffected by the pressure of immediate events, and thus in a position to exercise essential controls in the interest of continuity and adequate deliberation.'

And as all these developments in the institutional structure seem likely to occur, so there seems certain a change in the concept of the electorate. We seem to be passing from an age in which the democratic ideal has held a dominant position into one in which the achievement of 'good life' becomes the end and purpose of all our social effort, and the dissipation of the democratic doctrine must result in the reduction of the electorate to its proper position as an organ of government and its subjection to a critical appraisal with respect to both structure and function. It must lose the halo which has surrounded it and be judged by the effectiveness with which it performs the work assigned to it. The dogma of universal suffrage is bound to give way to a system of educational and other social tests, *e.g.*, where only *bona-fide* workers may vote, such as will exclude the uninformed and the anti-social elements which have hitherto frequently tended to control election. It is perhaps unnecessary to explain that the implications of such a change in the electorate with respect to the party system would clearly be far-reaching.

It will be clear that the structure of the future democratic State is likely to assume the character of some form of dictatorship. Representative or parliamentary government is clearly doomed, for with the developments in the technological methods of production and with the appearance of new social and economic theories, the conditions or 'prerequisites,' as Bagehot called them for successful representative government are tending to quickly disappear. These conditions, according to Bagehot, were (1) that the body of citizens in the State should be fundamentally at one upon all the major objects of governmental activity, so fundamentally at one that the thought of conflict as a

way of change does not enter their minds at all, (2) that in the nation no single class of any importance in the community is permanently excluded from power, and (3) that there is a widely diffused habit of tolerance throughout the nation. Habits of tolerance, as Professor Laski said, are born of a sense of security, and in the modern age that sense of security has tended to diminish. During the last century it was present in a highly marked degree in both England and the U.S.A., that was why there was a noticeable agreement of policy between the various parties that worked the democratic machine in these countries. There were certainly differences between the Conservatives and the Liberals in England and the Republicans and the Democrats in the U.S.A., but the political struggles of the 19th century were fought over specific grievances which, when compromised, ceased to disturb the profound national unity. On matters of economic and social policy there was fundamental unity.

The old idea of democracy conceived of individual liberty in terms of the individuals belonging to the middle classes. It was felt that, if properly understood, the claims of the middle classes are universal and suitable for every stratum of society. Certainly, during the 18th century, the middle classes had occupied a central position, and this had given them a distinct advantage, for it had enabled them to attract elements both from above and from below, so that once consolidated they were able to confer stability on the whole social fabric. But the industrial revolution in the 19th century polarised the interests of society, and thus gave rise to a reverse attractive tendency towards the extremes of plutocracy and social democracy. Even so the plutocratic section of the middle class continued to make a heroic gesture by absorbing a good deal of the programme of socialism and putting it into practice. During the latter half of the 19th century, there was pursued a policy of humanitarian and socialistic legislation, making concessions to labour and securing justice and equality by such measures as old age pensions, workmens' compensation, unemployment insurance, and inheritance and death duties. But this progressive work is no longer possible. The conferment of material benefits upon masses was possible so long as there was a sense of security that came from increasing and expanding profits of trade. In the period of capitalism's contraction, a tendency that was discernible to an acute observer so long ago as the eighties of the last century, though in its catastrophic proportions obvious only since the War, the power to confer increasing material benefits on the masses diminishes and even disappears. Naturally a halt has had to be

called to social legislation and to the advance of workers' standard of life, for that interferes with that access to profits which was the rationale of the whole economic adventure. As a result, the antagonism between democracy and socialism, which had faded for some time, has again appeared very clearly and distinctly.

Its effect upon parliamentary government has been most disturbing. Parliamentary government, with its recognition of the two or multi-party system, is based upon a belief in the efficacy of discussion and compromise; but compromise is possible only when there is a basic uniformity of social and economic policy. A problem of taxation can be amicably settled so long as all groups are agreed that the power to tax is mainly for the purpose of raising revenue, but let one group insist with fervour that the power to tax can and ought to be a method for redistributing wealth, and the possibility of conflict is enormously increased. The conflicts that are agitating the modern world are irreconcilable in their character, and aggressive irreconcilable groups under representative government spend most of their energy rendering each other ineffective. The political experience of Germany, since the last War, supplies the most illuminating case study of this representative paradox. The Weimar constitution was one of the most democratic ever constructed. The party system guaranteed that every voice of importance in Germany's complex national life would have a chance to be heard. The result was the formation of a dozen parties, all champions of irreconcilable interests and points of view. Political action became possible only by exhaustive and exhausting negotiation. The passivity of parliament necessarily threw more of the task of governing upon the bureaucracy, while a growing proportion of the people grew increasingly impatient with an enervated Reichstag. Some thirty cabinets followed each other in the brief life of the Republic, none of them able to unite enough support to stem the slow drift into chaos, and by 1932 it had become clear that the various competitors for dictatorship must fight it out in a final struggle.

In all democracies in the modern age, the principle of pragmatism or political action, as against political discussion, has gained an enormous following. The result is the emergence of the one-party State in which the principle of political opposition is rejected in the demand for action, in which executive power is developed as compensation for legislative enervation, and in which leadership in the State is completely monopolised by a small body which has in its control all the means of forming public opinion.

COALITION OR COMPOSITE CABINETS

BY

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A question which is engaging the attention of publicists and statesmen to-day in India is the nature of the executive, both in the Provinces and at the Federal centre.

For some time now opinion has been hardening against the parliamentary or unitary type of government which has been functioning successfully in Great Britain for many years. When the Government of India Act of 1935 was placed on the statute book, it was definitely understood that the basis of government was to be of the British parliamentary type. There was not even a remote suggestion of a coalition or of composite government as a permanent feature of the constitution. The Instrument of Instructions to the Governors laid down that, in making appointments to his Council of Ministers, the Governor was "to use his best endeavour to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgment is likely to command a stable majority in the legislature, to appoint those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. But in so acting he shall bear constantly in mind the need of fostering a sense of responsibility among his Ministers."

Phrases in the above quotation such as "consultation with the person who is likely to command a stable majority in the legislature," "collectively to command the confidence of the legislature," and "foster a sense of responsibility among his Ministers" make it abundantly clear that the British parliamentary system of unitary cabinets was the avowed intention of the constitution makers. It was on this understanding of the constitution that the 1937 elections were fought; and when the Indian National Congress accepted office in July of that year, after a good deal of hesitation, it straightaway proceeded to construct the cabinets on the British principle of unity and homogeneity, commanding the confidence of the majority in the Assembly. Therefore, later charges that the Congress had committed an unpardonable sin in

excluding from the executive representatives of the minority or defeated parties in the legislature, do not seem to be either fair or honest. The Congress Prime Ministers were certainly within their constitutional rights in endeavouring to select all their colleagues from the members of their own party.

Leaving aside the propriety or impropriety of what the Congress did in 1937, there are many to-day who argue that a Cabinet consisting of representatives of all the parties in the Legislature on some agreed basis would have made for stability and avoided the friction and heart-burning which have marred political life in the country during the last three years. This is one of the "might-have-beens" on which it is idle to speculate.

Is it true that conditions in India are unsuited to the Parliamentary type of cabinet government? Answer to this question is bound to vary from party to party, if not from person to person. From the very beginning Mr. M. A. Jinnah, President of the Muslim League, has been contending that India was not suited for parliamentary government. His frequent public utterances make it clear that the conclusion reached by him is at least partly dictated by the consideration that the Muslims form a numerical minority in the country. He has said repeatedly that he is against parliamentary government especially at the centre, because, as things stand at present, the Muslims as Muslims can never hope to form a government there.

Before we agree or disagree with Mr. Jinnah, it is just as well to examine the principal features of the British Cabinet government.

(1) According to this system, the ministry is regarded as a committee of the legislature. It is not a committee of the whole house, but of the majority party or of parties which can command a majority of votes in the popular house. Though a committee of the house, it is not elected by it, but appointed by the King on the recommendation of the Prime Minister.

(2) Members of the Ministry work on the principle of joint responsibility. This means that on all matters of general policy and administration the Ministry stands or falls together.

(3) The minority party or parties for the time being accept the decisions of the House as their own, and try to oust the majority party by effective criticism and constructive suggestion and by constant endeavour to win over the large bulk of independent votes by offering them a better programme. Where this situation prevails, the main issues before Parliament are economic, social, political, and international and not religious or cultural.

Besides, there is agreement on fundamentals. On such questions as type of constitution and organisation of government, there is practical unanimity.

(4) When the Ministry ceases to command the confidence of the majority in the legislature, it either resigns or advises the King to dissolve the House and call for a general election.

Stating these principles which underlie the British form of executive government in a slightly different form, Marriott writes: "The cabinet system as hitherto worked in England has involved the acceptance of five principles: close correspondence between the legislature and the executive; the political homogeneity of the executive; the collective responsibility of the members of the cabinet; the exclusion of the sovereign from its meetings; and the common subordination of its members to the leadership of a 'First Minister.'"

The contention of men like Mr. Jinnah is that none of these conditions can be expected to prevail in India on account of communal electorates and the communal mentality of the people in general. He and others like him argue that there is no agreement on fundamentals; that there is no disposition on the part of the minority to acquiesce in the decision of the majority as though it was its own; that, as things stand at present, majority rule means rule by the majority community and that representatives of minority communities in the majority cabinets are really "mis-representatives" and "show-boys."

So long as people think in terms of their own community first, last and all the time, many of the above contentions are really unanswerable. It may be argued, however, that it is not impossible for parties opposed to the Congress to form a coalition of their own and present an alternative ministry by offering a better programme to the electorate. Such an alternative seemed to be a possibility some months ago when cordial relations were being established between the Muslim League and certain other parties in the country. But, since then the question of coalition has been practically shelved. The parties in question all profess hatred of the Congress, its leadership and its policy, but are in no mood to join together for carrying out a common programme or for lifting politics from the communal slough.

Going back to the elections of 1937, we find that coalition cabinets were within the realm of practical politics. In some Provinces the Congress had a reasonable fear of not being able to secure a clear majority in the general election. It was therefore favourably considering the formation of coalition cabinets. In some constituencies the Congress and Muslim League agreed

not to set up rival candidates. But when the results of the election were made known, it was found that the Congress had secured over-whelming majorities in several provinces. With such a majority the Congress felt no obligation to negotiate with the other parties. Its attitude was that it was wrong in its part to dilute the pure milk of nationalism with the communalism of the Muslim League or other avowedly communal parties. But it did not adhere to this principle consistently. While it found unitary Congress cabinets in provinces where it had a clear majority, in some other provinces it swallowed its principle and entered into coalitions. This was the case in N.W.F.P., Sind, and Assam. A coalition was under way in Bengal and would have come about if it were not for certain peculiar local conditions. In some Congress Provinces, in order to give representatives to the Muslims in the Cabinets, converts were taken over from those who had been elected on the Muslim League ticket. In one case at least (in the U.P.) such a convert was made to stand again for election, which was a perfectly constitutional procedure. But this was not done in every case (e.g., Bombay).

Once compromise was made in the form of coalition cabinets, it was naturally asked, why should not similar compromises be made even in Provinces where the Congress enjoyed a clear majority? With reference to the Madras Presidency it was asked why should not Mr. Abdul Hameed Khan, for instance, who had a majority of Muslim supporters behind him be selected instead of Mr. Yakub Hasan who did not have such a following? The answer given was that it was an unheard of departure *inasmuch* as it asked for representation in the Ministry of a *defeated party* in the election. This answer would have been perfectly satisfactory if in all the Muslim constituencies the Congress and the League had contested and the former had come out victorious. But such was not the case.

Other arguments were used such as the disruption of the principle of joint responsibility and the difficulty of *running* a government if members of the Ministry had to obey the behests of the different outside authorities. The likelihood is that there would have been continuous friction and ill-feeling and the coalition might have met with a still-born *death*. Or, the two parties might have agreed to enact the most *innocuous* measures, leaving out for the time being all controversial legislation, however desirable and necessary it may have been.

After the Congress governments had been comfortably in the saddle for some time and had won the unstinted praise of Governors and the British bureaucracy in general, doctors came

along to diagnose what was wrong with the Congress. One of the early critics was the Rt. Hon. V. S. Srinivasa Sastri who called attention to the development of totalitarian tendencies in Congress. Others followed suit. Much criticism was levelled against the arbitrariness of the High Command exhibited in such matters as cancelling the permission given by the Madras Assembly to its Speaker to visit England and other countries for a study of parliamentary procedure and putting pressure on the U.P. and Bihar governments to resign over the question of the release of political prisoners. Stories of Congress "atrocities" spread like wild fire. Severe criticism was visited upon the singing of *Bande Madaram*, the floating of Congress flag on public buildings, the hanging of the portrait of Gandhi in district board and municipal schools, the initiation of the Wardha and Vidya Mandir schemes of education, the compulsory teaching of Hindi, etc. All this, it was claimed, was against Muslim culture and the Muslim people, and that it could easily have been avoided if Muslims had been taken into the Cabinet. Even such innocent measures as prohibition, sales tax, and tobacco tax were given a communal twist. In the midst of these charges and counter-charges, Congress resigned office on very flimsy grounds in seven Provinces in November 1939, and its departure was publicly celebrated by a "Day of Deliverance" by Mr. Jinnah and his followers all over the country on the eve of unity talks between this Muslim leader and Pandit Jawaharlal Nehru.

Since then conditions have become definitely worse. A great many parties and political leaders have appeared on the scene adding piquancy to the situation. The Congress exit was expected to be only temporary and Mr. Rajagopalachariar, the Madras Prime Minister, confidently expected to come back to power within a few months and take over the government from the hands of the "caretakers." Even Secretaries to Government fully expected that. But British diplomacy coupled with the tactical blunders and shortsightedness of the Congress and adverse and persistent propaganda by the minorities have conspired to keep the Congress out.

In the face of this situation, what are the chances of a popular ministry again functioning in the Provinces? For two years now public men like Dr. C. R. Reddy and Mr. S. Srinivasa Iyengar have been arguing for composite cabinets, although the two do not mean the same thing in using the term. Broadly speaking, Dr. Reddy stands for an *All-party* composite Cabinet, while Mr. Iyengar wants a *Non-party* (or loosely organised party) composite cabinet.

The arguments used by Dr. Reddy are briefly as follows:—

1. A composite legislature involves a composite cabinet as its logical corollary. One is incomplete without the other. India is a land of political curiosities. Therefore, her constitution, too, should be a novelty.
2. The British parliamentary system works in Britain, but cannot be successfully transplanted to other places. Its success depends upon "British manners, chivalry and charity in criticism, the spirit of constitutionalism, moderation and equity." (Personally I do not believe that these virtues are impossible of cultivation by us if we make concerted efforts to alter them).
3. The unitary cabinet system works a hardship on the minorities. What is given with one hand is taken away by the other. The ample safeguards provided in the constitution for the protection of the minorities are "inoperable and inoperative." For, to put them into operation is tantamount to the Governor expressing his lack of confidence in his Ministers. This would mean the resignation of the Ministry, with no alternative ministry to take its place, owing to the weak position of non-Congress parties in the legislature.

While these arguments appear thoroughly logical, there is no doubt that they are greatly exaggerated. As regards the inoperability of safeguards, more than one provincial Governor (Lord Erskine and Sir Harry Haig) has publicly said that there was hardly any occasion to put safeguards into operation. In some instances, they were put into effect, but not openly; and to this Dr. Reddy objects claiming that such interferences ought not to have been "Masonic secrets." The reply to this claim is that there are many instances in the history of administration where more good than harm has been done by timely warning given privately by the chief executive than by open enquiry and censure. On the whole, we cannot help feeling that Dr. Reddy proves more than what is necessary to establish his case.

Granting for the sake of argument that unitary cabinets are unworkable because of the communal tension, shall we try coalition cabinets? Dr. Keith, speaking of coalition cabinets in

England, has made it clear that they make for friction and disagreement. For ourselves we believe that a coalition cabinet has all the disadvantages of a unitary party cabinet and none of the advantages of a composite cabinet. It is an insincere kind of arrangement based on political expediency. Parties are driven underground and encouraged to do their work secretly. A coalition government lacks courage and unity of command. It is only a makeshift. Out of say three parties in Parliament, none of which has an absolute majority, a coalition may be formed between any two of them. The smaller of the two will always be suspicious of the larger and the larger contemptible of the smaller. This tendency was evident in the first Labour Government of Mr. Ramsay Macdonald which depended on Liberal votes in order to continue in office.

If composite cabinets are to be given a trial, what form should they take? Both Mr. Srinivasa Iyengar and Mr. Reddy agree that they are to be irremovable. According to the former, if they are to be removed at all it should be by a special majority of the legislature for special reasons. As regards their composition, there is difference of opinion. Should they be elected by the whole legislature or by the various groups or parties within the legislature or by party caucuses outside the legislature or by a direct vote of the people? Dr. Reddy wants communal parties to elect communal representatives. In other words, he wants parties in the legislature which are elected on the basis of separate electorates to choose their own representatives in the Cabinet. This does not seem to be a satisfactory way of helping to solve the communal tangle.

Mr. S. Srinivasa Iyengar's position seems more logical when he favours a composite cabinet formed on a non-party basis. He does not object to parties as such so long as they are loosely organised and do not exercise an iron discipline over their members which they seek to do at present. His contention is that parliamentary or unitary type of government and rigid party system should go out together. The party system in India, he believes, has led to factions and intrigue; to the formation of party caucuses and tyranny of the High Command, to bribery and corruption of the worst sort, and to base forms of communalism. The party mentality, he contends, is very often a partisan mentality. Discipline of a rigid kind leads to power politics, and national welfare is thrown overboard.

To overcome these evils of the party system, Mr. Iyengar makes many suggestions—some of them drastic—which are familiar to readers of his small book "The Problem of Demo-

cracy in India." Without accepting all of them, we may agree that there is much force in his contention that non-party composite cabinets may be a cure to communalism, corruption, and partisanship—the major evils of Indian politics today. Mr. Iyengar seems to argue that once India becomes free and her political life is stabilised, she can afford to have the luxury of parties, but not now.

The suggestion, then, is for a form of executive government similar to the Swiss Federal Executive, which is in the nature of a Board of Directors chosen by the National Assembly in a joint session. Its tenure is fixed (four years) and it acts as an agent of the legislature. It no doubt takes the initiative in legislative matters, prepares measures, and presents the budget. But if defeated it does not resign. It pockets its pride and goes on as though nothing happened. It acknowledges that policy belongs to the legislature. By convention, the legislature sees to it that all the three racial groups are represented on the Executive Council. During the last War it went so far as to give the majority of seats to the two minority groups—the French and Italians. Presidentship is elective and rotational. The President is only the chairman of the Council and is not the First Minister or the first among equals as in England.

The contention of this paper is that some such arrangement may be tried in India. According to Dr. Reddy, an irremovable executive and reparation of powers are better suited to India than any other system. Where we differ from him is in wanting the present communal system to continue in all its severity. His argument is that separate electorates and composite cabinets "must either go together or go out together." If we were not forced to think communally to-day by interested parties, we believe it would be possible to have joint electorates and composite cabinets. Even otherwise, we could have separate electorates and composite cabinets, but premium should not be placed on separation as is the case to-day. According to Mr. Srinivasa Iyengar, composite cabinets involve abolition or at least modification of the party system.

According to both the writers in question, the executive must not depend on the legislature or *vice versa*. Budget legislation and general policies should be determined by the legislature, which is powerless to-day under the parliamentary system when the government has a large majority behind it.

Dewan Bahadur N. Gopalaswamy Ayyangar of Kashmir, whose mind also seems to be working in the direction of composite cabinets, says that Ministers should be like judges, doing their

administrative work on strictly non-party lines. The elimination of party from Ministries, he argues, will tend in course of time to eliminate party voting in legislatures and opposition on party lines. Criticism of measures and voting on them will be on the basis of their intrinsic merit and will not be engineered by party caucuses; and this, no doubt, will be more in keeping with the essential purpose of a deliberative assembly.

After getting out of office, even the Congress seemed a little more sympathetic towards the idea of composite cabinets. Mr. Gopala Reddy, one of the ex-Ministers of Madras Government, said: "Separate electorates and the communal Government Order in the matter of appointments are a negation of democracy, but the Congress, having accepted them as its policy in the matter of administration of provinces, should give due weight to the legitimate grievances of the minorities. Congressmen should approach the minorities problem with a spirit of goodwill and not spurn demands lightly. Though the party system has failed in some countries and proved a great success in India, Congressmen should try an all-party Cabinet system to solve all the minorities problem which are now a hindrance to the attainment of freedom." Although we may not endorse the somewhat patronising attitude of Mr. Gopala Reddy contained in this extract and his advocacy of an "all-party cabinet," it is interesting to note the changed outlook on the part of one of the prominent Congressmen.

In line with Mr. Gopala Reddy's suggestion, Mr. C. Rajagopalachariar, the Ex-Prime Minister of Madras, advocated a national government at the centre with Mr. Jinnah as Prime Minister if he would agree to accept the office. Memberships in the cabinet would, we presume, be roughly proportionate to the strength of the parties in the legislative Assembly.

Dr. C. R. Reddy too wants a national government, but one based not on population or on the present composition of the Central legislature. It is to consist of 15 members, six of whom are to be Muslims by convention. One seat is to be given permanently to Hyderabad, two seats are to rotate between Baroda, Mysore, Kashmir, and Travancore, one seat is to be given to the Minor States to be filled by the Princes' Chamber, and one member from each Province is to be appointed by the Viceroy on the recommendation of the Provincial Government concerned.

The powers of this Cabinet are to be strictly limited, for, according to Dr. Reddy, the centre is to be a confederation and not a federation. This latter suggestion of Dr. Reddy's is rather strange when we take into account the fact that practically

every composite state which started as a confederation soon felt the necessity to transform itself into a federation. Even Switzerland, where the cantons have had a large measure of internal sovereignty, is, under the stress of the present war, being obliged to strengthen the centre. It may be that Dr. Reddy hopes that confederation is the only feasible proposition in the present communal-ridden India and that the logic of events will soon compel us to replace Confederation by federation. But it is equally possible that it may not accomplish anything of the kind. Instead, it may bring to pass the vivisection of India, which is ardently advocated by some, in two stages.

To conclude, what we want is not so much a coalition strictly representing the leading rival parties in the legislature, but a non-party composite government elected by the whole legislature for a fixed term, which can be removed under extraordinary circumstances by a two-thirds or three-fifths vote of the lower house or of the two houses put together. In the words of Lord Rosebery in another context, it is to be a committee of businessmen and not of busy-bodies—a committee of administrators. This may be one of the ways of combating communalism which is the greatest single impediment to the national progress of India. In cases of this kind experience shows that frontal attack is not so effective as indirect attack; and a non-party composite cabinet adopts the strategy of the latter method.

In a coalition, ministers are representatives of their respective parties hanging together for safety. In a composite Cabinet, on the other hand, they are representatives of the legislature and of the people as a whole.

The chief trouble with this scheme is, will the major parties of the country which seem so strongly impregnated be willing to commit *hari-kari*? Who is to bell the cat? The answer to it lies in the fact that even to-day there is a large percentage of unattached or independent voters in the country on whom loyalty to the party sits loosely and who view with disdain the antics of some party men. Many a man adheres to his party and pays lip service to it because of his fear that self-preservation requires it. But once he is convinced that the system which we propose is not going to favour one party or community against another, he will assert his independence and free himself from the so-called party discipline.

Another difficulty with regard to the composite cabinet is that it may lack unity and responsibility. It cannot be a solid cabinet. This is not a grave danger, when it is remembered that policy-making under this system will belong to the legislature

and the cabinet will be merely the executors of the policy entrusted to them. The fact that it may not be able to take bold steps of a progressive kind is not a serious difficulty. It is much better to carry forward measures which have the support of the thoughtful people among all groups than to provoke the unthinking antagonism of any party.

What is required to bring about the change under question, and for that matter of any other wholesome change, is a spirit of co-operation, of accommodation, and of mutual give and take. We are convinced that there is an abundant measure of it in the country already, but it is not organised properly. When parties agree to take the back seat or are made to take it, we are confident that the saner elements in the country which believe in progress by general consent, in fair play and justice to every body will be able to assert themselves and make their influence felt in the life of the country.

RESPONSIBLE GOVERNMENT IN INDIA: PRESENT AND FUTURE*

BY

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The Report of the Joint Select Committee on Indian Constitutional Reforms (1934), after pointing out the 'difficulties and dangers' of reproducing the British model in India, recommended the introduction of a system under which "Provincial Ministers should be made *generally* responsible over the whole field of Provincial government."¹ Neither the language of the Act of 1935, nor its working justify any wider claim in its favour. An objective analysis would reveal that it is indeed very wide of the mark to suggest that the Act of 1935 "presents, so far as Indian social conditions permit, the possibility in the provinces of *true* responsible government."²

Introductory.

The nature and import of ministerial responsibility cannot be properly understood without a reference to (1) the composition of the legislature; (2) the character of the ministry; (3) the restrictions on the legislature and ministry imposed by the Act, especially due to the 'special' powers and responsibilities of the Governor, and (4) the forces moulding the sanction behind the popular representatives. Let us briefly state the position under each of the above counts.

The legislatures in the provinces do not conform to the British model,—because that is the model avowedly imitated for constitutional advance in India,—as the electorate is yet a fraction of the adult population; as even this small electorate is cut up into communal, class and sectional divisions; as the result of voting cannot be expected to lead to any homogeneity in the responsible executive making the achievement of ministerial responsibility itself highly problematic; and as the institution of

second chambers and the system of nomination thereto create additional clogs, liable to create complications.

The ministries have been constituted on the lines indicated in the Instrument of Instructions to the Governor,³ i.e., "in consultation with the person who, in his judgement, is likely to command a stable majority in the Legislature, to appoint those persons (including, so far as practicable, members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature." The position is that, rightly or wrongly as against the suggestions of the British Indian Delegation and certain members of the Joint Committee, a deliberate avoidance has been made of statutory and rigid provisions relating to (a) a Prime Minister, and (b) the principle of joint responsibility. Besides, one should not forget the numerous restrictions imposed by the Act, including the insidious influence of a civil service amenable to control from outside, and the statutory watchfulness of Secretaries and Governors.

Further, there is the existence of all-India bodies like the Congress, and lately the Muslim League and the Mahasabha, seeking to control ministerial activity through the fiat and 'diktat' of their Parliamentary caucus. It is an anomaly that except in the provinces where there are coalition cabinets, the unfettered responsibility of ministers to the Legislature, within the circumscribed sphere, with unstinted attention to local issues and problems,—has been a rare phenomenon. It has been suggested that the extra-provincial control and possibility of wire-pulling has been the *raison d'être* of such a situation and was also occasioned by the peculiar conditions of a nation-in-war against foreign domination.⁴ But, as in the case of a war between nations, so also in a war of tactics and policy between an Imperial power and a struggling people, precautions should always be taken against the continuance of such 'emergency' traditions into the future.

Pointers from the Working Constitution.

The Act has no provision for a Prime Minister. The objective of those who wanted a formal provision for the office was to secure on the British model a party government presided over by the leader, "without the necessity for the Governor interfering in

* A paper submitted to Indian Political Science Conference, Fourth Session, Bombay, December 1941—January 1942.

¹ Paragraph 17.

² Keith—*A Constitutional History of India*, p. viii.

³ Paragraphs VIII and IX.

⁴ *Vide* an article in *Modern Review* for February, 1940, by the present writer on "Democratic Theory in its application to Indian Politics".

the day-to-day work of . . . the cabinet."⁵ That the proposal might have had far-reaching consequences was emphasised by Mr. Churchill who vehemently opposed the proposal because it sought to "reduce the Governor to the position of a constitutional sovereign who only acts on the receipt of minutes from his Ministers and remain isolated and remote until some very rare constitutional crisis arises."

Mr. Amery at that time pointed out that the provision in the Instrument of Instructions was likely to lead to such a development. In fact, the term Prime Minister has become commonly accepted as a description of the leader of the Government and has received legal sanction also in one Province. But sec. 50(2), allowing the Governor to preside over meetings of Council of Ministers, has been taken advantage of so frequently that it has often been outside the formal meetings that ministers have sought to hammer out differences.⁶ The Khare episode in C.P. and the Governor's intervention in ministerial disputes, notably in Bengal recently, point to the fact that organic unity in the Cabinet becomes liable to serious inroads under the circumstances. Undoubtedly, Mr. Churchill had discovered the right distinction between applying British parliamentary analogies and reproducing certain aspects of it only, while keeping the leading-strings in the hands of "the Authorities."

I am not unmindful of the fact of the legal status of ministers and do not suggest that the mere creation of the office of a Prime Minister, in the statute, would have meant any fundamental difference to the working of the constitution. Yet, to those who are fond of applying British institutions to this country, and who adhere to the triple shibboleths of national unity, government by majorities and legislative omniscience, there was point in asking for a Prime Minister not only as a symbol but also as a rallying point. The consequences would have been what the constitution of Eire secures by statute:—(a) the collective authority and responsibility of the Government, (b) the supremacy of the Prime Minister in relation to the Cabinet, in relation to dictating the resignation of a member of Government or the whole government and in conferring with the Head of the State.⁷

The developments which I have been hinting would lead to a further entrenchment of the position of parties in the country

⁵ *Ibid.*, speeches by Messrs Morgan Jones and Cocks in the House of Commons Committee, 13th March, 1935.

⁶ Chintamani and Masani, *India's Constitution At Work*, p. 57.

⁷ Sec. 28 of the Constitution of 1937.

on the seats of power, without, however, the British spirit of compromise or their respect for opposition views, and under which "opposition and government are carried on alike by agreement," which except in recent years had been their unique achievement. Even when it is urged that ministers had assumed office, in the peculiar circumstances of India, from only a patriotic desire to further the cause of constitutional advance, they were bound to be liable to some of the lures of cabinet office: "the sensation of power, the respect of the masses, the interest of the work, and the consciousness of public-spiritedness."⁸ Add to this the ubiquitous pressure of vested interests inside and outside the legislature and the Cabinet. In the past, as with the British Government so with the Governor's ministers, there has however been little 'bowing to the storm,' as the storm had not been of sufficient vehemence. The result had been, to borrow the language of Jennings, that in many cases the lack of opportunity given to the opposition to bark inside the legislature has resulted in attempts to bite outside.

Responsible government, as introduced by the Act of 1935, had 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.

Some Suggested Alternatives.

To-day, however, the storms on the horizon are too many. The taste of power has resulted in the inevitable generation of psychological reactions. It has, therefore, become incumbent upon us to re-examine some of the basic postulates of our political creeds and to seek outside the beaten track, especially that indicated by Britain, solutions for meeting the chaotic situation created by a congeries of suggestions, innuendoes, challenges and "fronts." An attempt is essayed in the following paragraphs to examine certain possibilities of a rational solution in the field of ministerial responsibility, which is, in a sense, pivotal to constitutional discussions.

Several variations of the "non-party" government idea have been canvassed for some time past. Of these the best change in structure and fundamentals would be required by the suggestion to include a substantial element of the opposition, mainly Muslim League elements in the Cabinets. Though receiving influential support, this would have led to a further watering down of the

⁸ Jennings: *Cabinet Government*, p. 500.

British parliamentary analogy of the Indian constitutional structure. In certain provinces, coalition cabinets have proved inevitable, but in provinces where a single party could gain a clear majority, the 'non-party' cabinet idea has not found much favour. It must, however, be emphasised that the electorates in India have resulted in the formation of minority blocs, whose political creeds are hazy but which have principally been distinguished by their special communal claims, making the problem in India distinct from such analogies from abroad. This suggestion thus is more in the nature of sops to communal minority apprehensions, for tiding over temporary difficulties, without asking for radical changes.

More far-reaching are the schemes for composite executives as typified in the Latif Scheme and other suggestions from South India, notably Mr. S. Srinivasa Iyengar, Dr. C. R. Reddi and Sir Shanmukham Chetty.⁹ In spite of important variations, I bracket them together as they seek to discard the British system of the executive and seek inspiration from U.S.A., Switzerland and other countries. The thesis is in favour of composite cabinets recruited from the different communities, or parties, either from or outside the legislature not liable to be turned out by the legislature, and elected either by the voters as in U.S.A. or by the legislature. Those, of course, who advocate the U.S.A. executive cannot want a really composite executive but my reading is that, if analogies are sought, the anti-British-parliamentary-school seeks its inspiration from Switzerland. Even though, there are some general resemblances between conditions in Switzerland and India, I continue to maintain¹⁰ that the strained communal relations, the demands for Pakistan, Indistan, Dravidistan, etc., the presence of 'third parties,' the debris of feudalism and traditionalism, and the chaotic stage of mass organisation due to ignorance and illiteracy—all tend to cut at the root of the 'composite cabinet' idea, as contrasted to mere coalitions. Stability of the executive cannot be forced by a stroke of the constitution-makers' pen, but must be based on certain community of ideas, interests and issues and predicate a 'settled' order of things compared to the flux in all aspects of Indian life.

⁹ Vide Dr. A. Latif: *Muslim Problems in India*, also critically examined in Rajendra Prasad: *Pakistan*, ch. IV; Iyengar—*Problems of Democracy in India*, and an article by Dr. Appadorai in *The New Review*, May, 1940.

¹⁰ Vide article in *Modern Review* (February, 1940) already cited.

Dr. Latif's suggestion contain adaptations of foreign institutions which deserve consideration. The Prime Minister in his scheme is to be elected by the legislature and shall have to form a Hindu-Muslim cabinet with an agreed policy. This would involve prior consultations, before the legislature fixes on a Prime Minister, for otherwise the Prime Minister becomes a virtual dictator in the choice of his colleagues, and the irremovable cabinet an uncontrolled *junta*. The question which disturbs the communally-minded is, however, distinct from what disturbs the politician and social worker. One shudders at the fascist analogy of the elected-fixed-tenure-Prime-Minister-idea, and unless dictatorial rule is favoured, even on an agreed platform, the 'over-riding importance of the executive' emphasised by the Joint Committee to buttress the Governor's position should not be borrowed again to buttress the position of a Crown dictator.

The Guild Idea.

The fundamental point which constitutional proposals for India cannot ignore is that many of the problems, mistakes and miscarriages of the limited experiments at political democracy in India are due to the neglect of the development of social democracy in this country. If Great Britain is an oligarchy even to-day and democracy falters in critical periods in spite of the basic self-governing institutions of that country, the Indian failures need not alarm us. A Tagore, A Besant, a Bhagavan Das or a C. R. Das might have been enthusiastic about the revival of the village-community life as a guarantee for the success of the democratic experiment, but their plea was in favour of an apparent anachronism. Life to-day is ceasing more and more to be related to local areas but is becoming irrevocably and deeply involved in one's one pursuit and interests. The very object which those who urge for a revivalism in the so-called political genius of India may better be secured by trying to build on the basis of local and regional guilds of religious communities (if conditions make it essential), or of functional groups or societies, and to build them up into linked federations of different ascending degrees, for meeting the various social and governmental problems.

Such a scheme was furnished some time ago by Dr. Percival Spear in a memorandum. Proceeding on the thesis that India is not one society and that the fundamental divisions of the country are "not so much political, or economic or merely religious—though all these play their part—but cultural," he pleads for a

federation, "not of geographical units or of economic interests, but of sets of people with radically differing world views and ways of life, with conflicting and abiding moralities." Coalition cabinets including the minorities are no solution as they "only subsist by avoiding all questions which affect their component units, and in practice they subsist by making a division of the loaves and fishes."

Dr. Spear proposes that governmental functions should be re-arranged into (1) matters affecting all men, in which all would accept the judgment of all, and (2) matters affecting the cultural societies individually, upon which men will accept the ruling of their own group. Matters falling within the first category again are to be federally distributed in an heirarchical form. Matters lying within the second category are to be administered by communal guilds created on a regional basis and citing the case of the Shiromani Gurdwara Prabandhak Committee of the Sikhs, he argues that "once a community felt that its vital interests were in its own hands, safe from interference, the element of political bias and agitation would disappear from its internal affairs, and that it would be much more willing to co-operate with the other communities in matters of general national importance." He would further have second chambers elected on a basis of equality by the various guilds, the right to appeal to a "legal (evidently judicial) body," and the right to a share of the government's funds handed over to communal guilds in proportion to their *population* (not wealth or representation).

Dr. Spear does not advocate a responsible executive. Though party leaders may initiate and advocate policies and programmes, "the executors of policy would be men enjoying general respect," elected annually or biennially by both houses sitting together. The council is to have an annual chairman who would be the President of the Indian Commonwealth, on the analogy of the composite Working Committee of the Indian National Congress working through a President.

I shall not try to dissect the scheme nor suggest small alterations. The fundamental thesis about the non-existence of a nation in India or of the people of India is one which receives increasing support to-day and on that basis the minority safeguards are admirable. A complex society and federal arrangements predicate the surrender of the principle of legislative omnipotence and the acceptance of the limitations of 'fundamental law,'¹¹ which is also the basis of a federal structure.

¹¹ *Vide* Federation and Fundamental Law: G. M. Young (Public Administration, April-June, 1941).

An Approach to Relative Democracy.

It is essential, however, to recognise that the present war is likely to usher in new slogans and new solutions, and it may not be too bold to draw from certain current ideas for meeting India's constitutional difficulties. One hears of suggestions regarding federations including different parts of the globe and also of revolutionary changes, as envisaged in such documents as the Sankey Declaration of the Rights of Man. Whether these two ideas are to be co-ordinated to in a radical change of the world's socio-economic and political structure is not for me to forecast. But the Indian scene presents the contradictions between a democratic *political* urge and shrinking from democracy in other spheres. Majorities tend to be *perpetual* majorities of communities and parties in the various provinces, leading to exasperation. The Indian States can hardly be left out of the picture of a federation. The various 'stan-ists' seek for a recognition of the right of seceding at will from a federal government, which U.S.S.R. alone of federations acknowledge. Proportional representation and adult suffrage are admirable ideas which, however, do not receive the support of many progressives¹² and even its supporters realise the necessity of its modification for securing the representation of the distinct groups and communities, until political enlightenment has spread farther and economic conditions have substantially been altered.

We are, thus, urging that to suit Indian circumstances as given to-day, the principle of federalism need modification in order to allow for freer association, with the right of secession recognised. If, however, the federalisation of authority and the creation of autonomous groups provide for the devolution of powers and the dissemination of powers, the causes of friction would be few; and even a formal secession of an unit may not lead to the choking of the numerous channels of consultation. In the States and many of the provinces a gradually enlarging electorate, working through P. R., may be the basis of popular sanction behind *government*, but for the group committees, (concerned as they are with homely and narrower issues) as far as practicable, adult franchise should be aimed at. Indirect elections from these bottom groups should not be anathema and the second chambers thus constituted may be given considerable powers of veto. The repudiation of parliamentary system and manhood suffrage would involve the establishment of executives periodically elected which

¹² For instance, Sir P. S. Sivaswamy Aiyer: *Indian Constitutional Problems*, pp. 49-50.

must, by its very nature, be unable to rely on any one party or group loyalty. It is also worth considering whether it would be desirable to have a periodically elected President, in the Provinces and the Centre, on an agreed basis of rotation between major groups, possibly on a religious basis at present but liable to be transformed to a more rational basis later with alterations in economic life. Such a head of the State would be easily understood by the masses and would have little chances of being dictatorial, and may give opportunities to the representatives of princely and vested interests, so long as they exist, to find scope for catering to their sense of variety. Not being endowed with any extraordinary powers, he would be a figure-head, who may often play, if he has the tact and knowledge, a rôle like that of the French President or the Eire President. The combination of the President and Prime Minister, as in the Spear scheme, and also borrowing from recent Eire and South African Legislation regarding the use of seals and transaction of foreign affairs,—should be considered.

The danger facing a scheme like the above is that of fostering reaction and entrenching privilege. Not merely devolution of powers, but also fundamental laws supported by a judiciary may be suggested as safeguards. In fact, if the present war does not lead to a cataclysm to the democratic forces, co-ordinating and consultative organs of an international system should offer safeguards for not only maintaining peace but also the conditions of peace. Apart from the policy of a People's League of the future, the army itself should be composed on a *mixed* basis, with a *separate* status, but liable to controls by the legislature and the executive. I am not competent to dilate on military organisation but it is essential that the army should cease to be a body outside the normal popular participation: a People's army and civic police, popularly controlled and largely served for periods by all adult citizens, with an *esprit-de-corps* of its own which every citizen while on the army or police feels for a time.

The reconstruction of the world must find India a ready participant and our schemes, liable to adjustment, must be ready. It is not merely a demand but a possibility that autonomy of India in a planned federation of the future will be the basic idea for constructing a constitution for the *peoples* inhabiting the Indian continent. The application of ideas of federation and democracy thus needs be re-thought, revised and related to an immediate future, based on the present circumstances albeit modified by world reactions.

CIVIC RIGHTS OF WOMEN IN BRITISH INDIA*

BY

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The Indian Women's Movement in the recent past has had two phases. In the first phase, it aimed mainly at educational and social reform and was sponsored and encouraged by men like Raja Ram Mohan Roy, Swami Dayanand, and certain other socio-religious leaders. In the second phase, which may be said to have its beginnings in the early years of this century, the movement became political and feminist. At present, both these parts of the movement are running side by side, though there is considerable overlapping at times. It is the purpose of this essay to trace the circumstances which have introduced the second phase and to assess the results achieved.

Owing to the efforts of the social reformers of the 19th century, more and more attention was being paid to the improvement of women's lot in life, but no one ever thought of civic rights for Indian women. In fact, it was universally recognised that the proper sphere of a woman's activities was the home and she was not required to take any interest in public or national affairs, which were exclusively the concern of men. Things, however, began to change in 1905.

A strong nationalist movement was started in that year as a result of Lord Curzon's policy, especially the Partition of Bengal. Events outside India, no doubt, affected the movement, especially the victory of Japan over Russia. In this nationalist movement, the boycott of British goods was used as a political weapon for the first time in British Indian history. The emphasis in the boycott was against the foreign cloth and this encouraged the wearing of home-spun. The *swadeshi* movement depended for its success upon the output of a large amount of home-spun yarn and this naturally brought women into the national movement for the first time.¹ From that time, the Indian politicians, especially the Congressmen, seem to have realised the importance of getting women to contribute their proper share in the national activities.

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December 1941—January 1942.

¹ *Rise and Fulfilment of British Rule in India*, Thompson and Garrat, p. 549.

However, the time was not yet ripe for giving the women of India any civic rights and the Morley-Minto Reforms contained nothing in that line. Of course, no one demanded or expected that they should. Even in England the women had not got the vote in 1909, and it would have been preposterous to expect the Morley-Minto Reforms to concede it to the Indian women. Moreover, there was no All-India organisation of the women, though it is true that women had always been allowed to take part in the affairs of the Indian National Congress.

Effect of War.

The Great War, however, was to change all this. It has been truly said that there is no department of life which was not affected, in one way or another, by the War. It had the important effect of making the Women's Movement in India definitely all-India, political and feminist, though it was never aggressively feminist.

The following causes and circumstances combined to give the movement that turn:

Firstly.—As pointed out by Mrs. Gray, women had been deeply stirred by the War, and acquired the habit of working together on non-communal lines to alleviate the sufferings of the troops.² This habit stood them in good stead after the War and has helped to keep the Movement outside and above the communal battle. They began to realise that they had aims and objects, other than those of men, for which they must organise themselves.

Secondly.—The War gave an impetus to the suffragette movement in England, and this had its repercussions in India. Educated Indian ladies read about the activities of their English sisters and began to think of the vote for themselves.

Thirdly.—The Allies declared during the War that they were fighting for democracy, equality and self-determination. This idea appealed strongly to the Indian women who had for centuries been suffering from the tyranny of men.

The women of India who were dedicating the lives of their sons, brothers and husbands to the cause of mankind, were themselves compelled to live in political and economic bondage. The incongruity of such a position was both glaring and poignant. The educated among them came to the inevitable conclusion that the first step in their emancipation should be the getting of the vote on the basis on which it was to be granted to men.

² *Political India*, Ed. Sir John Cumming, p. 157 (Oxford University Press, London, 1932).

Fourthly.—The political ferment in India during the War brought the various parties closer to each other and the famous Lucknow Pact was signed between the Congress and the Muslim League. One of the clauses of the Pact suggested that the Provincial legislatures should be elected "directly by the people, on as broad a franchise as possible." It did not specifically mention the women, but the phrase "as broad a franchise as possible" and the word 'people' are wide enough to suggest the presumption that the framers of the Lucknow Pact intended women to be included in the electoral rolls; at least that is how the women later on interpreted the word 'people.'

Fifthly.—The circumstances which followed the Lucknow Pact and crystallised the women's desires for vote was Mr. Montagu's famous announcement of August 20, 1917.

By that declaration, the British Government did not propose to introduce any sweeping or sudden change in the administration of India. The process was to be gradual and it seemed to many Indians that the ideal was encumbered with conditional and restrictive clauses.

Still, in spite of these defects the announcement signified the dawn of a new era, for after all some beginning in responsible government was to be made. It was a psychological moment and the women of India realised that they must bestir themselves, or they might wake up to find that India had a new constitution in which women had no place. Therefore, when they learnt that the Secretary of State was coming to India, they decided to approach him.

Mr. Montagu, accompanied by his personal staff, landed in Bombay on the 10th of November, 1917. It is interesting to note that on the very first day of his arrival in India he received a request for an interview from the women of India.³ The request was, of course, granted, and he received the deputation of women in Madras on December 18. The deputation was led by Mrs. Naidu, the poetess, whom Mr. Montagu describes in his *Indian Diary* as a "very attractive and clever woman, but a revolutionary at heart."⁴ Mrs. Annie Besant was also present in the interview but the address had been drafted by Mrs. Cousins, a "well-known suffragette from London." This was the only deputation of women which waited upon Mr. Montagu, but it was representative of womanhood in all parts of India. The deputation

³ *An Indian Diary* by E. S. Montagu, edited by Venetia Montagu, London, 1930, p. 5.

⁴ *Indian Diary*, op. cit., pp. 115-16.

demanding votes for women in the new constitution, in addition to asking for more girl schools and medical colleges. The passage in the address relating to women's suffrage is worth quoting:—

“Our interests as one-half of the people are directly affected by the demand in the united (Hindu-Muslim reform) scheme that ‘the members of the council should be elected directly by the people on as broad a franchise as possible,’ and in the Memorandum (3) that the franchise should be broadened and extended directly to the people. We pray that when such a suffrage is being drawn up, *women may be recognised as ‘people’* and that it may be worded in such terms as will not disqualify our sex, but allow our women the same opportunities of representation as our men.” In agreeing with the demand of the above-mentioned Memorandum that ‘a full measure of Local Self-Government should be immediately granted’, we request that it shall include the representation of our women, a policy that has been admittedly successful for the past twenty years in Local Self-Government elsewhere in the British Empire. The precedent for including women in modern political life has been a marked feature of the Indian National Congress in which, since its inception, *women have voted* and been delegates and speakers, and which this year finds its climax in the election of a woman as its President. Thus, the voice of India approves of its women being considered responsible and acknowledged citizens; and we urgently claim that, in the drawing up of all provisions regarding representation, our sex shall not be made a disqualification for the exercise of the franchise or for service in public life.” In making their demand, the women were not actuated by a desire merely to acquire political rights but the basic idea was to secure the same opportunities of service to their country as the men in all spheres of life and above all, in the national struggle for freedom.⁵ They assured Mr. Montagu that the Congress would willingly pass a unanimous resolution in favour of women's suffrage.

⁵ Rani Lakhshmi Bai Rajwade in answer to the Questionnaire of the International Alliance of Women for Suffrage and Equal Citizenship.

The Calcutta Congress of 1917 was presided over by Mrs. Besant and there was no difficulty in getting it to pass a resolution in which it expressed the opinion “that the same tests be applied to women as to men in regard to the franchise and the eligibility to all elective bodies concerned with Local Government and education.” It was quite in the fitness of things that the Congress which demanded a vote for the women was presided over by a woman, though Mrs. Besant largely owed her election to the presidency to an entirely different factor, namely, her internment in the summer of 1917. Next year, the special session of the Indian National Congress, held in Bombay in September 1918, passed by a three-fourths of majority a resolution in favour of women's suffrage. In the same month, the Muslim League which represents a certain section of the Muslims followed suit by a resolution in favour of franchise for Indian women.

To the Act of 1919.

The year 1918 was devoted to converting the forces of Government to the cause of women's suffrage, but it proved a difficult task. Mr. Montagu's reply to the deputation had been sympathetic, but it was a great disappointment to the women of India that except for a brief mention of the obstacles which social custom set up in the way of female education, there was hardly any reference in the Montagu-Chelmsford Report to the women of India.

The Franchise Committee, which visited India under the Presidency of Lord Southborough, reported early in 1919,⁶ that it had received numerous petitions from women of educated classes urging the grant of female suffrage on property qualification or at least the admission of women graduates to the franchise.⁷ But they were not satisfied about the desirability of granting the request, and they reported that “in accordance with the preponderating weight of the evidence received by us, we propose to disqualify women.”⁸ All members of the Committee were agreed on this point except one,⁹ who was of opinion that “While there

⁶ February 22, 1919.

⁷ Para 8 of *Southborough Committee's Report*.

⁸ Para 7, *Ibid.*, (The Committee heard a deputation headed by Mrs. Sarojini Naidu and certain other ladies, e.g., Mrs. S. D. Chaudhari and Mrs. H. Roshan Lal representing the All-India Women's Association.)

⁹ Mr. Hogg.

may be no very general demand for female suffrage at present, no strong opposition to it was revealed by the evidence and that therefore it was advisable to remove the sex disqualification at the outset of the development of responsible government in India." He was, however, not in favour of any special polling arrangements for women.¹⁰ The arguments of the Committee against female franchise may be summed up as under:¹¹

- (i) Impracticability of bringing women to the polls;
- (ii) The fact that none of the local governments advised the extension of the franchise to women;
- (iii) The fact that the Municipal franchise had been granted but had been only sparingly exercised except in Bombay;
- (iv) Social conditions, especially illiteracy;
- (v) Seclusion of women; and
- (vi) The conservative nature of the country.

Owing to all these considerations, they "decided not to recommend the extension of suffrage to women."¹² If this advice had been followed, a beginning could not have been made and the desire that the Indian women should have some direct opportunity of influencing the course of politics in their own country would have remained unsatisfied. There was at a time danger that it would be so, for the Government of India agreed with the recommendation of the Franchise Committee. In their fifth despatch on the Indian Constitutional Reforms, they referred to this matter in the following terms:

"In the present condition of India we agree with them (i.e., the Southborough Committee) that it is not practicable to open the franchise to women."¹³ One

¹⁰ Report, *op.cit.*, para 8.

¹¹ *Ibid.*

¹² *Ibid.*, They wrote: "We are satisfied that the social conditions of India make it premature to extend the franchise to Indian women at this juncture, when so large a proportion of male electors require education in the use of a responsible vote. Further, until the custom of seclusion of women, followed by many classes and communities is relaxed, female suffrage would hardly be a reality, it would be out of harmony with the conservative feeling of the country and would involve great difficulties in the actual recording of votes."

¹³ Government of India Despatch to the Secretary of the State, dated April 23, 1919, para 3.

of the members of the Executive Council,¹⁴ however, disagreed with this view and was of opinion that the sex disqualification should be removed at the outset. This was, indeed, a dark outlook for the women of India, but they did not sit idle, and pressed their claims.

After the introduction of the Government of India Bill in Parliament in July 1919, a number of deputations proceeded to London to give evidence before the Joint Select Committee of members of both Houses of Parliament. Mrs. Sarojini Naidu handed in a paper to the Committee in London supporting women's franchise.¹⁵ In the autumn of the same year, Mrs. and Miss Tata left for England, with Sir Sankaran Nair, to agitate there for the women's franchise. In addition to this, Mrs. Annie Besant eloquently pleaded before the Committee for the same cause but the question seemed to the Committee to be one which went deep into the social system and susceptibilities of India and, therefore, to be a question which could only, with any prudence, be settled in accordance with the wishes of Indians themselves as constitutionally expressed."¹⁶

They, therefore, recommended that the question should be left to the newly elected legislative council of each province to settle by resolution, and that the Government of India should be instructed to make rules, so that, if a legislative council so voted, women of that province should be put upon the register of voters.¹⁷ The recommendation was accepted, and the electoral rules were drawn accordingly.¹⁸ A corresponding power was

¹⁴ Sir Sankaran Nair.

¹⁵ August 6, 1919.

¹⁶ Para 7, Clause 7(e) of the Report of J. S. Committee, November 17, 1919.

¹⁷ *Ibid.*

¹⁸ See *Electoral Rules in Government of India Notification No. 767-F*, dated 27th July, 1920. Part III (vii) (i) Provides disqualification for women but says: "Provided further that if a resolution is passed by the Council after no less than one month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification for registration should be removed either in respect of women generally or any class of women, the local Government shall make regulations providing that women or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex."

conferred upon both houses of the central legislature also, provided that women from those provinces only could vote for the central legislature in which they could vote for their own provincial councils.¹⁹

Madras led the way in April 1921, and Bombay also took advantage of this clause before the end of the year. The United Provinces followed with a unanimous resolution for women's suffrage in 1923, and the Central Provinces, the Punjab and Bengal three years later. Finally, Bihar and Orissa and Assam joined the majority, so that women were enfranchised on the same terms as men throughout British India within ten years of the passing of the reforms. The further privilege of voting for the Central Legislative Assembly was conceded wherever women voted for their provincial councils.

As Mrs. Gray puts it, "this was a remarkable and unlooked-for development in the annals of Indian history, for it had not been expected that women would desire to go to the polls or that men would desire to see them there."²⁰ This naturally seemed remarkable to outsiders accustomed to consider Indian men as totally averse to the freedom of women. It was, however, not so to the Indian politicians who have always held the view that women should exercise the right of voting. Just as, at the annual meetings of the Congress, women had always been admitted as delegates and speakers and two women had been elected even President (Mrs. Naidu and Mrs. Besant), so they showed no sex prejudice against admitting women to full citizenship.

Defects of the Franchise under the Act of 1919.

In the six Governor's provinces the proportion of female electors to adult female population was only 6%, which roughly means that one out of two hundred or to be exact six out of one thousand were enfranchised. The total number enfranchised was 268,000 only.²¹

Thus, it will be seen that a very small number of Indian women got the vote. The remarks of the Statutory Commission of 1927 are worth quoting in this respect. They say: "The adoption of property qualifications as a basis for the franchise gave a predominance, and sometimes a monopoly, in the vote to

¹⁹ *Electoral Rules, op.cit.*

²⁰ Mrs. Gray's Essay, p. 158 (*Political India, op.cit.*)

²¹ Excluding the seventh province Burma, where the percentage was the highest, i.e., 4.6%. These figures are taken from the *Simon Report*, Part III, Chapter I, para 202 and are for the year 1926.

certain classes of the population. Thus, though it is true that in an agricultural country like India, the bulk of the population appears extremely homogeneous in its needs and aspirations, whole sections of the population came to be excluded from the franchise. The chief among these are nearly all the women and the general body of the poor. In exercising the option allowed to them of enfranchising women, on the same terms as men, the provincial legislatures have made a gesture of high significance. But so long as the qualification for the vote is almost entirely a property qualification, it will remain a gesture, because India's women do not own property in their own right."²²

Another great defect of the franchise was that it failed to give votes to all literates. If education be the best test of capacity to use the vote, the franchise failed completely to take advantage of the material, inasmuch as many persons who got the vote were illiterate and many who were literate did not get it as they failed to satisfy the property qualification. Such was especially the case of literate women, most of whom possessed no property of their own.

However, it was something to feel that the women of British India had been enfranchised without an embittering struggle, "They have just blown their trumpets once, twice or thrice and the walls of Jericho have fallen."²³ In 1923, women for the first time voted for the provincial legislative councils and for the Central Legislative Assembly, although only from three provinces, namely, Bombay, Madras and the United Provinces. On an average, less than ten per cent of the women electors went to the poll. In 1926, when they voted for the second time, their average rose to a little over 13% for the provincial legislature, it being highest in Bombay and Madras, where it was over 19%. In these elections, women from six provinces voted excluding Burma. The percentage of women who went to the polls is disappointingly low. In a paper on the problem of non-voting in India, read before the Indian Political Science Association, held at Lahore in January 1940, Professor Sahgal traced the causes of non-voting. Illiteracy and lack of political consciousness are, no doubt, the main causes. But the low figures for the elections of the twenties can be explained by another fact also.

The Indian National Congress started the first civil disobedience movement in 1921, a part of which was the boycott of

²² See Part III, Chapter I, para 203 of the *Report*.

²³ Mrs. Gray, p. 159.

elections to the legislatures.²⁴ One inevitable result of this boycott was that the vote, ordinarily an important badge of citizenship, was not considered as of much account. At many places, barbers and sweepers were set up by the Congress against titled gentlemen and the former defeated the aristocrats. Naturally, the man in the street thought that the vote was a huge joke, and it would not matter much if the right was not exercised. This belittling of the vote had another effect also. If the women wanted to play with a meaningless bauble, why should they not? This attitude no doubt accounts, to a considerable extent, for the utter lack of opposition to the female franchise in India. Another cause which explains the fact but, which it is rather difficult for a foreigner to understand, lies in the deep 'veneration that is given by the Hindu and Mohammedan religions to the feminine aspect of life equally with the masculine, as shown by the necessity for the presence of the wife at all ceremonies performed by a Brahmin and by the idea of the sacred mystery of womanhood implied by the *Pardah*.²

The Civil Disobedience Movement helped them in another way also. Mahatma Gandhi appealed to men and women of India to help his movement by enlisting as volunteers. A large number of women offered themselves for work and some even courted arrest. Of course, many joined in the processions which were organised in all big cities of India. The result was that the women began to have some taste of public and political life of the country. The leaders also realised how useful the women could be in any mass agitation especially if the agitation was to be run on non-violent lines. No one was more fitted for peaceful

²⁴ For the first election of 1920, the proportion of voters who went to the polls, was about 20 to 30% on all-India basis for the provincial legislatures; 20% for the Legislative Assembly and about 40% for the Council of State. In Bombay where the Congress movement was very strong, only 8% of the voters went to the polls. In the elections of 1923, when the national ban on council entry was removed, there were lively contest and much larger number of voters went to the polls. Addressing the Joint Session of the Central Chamber on January 31, 1924, H. E. the Viceroy observed: The attendance at the polls and the close contest between candidates during the recent elections demonstrate the increasing interest which the system claims from the electorate and the country at large. In 1926, there was a further improvement and the report of the Statutory Commission remarked: "The readiness of the voter to register his vote is a fact which the pessimist would find it difficult entirely to discount." And again "the figures are remarkably uniform and show a steady improvement" (see Report, Vol. I, para 210).

picketing and other similar activities than the women, and it was clear that the Congress leaders would benefit by this lesson in the next Satyagrah Movement, as we know they did, in 1930 and 1932. This first participation in the Movement, was a prelude to greater sacrifices to be demanded of them in the future and there is no doubt that this encouraged the Women's Movement in India.

Women's Organisations.

This awakening resulted in the formation of certain organisations of women which could voice their feelings and work for the realisation of their aspirations. The National Council of Women in India was founded in 1925 and had women's suffrage as one of the planks in its programme, although it devoted its attention mainly to co-ordinating social reform activities and to keeping Indian women in touch with women of other lands. Then, there was the All-India Women's Conference on educational and social reforms (1926) which provided an important platform from which women could voice their views. Its rapid growth in recent years is an index of the ever-increasing number of politically minded Indian women. The fact that not only its annual meeting, but also its constituent conferences in all parts of India attract hundreds of women to discuss such questions as the restraint of early marriage, the disabilities of women in matters of property, compulsory education for girls, and even as bold a subject as the provision of birth control clinics, indicates the growth of political consciousness in Indian women. The articulate women may be few at present, but they are rapidly growing in numbers and in the influence which they exercise on those who are not so organised.

In fact, the growth of political consciousness among Indian women from 1917, when they first led a deputation to Mr. Montagu, to 1927, a period of ten years, was almost phenomenal. The contrast between 1917 and 1927 may be conveniently illustrated by reference to official documents. In the Montagu-Chelmsford Report, there is hardly any reference to the women of India, except for a mention of the obstacles which social custom sets up in the way of female education. It is a striking proof of the change which came over the Indian scene during the next ten years, that the Simon Commission which visited India in 1927, devoted in their report a separate chapter to the discussion of problems relating to women.²⁵ It was clearly impossible in 1927

²⁵ Chapter 7 of Part I, Vol. I.

to exclude women from any political scheme intended for India. In any democratic constitution, the legislature is the index of popular will, and popular will can express itself only if the legislature represents all citizens, male and female. Hence the importance which the women of India attach to the franchise.

Recommendations of the Statutory Commission.

The Simon Commission, however, was not prepared to recommend any large and sweeping extension of the franchise. In their report they remark: "There can be no doubt that practical considerations of men and money make any large and sudden extension of the franchise unworkable and administratively impossible."²⁶ They nevertheless recommended that "women's suffrage should be a cardinal part of the franchise system."²⁷ They desired to "see a substantial increase in the present ratio of women to men voters."²⁸ They, therefore, recommended that to the then existing qualifications two more could be added, *viz.*, (1) being the wife, over 25 years of age, of a man who has a property qualification to vote and (2) being a widow over that age, whose husband at the time of death was so qualified. In addition, they opined that the educational qualification should apply to women over 21 as well, as to men. "We limit our proposal to wives and widows of 25 because on practical grounds, we are anxious to avoid introducing at this stage too heavy a proportion of women in the electorate."²⁹ However, they thought that such a limited franchise was to be considered only temporary, and "as education spreads we should expect to see the responsibility of the vote conferred on an increasing proportion of the population."³⁰

However, the recommendations of the Statutory Commission were not fated to be translated into Statute. The Parliament had thought it proper not to include a single Indian in the personnel of the Commission. This deliberate exclusion was extremely humiliating to Indian self-respect, with the result that the all-white commission was boycotted even by the Indian Liberals. Its report, published in 1930, was received with a chorus of condemnation and was publicly burnt at many places.

²⁶ Para 209, Vol. I.

²⁷ Para 91, Vol. II.

²⁸ Para 108, Vol. II.

²⁹ *Ibid.*

³⁰ *Ibid.*, para 109.

In the meantime the Labour Party came to power in England and great expectations began to be entertained in India, as the leaders of the party had frequently professed sympathy for Indian aspirations. The Ministry soon announced their decision to convene a Round Table Conference to frame a constitution for India, to which Indians of all opinions were to be invited. No clear assurance regarding the ultimate object of Parliament was however given, and the Indian National Congress, failing to receive any reply to its demand for Dominion Status, decided to launch the Civil Disobedience Movement in 1930.

This movement was again to bring women into prominence. Thousands of women broke certain laws and courted arrest for their political ideal of Indian independence. Their special domain was, however, the picketing of foreign cloth and liquor shops. The Congresswomen were organised in a separate organisation of their own called the Desh Sevikas, the members of which are vowed to peaceful methods of persuasion. They carried through their task with such conspicuous devotion to peaceful methods that in some places even the police called upon them to help in maintaining order in times of dangerous rioting. Pandit Jawahar Lal Nehru, under whose Presidency of the Congress, the campaign of 1930 was started, pays them a handsome tribute when he writes in his *Autobiography*³¹:—

“Many strange things happened in those days, but undoubtedly the most striking was the part of women in the national struggle. They came out in large numbers from the seclusion of their homes and, though unused to public activity, threw themselves into the heart of the struggle. The picketing of foreign cloth and liquor shops they made their preserve. Enormous processions consisting of women alone were taken out in all the cities, and generally, the attitude of the women was more unyielding than that of the men. Often they became Congress ‘dictators’ in provinces and in local areas.”

Out of this movement, the women emerged fully conscious of their political rights and duties and their right to an extended franchise could not possibly be denied.

Views of the Indian and Provincial Governments.

But while all this was going on, preparations were being made to hold the first session of the Round Table Conference in London. The Government of India were also busy preparing their Despatch containing their views on the Constitutional

³¹ Nehru, *Autobiography*, Bodley Head, p. 214-15.

Reforms. Once again the Government of India proved itself to be more reactionary in their outlook than the British statesmen. A perusal of their remarks regarding the women's franchise would prove my charge against them. Referring to the Statutory Commission's proposals for increasing the number of women voters by wifehood, widowhood and literary qualifications, the Despatch of the Government of India says: "These suggestions have called forth much criticism and we doubt whether they would be acceptable to any considerable section of opinion of the country."³² Their objection, as also that of the various provincial governments, was that the proposal, if accepted, would "give to the family of the low caste Hindu voter, whose wife is able to go to the poll, a second vote, and thus give them twice the voting power of many of the higher castes, and also of many of the Muslims, whose wives would be debarred from recording their votes by the operation of social custom."³³

The Punjab Government was also opposed to the extension of franchise to women. They recommended that the same property qualification should continue in case of women as was prescribed for men although this would enfranchise only a small

³² See para 29 of the *Government of India's Despatch on Proposals for Constitutional Reform, 1930*.

³³ *Ibid.* Reference is of course to the prevalence of Pardah among Muslim. The views of the various provincial governments are summarised below:—

Madras.—The Government accepted recommendations of the Statutory Commission.

Bombay.—Accepted, subject to investigation by the Franchise Committee.

Bengal.—The Government are agreed that "there is no need at present of any measures to bring more women on to the electoral roll." They considered the proposals not only unworkable in themselves, but also inequitable.

Punjab.—Women "should continue to have the same property qualification as men in spite of the fact that the number of women which is thereby enfranchised is very small."

Bihar and Orissa.—"For this rapid enfranchisement of women there is no justification and the proposal has been generally condemned and has aroused strong resentment."

C. P.—The question shall be left to the Franchise Committee.

Assam.—Opposed reservation of seats for women.

U. P.—Opposed reservation of seats for women. (For a fuller view of these governments see "*Views of Local Governments on the Recommendations of the Statutory Commission, 1930*, Government of India Central Publication Branch, Cal. 30.)

number. "It is a matter," they said, "where the growth of public opinion should be left to have play."³⁴

The strongest opposition to the extension of female franchise came from the Government of Bihar and Orissa. They advanced the usual argument that the extension of franchise would mean duplicating the votes for members of the lower castes, and will thus "lead to an increase of voting power only of the less responsible and less educated classes of the community." Their second argument was that there was no demand for vote on the part of women themselves. Their third objection was that, owing to the Pardah system, there would be an increase in cases of personation as "their identification at the poll will be practically impossible."³⁵

Luckily for the women of India, the Round Table Conference was held soon after the sending of this Despatch and two very able and energetic Indian women were invited to attend it.³⁶ They pressed their claims so well, that all agreed in disregarding the proposals of this reactionary despatch. In her speech of November 20, 1930, at the plenary session of the Conference, Begam Shah Nawaz described the gathering as 'unique' because of inclusion of women and said,³⁷ "Whatever may be the ultimate form of Government decided upon, we hope that this Conference will not treat us in the way we have been treated in the Government of India Despatch. The fate of half the population of the country has been decided in one sentence. Had that one sentence said that sex should be no disqualification for women in any way, we would have rejoiced. But to finish nearly 160 million of His Majesty's subjects by saying that no special provision should be made for women, shows a complete lack of understanding. But if others have blundered, we hope and pray that this Conference will not, and it will give women their adequate share in the administration of their country." This was a strong plea and coming, as it did, from a lady who belonged to a family the women of which had always observed Pardah,³⁸ it was bound to have effect. Moreover, she was not slow to point out to the Conference, that "India bruised and aching is looking up to us

³⁴ See *Views of Provincial Government, op.cit.*

³⁵ *Government of India Despatch, para 29.*

³⁶ Begam Shah Nawaz and Mrs. Subbarayan.

³⁷ *R. T. C. Speeches*, G. A. Natesan and Co., Madras, p. 162-166.

³⁸ Begam Shah Nawaz described herself in those words. See *Speeches op.cit.*

to spread the balm of goodwill and friendship.”³⁰ This had its desired effect, and Mr. Ramsay Macdonald, the then Prime Minister of Britain, described the Conference as ‘historic’ in more senses than one, for, he said, “You have listened to a charming new voice, which in itself marks something great and something more significant in the evolution of Indian self-government the voice of the women of India.”³¹ Consequently, the Franchise Sub-Committee appointed by the R.T.C. included these two women delegates and it submitted its report on January 16, 1931.³² Since its terms of reference were limited,³³ they did not go into details of the franchise,³⁴ but only laid down certain general principles. Their remarks about the women’s franchise mark a definite advance on the Government of India despatch and bear full quotation.³⁵ “We observe that under the existing franchise, the number of women voters is infinitesimal as compared with that of men. No system of franchise can be considered as satisfactory, or as likely to lead to good government, where such a great disparity exists between the voting strength of the two sexes. We do not anticipate that the recommendations, we have already made, will reduce this disparity, nor do we think that they provide sufficiently for the enfranchisement of women. We, therefore, agree that special qualifications should be prescribed for women”

The Congress called off the N.C.O. and Mahatma Gandhi went to attend the second session of the R.T.C. The women also got accession to their strength by the inclusion of Mrs. Sarojini Naidu among the delegates. It was in this session that they put forth concrete demands, supported by the Congress. The scheme for Reforms circulated by Mahatma Gandhi on behalf of the Congress demanded that, “the franchise shall be extended to all

³⁰ *Ibid.*

³¹ *Ibid.*, p. 282. The Prime Minister’s speech, November 21, 1930.

³² See *Proceedings of the Indian R. T. C.*, Official Publication, pp. 385 to 391, being report of Sub-Committee No. 6, and the discussion on it. This first franchise Committee was presided over by Sir W. A. Jowitt. The Lothian Committee was appointed later.

³³ Their terms of reference were simply “on what main principles is the franchise to be based for men and women.” See *Proceedings op.cit.*

³⁴ In para 4 of their report, they recommended that an expert commission should be appointed to work out the detail. *Ibid.*

³⁵ Para 9, Report, *op.cit.*

adult men and women.”³⁵ The Congress was committed to adult franchise, for both men and women, by the Karachi resolution and could not entertain any other franchise. Although it was clear that no scheme based on adult franchise could be acceptable to the Parliament, it was something to know that the greatest political organisation of India was supporting the cause of women. This naturally strengthened their hands. The women’s organisations in India were also active and they prepared a memorandum of their demands, which was submitted to the R.T.C. jointly by Mrs. Naidu and Begam Shah Nawaz.³⁶ The Memorandum referred to the fundamental rights as formulated by the “accredited leaders of the nation,” and made the following demands³⁷:—

(i) “Complete and immediate recognition of their equal political status, in theory and in practice, by the grant of full adult franchise, or an effective and acceptable alternative, based on the conception of adult suffrage.”

(ii) “No reservation of seats, nomination or co-option, whether by Statute, Convention or at the discretion of the Provincial and Central Governments. For they said: “To seek any form of preferential treatment would be to violate the integrity of the universal demand of Indian women for absolute equality of political status.”

(iii) “No sex discrimination, either against or in favour of women, under the new constitution.”

Mrs. Subbaroyan, who submitted a separate memorandum of her own, however, did not agree with the suggestion that no special provision should be made for women. She thought that it was impossible to enfranchise a larger number of women without having certain additional qualifications, e.g., literacy or wife-hood. However, she agreed with the other women inasmuch as she was also opposed to communal electorates and supported election by proportional representation.

It must, however, be remembered that, when the women’s organisations opposed special additional qualifications, they did

³⁵ See *R. T. C. Session, Second, Report of the Minorities Committee*, Appendix I, being Congress scheme circulated at the request of Mr. M. K. Gandhi, para 2.

³⁶ The Memorandum is printed in Appendix XIV of the *Minorities Committee’s Report* given in official proceedings of the II Session of the R. T. C.

³⁷ The Memorandum was issued by the All-India Women’s Conference; the Women’s Indian Association and the Central Committee of the National Council of Women in India.

so on the assumption that adult franchise would be granted. In 1932, the same three organisations submitted a second Memorandum to the Third Session of the R.T.C., in which they reiterated their demands. These questions continued to be discussed right up to 1935 when the Government of India Act was passed. I shall divide this subject into two parts, namely, the question of franchise, and the question of reservation of seats which really begins from 1930.

Franchise, 1932-37.

Regarding the franchise, it only remains for me to discuss the proposals as formulated in the recommendations of the Lothian Committee, the White Paper of 1933, the Joint Select Committee, of the two Houses of Parliament which met in 1933-34 and the Government of India Act 1935.

As recommended by the Franchise Sub-Committee of the first R.T.C. another expert franchise sub-committee was appointed between the second and the third session of the R.T.C. under the chairmanship of the Marquess of Lothian. The report of this committee was considered by the third session of the R.T.C. The Committee came to the conclusion that about one-fifth of the voters should be women in order to compel candidates to consider their interests and opinions, to awaken political interest among the women, and to make their votes an effective lever, particularly in effecting reforms of special concern to women and children.⁴⁸ They recommended: (i) That there shall be the same property qualification for women as for men. (ii) That in case of women, a low educational qualification should be laid down, viz., mere literacy. The Conference unanimously accepted the first proposal but some difference of opinion manifested itself on the second point, as some delegates suggested the upper primary standard. But this proposal would have enfranchised only a small number of women, hence the general feeling was in favour of 'mere literacy' qualification. Some thought that the same concession should be given to men also.⁴⁹ (iii) That wives and widows of over 21 of men qualified by property to vote should be enfranchised. The same old objections were raised to this proposal.

Next year, His Majesty's Government published a white paper, containing their proposals for Indian constitutional reforms. Once again it was proved that governments are more cautious in matters of political advance than most of the

⁴⁸ Para 213 of Report.

⁴⁹ *Ibid.*

politicians. Presumably pressed by the Government of India, or the India Office, His Majesty's Government did not accept in entirety the proposals of the Franchise Committee or the R.T.C. regarding women. It was laid down in the *White Paper*, of 1933 that women, qualified in respect of their husbands' property, should make an application for registration. Moreover, the educational standard enabling a woman to be registered as voter was substantially raised. Take the case of Bombay for instance. Here the educational standard was kept as high as the passing of the Matriculation or the School Leaving Certificate Examination, and it was also laid down that only one wife could be enfranchised in right of her husband's property.⁵⁰ For the Punjab, the passing of the primary educational standard was recommended. Had these proposals been accepted, they would have led to some unfortunate consequences. But the bureaucrat was again to come into clash with the politician, and the politician won. The Joint Committee on the Indian Constitutional Reforms considered these proposals and found them inadequate and unsatisfactory. They received some very strong representations from representatives of women's organisations both in England and in India. Their objections to the *White Paper* proposals, may be summed up as follows:—

(i) These proposals were estimated to produce a women's electorate of nearly six million as against a male electorate of between 28 and 29 million, a ratio approximately that recommended by the Franchise Committee. But of these six million only two million, that is to say, women qualified to vote in respect of the ownership of property in their own right would automatically be placed upon the roll; for the rest, that is four million, an application to the returning officer would be required. This would have seriously prejudiced the position of women under the new constitution.

(ii) Secondly, the standard of education, as laid down in the *White Paper*, was so high, that it would have resulted in the enfranchisement of very small numbers. The effect of this rule would have been specially hard on those women who were educated at home.⁵¹ In view of these strong objections, the Joint Committee remarked in their report: "We are only well aware of the formidable obstacles which every reformer in this field will encounter, and we have reason to believe, for example, that there

⁵⁰ See Appendix V of the *White Paper*, 1933.

⁵¹ See report of the Joint Committee on Indian Constitutional Reforms (Session 1933-34), Vol. I. Part I, paras 123, 124, 125, 126, 128 and 132.

is even now a large body of opinion in India which would condone the dreadful practice of *Suttee*. We are, therefore, all the more convinced of the necessity for strengthening the position of women under the new constitution and we are not satisfied that the proposals in the *White Paper* are adequate to achieve this object. We are particularly impressed by the unfortunate consequences likely to follow from the 'application' requirement.⁵² They also agreed that the educational qualification was too high, and felt the force of the argument of those who wished to enfranchise the wives of men with military service to their credit. They, therefore, recommended that:

(i) The application requirement should be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar, Orissa, C.P. and urban areas of U.P.

(ii) In Bombay, C.P., U.P., Punjab and Assam, a literacy qualification should be substituted in place of the educational qualification.

(iii) In every province, subject to further consideration in case of N.W.F. Province, the wives of men with the military service qualification should be enfranchised, registration being on application.

(iv) In cases, where registration will be on application, the hardship should be mitigated by the husband making the application on wife's behalf, or she may make application by letter; and where a woman does not wish her personal name to be placed on the register, she may be entered as the wife of A, B or C.⁵³ They, further, recommended that the standard of education should be lowered in those provinces where it is above literacy to mere literacy before the second elections, if the provincial councils so desire.⁵⁴ These proposals were generally accepted by the Parliament and incorporated in the Government of India Act, 1935. Under the Act, the qualifications for women for the various legislatures are as follows.

Franchise under the Act of 1935.

The Federal House of Assembly or the Lower Chamber. The election to the proposed lower house will be by indirect election in the case of both men and women, the members of the provincial legislature forming the electorate. Muslim and Sikh

⁵² *Ibid.*, para 134.

⁵³ *Ibid.*, para 135.

⁵⁴ *Ibid.*, para 136.

members of a Provincial Assembly will elect Muslim and Sikh members assigned to that province for the House of Assembly and those holding general seats in the provinces will elect members for the general seats of the Federal lower house. But a special provision is made for women. The Act provides that women members of the Federal Assembly shall be elected by an electoral college consisting of all women who are members of the Legislative Assembly of any province.⁵⁵

The Council of State. The elections to the upper chamber will be direct in the case of men, though owing to a high property qualification, the electorate will not be very large. Here again, there is a special provision for women, who would be elected by all members, men and women, of a provincial legislature.⁵⁶ So that as far as women are concerned, election to both houses of the federal legislature will be indirect, the mass of the women having no share at all in the selection of their representatives.

Provincial Electorate. The position for the provincial legislatures is better, though far from being ideal. The provinces are divided into small territorial areas for electoral purposes. A district or group of districts is or are taken as a unit. Large cities are formed into groups for urban constituencies. But the Act did not contain details of the nature of the constituencies which were to return women, although provision was made for the later regulation of these details. Under the Act, the franchise has been extended to all women of over 21,

- (i) who are not otherwise disqualified;
- (ii) who are British subjects or subjects of a Federated State;
- (iii) who possess a property qualification in their own right;⁵⁷
- (iv) who are the wives or widows of men with property qualifications;
- (v) who are the wives of men with a military service qualification for vote;
- (vi) who are the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers or

⁵⁵ Rule 21 of the First Schedule.

⁵⁶ Rule 9 of the Schedule First.

⁵⁷ For details of the property qualifications in the Punjab, see Sixth Schedule Part VI of the *Government of India Act, 1935*.

members of the Regular forces or of any British India police force; and

(vii) who have an educational qualification.

In the Punjab, the educational qualification for women is mere literacy. For women, who wish to be enrolled on grounds of literacy or wifehood or widowhood of a man having military qualifications or on grounds of husband's property, the making of an application is necessary.⁵⁸

So much for the women's franchise, we now turn to the still more difficult question of securing the presence of enough women as members of the legislatures.

Women Members of Legislatures. The rules made under the Act of 1919 had provided that the Provincial and the Central Legislatures could remove the sex disqualification by resolutions.⁵⁹ But the passing of such resolutions had only had the effect of removing the disqualification for registration as a voter. Except for Burma, the rules prohibited women from being members. Therefore, when the Reforms Enquiry Committee was appointed in 1923, under the chairmanship of Alexander Muddiman, the women of India sent a deputation to wait upon it for this purpose. They urged their case very skilfully, and the Muddiman Committee recommended that the electoral rules should be changed so as to empower the Provincial and Central legislatures to remove the disqualification for membership for seats to be filled both by election and nomination.⁶⁰ This was consequently done and in 1926, women were for the first time eligible as members. In 1927, Dr. Muthulakshami Reddi was the first woman member of a provincial council. She was a nominated member and was later elected as the Deputy President of the Madras Council. Within four years, the privilege was conferred in seven out of nine provinces where women could become members.⁶¹ The Central Legislative Assembly also removed the bar and women soon began to adorn the benches in the various legislative chambers of the country. Women were, however, not made eligible for the Council of State (the Central Second Chamber) and that house continues to be the only fortress which

⁵⁸ See *Punjab Assembly Electoral Rules*, 1936, Part B, Chapter III.

⁵⁹ Para 67 of the *Report*.

⁶⁰ Para 67 of the *Report*.

⁶¹ The two exceptions were Bihar and Orissa and the Central Provinces.

has not fallen to them. Even in other legislatures their number was not very large, but they proved their worth by sponsoring and carrying through many useful reforms relating to women. The passing of the Sarda Act and the support given to this 'man' made law by the women, the abolition of the Dev Dasi system, and the improvement in women's right to inherit property, are the first fruits of the women's political coming of age.

The Simon Commission which visited India in 1927 examined and discussed the method of reserving seats for women. They rejected this method as 'impracticable' and undesirable. They were of opinion that "the proper course is to leave the women candidates a fair field and no favour."⁶² They, however, realised the necessity of having enough number of women in the legislatures. For this purpose, they recommended that provision should be made, by Statutory rule or otherwise, that at the time of nominations the "Governor should have special regard to the extent to which women have been returned as members from general constituencies, with a view to supplementing their number, if he thinks this should be done."⁶³ The Nehru Report too did not recommend any special provision for women either with respect to the franchise or the reservation of seats. But they recommended absolute equality of rights for all citizens, regardless of sex.⁶⁴

In my opinion the recommendations of the Statutory Commission regarding the membership of legislature were very sound. The women of India have themselves been anxious to avoid any reservation of seats for them, for, if reservation is provided for, it will further be necessary to distribute the reserved seats according to communal considerations, as is the case for men. It is a happy sign of the times that the women of India have always been opposed to encouraging any system which rests on communal rather than national foundations. The three main organisations of women, to which a brief mention has already been made, are national in the sense that they are open to women of all communities and no communal antagonism has ever been noticeable in their proceedings or activities in happy contrast to the organisations of mere men.

At the Round Table Conference, however, a conflict of opinion appeared about this matter. Three very important women's organisation, namely, the All-India Women's Conference,

⁶² *Report*, Vol. II, para, 91.

⁶³ *Ibid.*

⁶⁴ *Report*, Chapter VII, para 4 (xix).

the Women's Indian Association, and the National Council of Women in India, opposed, and they were supported by Begum Shah Nawaz and Mrs. Naidu, any special provision for women. They declared in their Memorandum to which reference has already been made, that, "No special expedients for securing the presence of women on these bodies, such as reservation, nomination or co-option would be necessary"—if adult franchise is granted. Further that, "the women of India have no desire to seek any specially favoured treatment for themselves, provided that their full and equal citizenship is recognised in practice, as it is in theory." The covering letter of Begum Shah Nawaz and Mrs. Naidu, submitted with this memorandum, says: "to seek any form of preferential treatment would be to violate the integrity of the universal demand of Indian women for absolute equality of political status."

"We are confident that no untoward difficulties will intervene in the way of women of the right quality, capacity, political equipment and record of public service in seeking the suffrage of the nation to be returned as its representatives in the various Legislatures of the country." Therefore, they asked that "there should be no sex discrimination, either against or in favour of women, under the new Constitution."⁶⁵

Mrs. Subbaroyan, who submitted a separate memorandum, did not agree with the view. Since she sums up the arguments in favour of special provision, very admirably, I should be excused for quoting extensively from her memorandum. To her, it seemed, "Obvious that for a considerable time, until the public became sufficiently educated, it was extremely unlikely that women would be returned in India through the ordinary poll." After referring to the necessity of securing the presence of women on the legislatures, especially during the first vital and formative years of the new constitution, she went on to say that "if some special provision for securing their presence is not made, it is possible, indeed likely, that their claims would recede further and further into the background." Referring to the opposition of the women's organisations to special provision she said: "Their opposition is apparently based on the belief that, if equality of civic rights is granted to women in India, equality of opportunity will automatically follow, and that owing to the part played by women in the recent political struggle, women now realise their strength and do not require special provision. These

⁶⁵ See the Memorandum and the covering letter in *R. T. C. Proceedings*.

theories seem to me to be far removed from the realities of the situation—I am convinced that one practical step forward, which will ensure the presence of women on the Legislatures, working side by side with men as a normal feature of our political right, will do more for them than any theories of equality."

It was, indeed, a difficult question. On the one hand there was the opposition of three most important associations of women to special provision. Women had seen the baneful effects of communal electorates, reservation of seats, and special provisions for minorities. They had seen how concessions granted to backward minorities for the transitional period, tended to create a permanent inferiority complex in those who were given special concessions. In theory, their argument was unassailable. On the other hand, owing to the large mass of women being illiterate and owing to social conditions, it was not expected that a sufficient number of them would be elected against men candidates. This view, however sound, did not take into consideration one very important factor. The implications of the wide awakening among women, as a result of their part in the political struggles of 1930 and 1932, had not been fully realised. The elections of 1937 were to show what a revolutionary change had been effected by these struggles. However, the statesmen of 1932 were convinced that some special provision for securing their presence was an absolute necessity.

All women, including those represented by Mrs. Subbaroyan, were opposed to nomination or to the ordinary method of reservation of seats involving separate electorates, appropriation of a share of existing seats and a permanent claim to them.⁶⁶ They were all united in demanding that the communal question should be avoided by providing for election of women by the method of proportional representation. A solution, suggested by the Women's Delegation in 1930, was that the Legislatures themselves, after their own elections, should for a temporary period elect a fixed proportion of women to the Legislatures.⁶⁷ The suggestion was also made that the proportion of women to be elected should be five per cent of the elected Legislature and that the temporary period should be for three elections. These suggestions and recommendations in the *White Paper* of 1933 were considered by the Joint Committee on Indian Constitutional Reform, who were in favour of the reservation of seats in special women's constituencies formed for the purpose and containing

⁶⁶ See Mrs. Subbaroyan's *Memorandum to the R. T. C.*

⁶⁷ See *Minorities Sub-Committee Proceedings*, p. 80.

both men and women.⁶⁸ Their recommendations were accepted by the Parliament and incorporated in the Government of India Act 1935. The position regarding women members of the proposed federal legislature and the present provincial legislature is as follows.

Under the Act of 1935.

In the Council of State out of a total of 150 seats to be filled by representatives of British India, only six seats have been reserved for women. Only six of the eleven governor's provinces will have one woman representative each in the Council. These women will be elected by all members, men and women, of the respective provincial legislatures. This means that women from the other five provinces will not have even the doubtful representation by indirect election.

For the Federal Assembly, out of a total of 250 seats for British India, only nine are reserved for women. Here again, four provinces go unrepresented, for no woman will be returned from Assam, N.W.F. Province, Orissa and Sindh. These nine members will be elected by an electoral college consisting of all women members of all provincial Assemblies. For the Provincial Legislatures, a total number of 41 seats has been reserved for the ten provinces, the N. W. Frontier Province being the only one governor's province in which no seat is reserved for women. It must be remembered that the total membership of all the Provincial Legislatures is fifteen hundred and eighty-five (1585) of which only 41 seats are reserved for women which works out at 2.5%. In the Punjab, out of 175 seats, four are reserved for women. Special territorial communal constituencies are formed for women in which the electorate consists of both men and women. For the Mohammedan women's seats, only women can be enlisted as voters.⁶⁹ In the general and Sikh constituencies, a woman candidate has to canvass both men and women. It is noteworthy that men and women can vote both in the ordinary territorial constituencies for their respective communities and in

⁶⁸ See *Proceedings of the Joint Committee* (Session 1933-34), Vol. I, Part I, para 128.

⁶⁹ See *Government of India Provincial Legislative Assemblies Order, 1936*, Part V, Sections 2 and 3. Section 2: "No man shall be included in the electoral roll for, or be entitled to vote at any election in any Mohammedan constituency specially formed for the election of persons to fill the seats reserved for women." See also *Punjab Legislative Assembly Electoral Manual, 1936*, p. 29.

the special constituencies for women. Women, who are qualified to vote in the election for a seat of their respective communities, can stand for election as members.⁷⁰

In addition to the seats reserved for them, they can contest other seats against men candidates. Women can also vote in and contest elections to the Upper House in the six provinces where bicameral legislatures have been set up, though no seats are reserved there. The system of communal representation and communal electorates, and in many cases 'sex' electorates, has been introduced for women, except in the case of Assam and Orissa where the women's seats are non-communal.⁷¹

Criticism. The following general criticism may be made of these provisions:

(1) The women have all along demanded an adult franchise. This, however, has not been granted even to men. Only about 14% of the total population has been enfranchised under the Act. If we deduct the number of those men and women who are less than 21 and thus not entitled to vote, we find that of the total adult population of 136.38 million only 36 million or a little over 25% are entitled to vote. Taking the adult men and women separately, of roughly 72 million adult males of British India, about 30 million, i.e., about 42% are entitled to vote under one or the other qualification in all provinces; of 66.40 million adult women about six million have been similarly enfranchised, or one in every eleven, i.e., about 89% of the adult women are still voteless. This number includes all those who are estimated to be entitled to vote. In actual practice only about 2/3 of this number are enlisted. With sixty per cent men and about 90% adult women being without a vote, the scheme of franchise under the Act does not constitute anything like a working democracy.

(2) Women have been granted separate representation in spite of their strong objections to it. "Women are undoubtedly a most important minority, whose separate interests need to be protected against exclusively men-made legislation. But to guarantee that protection, it is not necessary to foster a spurious antagonism between the sexes. The organised women of India have always demanded equal franchise, which has not been granted, and the open door for entry into the legislatures. But they have, instead, been granted the questionable boon of reserved

⁷⁰ *Punjab Constitutional Manual, 1937*, Vol. I, p. 329.

⁷¹ See *Table of Seats in Schedule 5th, Government of India Act, 1935*.

seats . . .⁷²: "The minimum, thus, reserved for them will inevitably become the maximum ever available to them. The women of India will, thus, never be able, so long as this system of reserved seats lasts, to obtain their rightful number of representatives."⁷³ The women of India have never been aggressively feminist. Mrs. Naidu remarked in her speech to the Bombay Presidency Women's Council on February 6, 1940, that the women of India have realised that "the civilisation can be built only in comradeship with men and not in competition with them." I am sure that that represents the view of women's organisations all over India. In England the suffragist movement was definitely feminist and yet separate representation of women in the House of Commons was never considered, in spite of the fact that practically all women candidates, who contested election for the Commons in the first general election after the grant of vote to women, were defeated.

(3) My third criticism against this scheme is that, if it was absolutely essential that women should have reservation of seats, enough seats should have been reserved for them. At present, only 2.5% of the provincial seats are reserved for them, and about 4% of the proposed Federal Legislature. This is grossly inadequate. The reservation should be either according to adult population, in which case women will have almost 43%; or it should be proportionate to their present voting strength, in which case they will get one-seventh or about fourteen per cent seats. The present 2.5% is entirely arbitrary, inadequate and unjust. To get the stigma of separate representation for 41 out of 1585 seats is not worthwhile.

(4) There is still a fourth objection to this scheme. The women of India have fortunately been above communalism so far. They did not ask for communal electorates, and still these were foisted upon them. All women's organisations are non-communal, and they have never felt any difficulty in associating with each other for common good. To provide communal electorates for them indicates a desire, in the minds of those who have devised this scheme, to prevent the Indian women from presenting a united front on any matter. Having seen the effects of communal electorates among men, it seems strange that the poison should have been introduced among women, especially when they never asked for it.

⁷² K. T. Shah in *Provincial Autonomy* (Second Edition), p. 252 (National Publications Society Series, No. 1).

⁷³ *Ibid.*

(5) If the reservation of seats must be adopted, why not reserve seats for women in the upper houses of the six provinces where upper houses exist. Moreover, since federation and with it the federal legislatures seem to recede into the background, why should not the women try to get the sex disqualification removed for the present Council of State, that citadel of reaction at the centre.

(6) The sixth defect is that the method of indirect election for both houses of the proposed federal legislature deprives the women from expressing their opinion on all-India matters.

THE TYPE OF EXECUTIVE SUITED TO INDIA'S CONSTITUTIONAL DEVELOPMENT*

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I

Recent events in India's constitutional development have served to emphasise the advisability of reconsidering the question of the type of executive best suited to conditions in India. So far, the general trend of thought has throughout been so overwhelmingly in favour of the parliamentary executive that the other types have not had any chance of serious discussion at all. In fact, opinion in India continues to be so ill-informed on this point, that any reference to other forms, not necessarily less democratic than the parliamentary type, is apt to arouse suspicion. It may be readily admitted that the parliamentary type of executive has in many countries produced excellent results; but the issue has never been analysed with care in the light of Indian conditions. Even such important bodies as the Indian Statutory Commission of 1927, and the Joint Parliamentary Committee of 1933, which reviewed Indian constitutional matters at such great length, did not give it more than a passing recognition.

The Indian Statutory Commission observed in their Report (Vol. II, p. 146):—"It appears to us that there is a serious danger of development at the Centre proceeding on wrong lines if the assumption is made that the only form of responsible government which can ultimately emerge is one which closely imitates the British parliamentary system. It is a feature of that system that the Government is liable to be brought to an end at any moment by the vote of the legislature. This arrangement has been arrived at in our own country as the result of a long constitutional development. It is intimately bound up with the adoption of an organised and stable party system, both in the constituencies and in the House of Commons, and depends for its success on the cohesion of groups of representatives and on the reality of their intimate and continuous contact with electors—a thing that is made possible by the small size of the country. It

is not an inevitable result of the adoption of representative democracy and, indeed, is hardly found outside the English-speaking world. *It seems to us most unlikely that if Britain had been the size of India, if communal and religious divisions so largely governed its politics, and if minorities had had as little confidence in the rule of others as they have in India, popular government in Britain would have taken this form.*

"In saying this we are not in the least denying the propositions of the Preamble; we are merely pointing out that *the British Model is not the only form of responsible government.* It is possible to conceive of various methods whereby the Executive will become effectively responsible to the will of the Indian people." (Italics mine.)

It was, however, strange that having thus indicated the need for considering alternative types of executive, the Commission did not pursue the problem further and actually recommended a parliamentary type of executive in the provinces, though the arguments given by it against such an executive at the Centre were equally applicable to the provinces.

The Joint Parliamentary Committee does not seem to have distinguished between the narrow problem of a suitable type of executive and the broad problem of "parliamentary government" or parliamentary institutions. Thus, its remarks on page 11 of its Report (Vol. I, Part I) appear to bear more on the general question of the grant of self-government to India than on the parliamentary type of Executive. The following extract will be found enlightening:—

"Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel. *In India none of these factors can be said to exist today.* There are no parties as we understand them, and there is no considerable body of political opinion which can be described as mobile. In their place we are con-

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December 1941—January 1942

fronted with the age-old antagonism of Hindu and Muhammadan, representatives not only of two religions but of two civilisations; with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another; and with the rigid divisions of caste, itself inconsistent with democratic principle." (Italics mine.)

But if such criticism raised any hope that the Committee would discuss alternative types of political institutions which might with advantage be adopted in India, they would be entirely misplaced. For, the only conclusion that the Committee draws from the above analysis is that communal representation must be accepted as inevitable and that the successful working of parliamentary government in the provinces must depend, in a special degree, on the extent to which Parliament can translate the custom of the British Constitution into statutory "safeguards."

It would, therefore, be no exaggeration to say that in the thick of controversies regarding the measure of constitutional advance to be given to India, and in view of the anxiety of the British Parliament to provide constitutional safeguards, the problem of the appropriate type of Executive was more or less ignored. Hence, the Government of India Act, 1935, was based on the acceptance of the parliamentary type of executive, both in the provinces and at the Centre. This was secured by inserting a suitable provision regarding the method of appointment of Ministers in the Instrument of Instructions.

The only provision which may be interpreted as a reservation of the broad principle embodied in parliamentary executive is contained in the following words of the Instrument of Instructions, which require the Governor to include, "*so far as practicable*, members of important minority communities." (Italics mine.)

II

The working of the new constitution in the provinces has tested the suitability of the parliamentary type of executive and the adequacy of the provision in favour of minority communities; and it would be highly instructive to sum up our experience in this respect. Though easy generalisations in this matter cannot be offered, it may be said that, on the whole, judged by the criteria of *stability of tenure*, *unity of action* and *smooth relations with the legislature*, the Parliamentary Cabinets in the provinces

could be regarded a great success. That this was of invaluable use to the country can be seen from the admirable activity with which administrative reforms and legislative measures were rushed through in several provinces. This activity was specially marked in the provinces in which the Congress Ministries were in office; for, it was there that the principles of Joint Responsibility and of the consequent amenability to discipline were carried to the farthest degree. In Sind, however, the extreme fluidity of the elements in the legislature led to the notorious instability of governments. The experience of Assam and the North-West Frontier has been better than that of Sind, though not free from difficulties on the ground of stability. Elsewhere, the Cabinets enjoyed stable majorities in the legislature, though individual changes in the personnel of the Ministry did take place in several provinces. But, the parliamentary type of executive which worked so smoothly and produced such encouraging results in many directions appears to have foundered on a single rock—the question of Communal Minorities. The provision requiring the Governor to include, "so far as practicable, members of important minority communities" has not been made use of by any Governor. It is generally believed that this could have been due to one of the two things: either the Governors did not find it necessary to interfere, as they might have been satisfied with the composition of the Ministry, or they did not consider it advisable to do so for reasons of policy. In either case, they cannot be considered to have carried out their obligations as scrupulously as they ought to have done. But, in levelling this criticism against the Governors, it is generally forgotten that the *facts* of the situation left no other alternative to them. It is true that the Act of 1935 gave the Governors vast constitutional powers. The ministers were appointed by the Governor in his discretion and held office during his pleasure. The Instrument of Instructions, while providing the general method by which he was to select his ministers, left it entirely to him to put a, more or less, rigid interpretation upon the words used therein, since the Instrument was not intended to be subject to interpretation by courts of law. The Governor had also the Special Responsibility of safeguarding the legitimate rights of minorities, and this could also bear as wide an interpretation as the Governor chose to put upon it. But, while all this may be admitted, the limitations of the Governor's powers in fact, if not in law, must also be realised. In the *first* place, the provision regarding the inclusion of members of minority communities in the Ministry was qualified by the words "*so far as practicable*." *Secondly*, it was

not the business of the Governor to see whether the members of minority communities included in the Cabinet were the true *representatives* of their respective communities. *Thirdly*, the Governor was required to bear in mind the need for fostering joint responsibility among the Ministers. The absurdity of reconciling joint responsibility with a fair share to minorities—when the minorities were returned on communal electorates, had reserved seats with appropriate weightage and had organised themselves on frankly communal lines—had not occurred to the authors of this provision in the Instrument of Instructions. The Governors were, thus, faced with a task which was next to impossible. In those provinces, where no single party commanded a majority in the legislature, coalition governments were inevitable and the Governors had no necessity to enforce this provision. In the Punjab, though the Unionists commanded a majority, they invited the co-operation of the Khalsa Nationalist party and had thus no difficulty in forming a cabinet containing members of important minority communities. It was the attitude of the Congress party that has attracted special notice, since it pursued a uniform policy in the six provinces in which it was first called upon to form ministries. In five out of six provinces, the Congress party succeeded in including members of minority communities. Only in Orissa was no suitable Muslim Minister found. In the Central Provinces, after the resignation of Mr. Shareef no other Muslim could be induced to join the Congress ranks. This failure of the Congress was due to its insistence that those only who signed the Congress pledge would be allowed to occupy office. This attitude, however, ruled out the possibility of the inclusion of those who frankly belonged to rival parties. And the most important body thus excluded from the chances of office was the Indian Muslim League which alleged that the few Muslims who were included in the Congress Ministries were not *representatives* of Muslims. This led to bitter feelings between those who thought that they had acted with complete constitutional propriety and those who suffered a sense of frustration on such a large scale. The definitely hostile attitude of the Muslim League to Congress administration may, in a large measure, be traced to this root cause, though it is unfortunate that the issue has since been magnified.

It is possible that a more generous treatment of the minorities by the Congress might have put the former in a better frame of mind and might, therefore, have succeeded in enlisting their co-operation in running the administration of the provinces. This has led many to criticize the attitude of the Congress for having

missed an excellent opportunity, and to advocate the formation of Coalition Ministries. Though there is no unanimity regarding the exact method of the composition of such ministries, the broad idea seems to be that the majority party should include representatives of important communities in the Cabinet. Several questions are, however, left ambiguous or unanswered; for example, whether the selection of ministers should be made by members of respective communities in the legislature or by the legislature as a whole; whether the ministry should have collective responsibility and resign if any of its members loses the confidence of his particular community or whether the doctrine of collective responsibility must be surrendered. In the absence of definiteness on these points, a plea for coalition ministries becomes at best an appeal, and at worst a threat, to the party in power. But there are two major difficulties involved in the *formation and functioning* of such ministries, which have not received due consideration.

In the *first* place, the acceptance and continued adoption of such a proposal would depend on the goodwill of the majority party. So long as the parliamentary type of executive is retained, and the rule of the majority party in the legislature is given constitutional sanction, the minorities have no permanent means of securing an adequate share in the administration. Coalitions are essentially products of necessity and there is no guarantee as to their continuation after the hour of need is over. Coalitions in any country have functioned successfully only when the parties to the coalition have, in the face of a common danger like war, or a tense foreign situation, agreed to sink their respective differences. Coalitions are not in themselves desirable institutions which must be kept as an ideal before a country. They are makeshift arrangements spontaneously arrived at by forces of political necessity. Hence, no amount of advocacy of coalition ministries can lead to their adoption if the other circumstances do not compel the majority party to do so; and no condemnation of these would suffice to dissuade a party from resorting to them if circumstances left it no other alternative. Thus, coalitions cannot, by their very nature, offer any reasonably long term solution of the problem. It is not denied that at any particular time a country might find a coalition as the best method of tiding over a temporary difficulty, but it would not be proper to look upon it as a permanent political institution. It is more of a political deal than a constitutional device.

Secondly, Coalitions are admittedly weak as compared with single party executives, since they are essentially composite

in formation. But, the advocates of coalition ministries, while recognising this element of weakness, would say that coalitions provide the strongest government *under the circumstances* and that like federations, coalition governments may gradually lead to greater unity. There is no doubt that if this materialises, coalitions will have amply justified their existence. But, considering the composition of the legislatures in India it would appear that the opposite danger of the perpetuation of communal divisions, with a probability of their intensification, cannot be ignored. Communal electorates, reservation of seats for each minority community, weightage and formation of communal groups together with an understanding of distribution of portfolios on communal grounds would only serve to aggravate the lines of division. This would mean introducing the communal virus right into the deliberations of the Government itself. It would offer no inducement for the formation of parties on grounds other than communal. Thus, even if coalition ministries provide an adequate short term remedy, they might in the long run prove too costly.

It would, therefore, be pertinent to inquire whether some other type of executive could be devised to secure fair share of offices to the minorities, without incurring the difficulties involved in the Coalition Ministries. In the following paragraphs the outlines of a new type of executive are given and its merits and difficulties explained. It may be that a solution on some such lines may eventually prove to be more helpful than the proposal of Coalition Ministries.

III

The Executive authority of the province should be vested in the Governor who should be required to act on the advice of a Council of Ministers. There should be no statutory limit as to the number of members to be included in the Council. The Governor should assign appropriate number of seats in the Council to each party in proportion to its strength in the legislature. Unattached members may also be given representation on the same lines, if necessary. The members of the Council should be returned by election by the legislature as a whole, and the Council, when formed, may proceed to elect its own leader who may be called the Prime Minister. The Ministry should have a fixed tenure of three to four years, which should also be the tenure of the legislature. The Ministers should continue to

be members of the legislature and should take active part in its deliberations.

It will thus be seen that an Executive modelled mainly on the Swiss Federal Council is recommended for trial in the provinces; and the experience gained in its working could then be utilised in devising a suitable type for the Centre. The merits of this plan may be briefly noted.

In the *first* place, a ministry of this type will be truly representative of all parties in the legislature and will thus avoid the main defect of the parliamentary type in which only the majority party occupies offices. Moreover, since the requirement of the inclusion of all parties will be obligatory, either by statute or by a suitable provision in the Instrument of Instructions, such a scheme would not have to depend, either for its introduction or for its continuation, on the sweet will of the majority party. Since the tenure of the ministry will be *fixed*, the majority party in the legislature will be unable to exercise its strength to dislodge the representatives of the minority parties included in the ministry. In this respect, it would be undoubtedly superior to a coalition ministry.

Secondly, the executive will be representative not of *communities* but of *parties* in the legislature. So long as all parties in the legislature are communal, this distinction may remain insignificant and it may be doubted whether a ministry of this type will be less communal, and therefore less divided, than a coalition ministry; but, the superiority of this proposal over that of a coalition ministry consists in this that whereas under the latter, communities are given *permanent* recognition, thereby making the growth of non-communal parties difficult, this will not be so in the former.

Thirdly, such ministries will not be easily amenable to domination by a single All-India party and the chances of control of provincial administration by the electorate in the province would be greater than in the case of parliamentary cabinets.

Fourthly, the fixity of tenure will conduce to stability of administration which is so desirable in a country new to the working of democratic government. This will not only prove helpful to long term administrative reforms, but will also free the executive from minding the transient moods and passions of the legislature, which occupy a considerable portion of the time of Parliamentary cabinets. It may also lessen chances of corruption and favouritism on the part of the executive, since it will no longer have to safeguard its existence by placating its political followers.

There are, however, several possible objections which could be raised against this type of executive and it would be necessary to consider them before a final judgment could be formulated. The *first* objection that may be anticipated is that such an executive will essentially make for a weak government. A ministry consisting of all parties in the legislature, large or small, may be so thoroughly divided that it may not be capable of working any long-term programme and may even fail to maintain reasonable standards of efficiency and order. Now, it must be admitted that the need for a strong government is so imperative in India that its claim may be readily conceded as of paramount importance. It may also be further admitted that a parliamentary executive, comprising of members of a single political party, with an assured majority in the legislature, is capable of acting with greater vigour and unity of purpose than a ministry under this scheme. But, there are two main considerations here, which should be borne in mind. In India, the maintenance of law and order and improvement in the efficiency of administration depend to a large extent on the sense of political satisfaction among the different communities; and a parliamentary type of executive, which, in the present circumstances of India, means, in most provinces, a body largely comprising of the majority community, is regarded with suspicion by communities excluded from an adequate share of offices. Besides, the position of a parliamentary Cabinet, when it does not comprise of members of a single party, is definitely weaker than that of a Ministry under this scheme; for, while this will have a *fixed* tenure, a coalition or composite ministry is liable to be overthrown by reshuffling of party strength in the legislature. Thus, differences among members of a Coalition Ministry are likely to lead to Cabinet crises; whereas under this scheme, the fact that members of different parties have, for a fixed period, come together will induce them to concentrate on measures regarding which there is least disagreement among them.

The *second* objection against the above scheme may be that a *fixed* executive, i.e., one not removable by the legislature, may lead to friction between the executive and the legislature. For example, the majority party in the legislature, which wields legislative and financial powers, may not see eye to eye with the policy of the Cabinet and may, therefore, create difficulties for it, by refusing to pass necessary legislation or by refusing to sanction necessary grants required by the executive. It may be conceded that the possibility of disharmonious relations between a fixed executive and the legislature can never be completely

ruled out, but provisions could be introduced to minimise the chances of such friction; and there is reason to expect that under this scheme the relations would be fairly smooth. Since the executive will be elected by the legislature, the Ministers will in most cases be leaders of their respective parties and will thus be normally able to carry the House with them. The period of their office could also be made sufficiently short to prevent lack of contact between them and the members of the legislature. The need for securing the necessary legislative and financial measures will always induce a reasonable frame of mind among the Ministers who in matters of broad policy will endeavour to carry out the wishes of the legislature; this need not, however, make them mere officials of the Chamber, as they would be leaders of their respective parties. The Ministers would sit in the legislature and thereby provide chances of mutual influence. Moreover, the legislature will, from the beginning, be aware of the fixed tenure of the executive and, under the circumstances, would neither waste its time in destructive criticism nor in party manoeuvres to secure changes in the Ministry. It would, therefore, confine itself to activities of a more fruitful nature. In so far as certain differences exist between the executive and the legislature, they will undoubtedly be of a minor character and such matters could be postponed till a fresh legislature gives a mandate to a new executive. This would, incidentally, prevent a legislative or administrative reform of a controversial character from being rushed through.

But, it may be asked, will this scheme satisfy the aspirations of minority communities? All that can be said in reply to such a question is that this method would, from the point of view of minorities, constitute a great improvement on the method provided by the Government of India Act, 1935, as also on the method of Coalition Ministries. Compared to the former, this method guarantees seats in the Cabinet to all parties in the legislature, thereby removing the monopoly of the majority party to control all offices. Compared to Coalition Ministries, the representatives of minorities will not, under this method, depend for their tenure on the sweet will of the majority party, but will have their seats secured by a suitable provision in the constitution itself.

It is possible that, as the scheme is analysed in greater detail, a few more merits, as also a few more defects, may be revealed; but the consideration of its essentials would show that, from the point of view of representation to minorities and stability of government, this scheme offers a better system of government than the parliamentary type of executive or Coalition Ministries,

HOW FAR ARE THE PROCEEDINGS OF LEGISLATIVE BODIES, PUBLISHED WITHOUT THEIR AUTHORITY, PRIVILEGED IN INDIA?

BY

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Although freedom of vote and speech in a legislature is a fundamental principle of representative democracy, the law relating to publication of legislative proceedings, without the authority of the Chamber, is still disputable in India. The Government of India Act, 1935, Section 71, provides:

- (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 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.

Section 28, of the said Act in almost identical terms, confers similar privilege on the Federal Legislatures. Indeed, all Indian Constitutions since 1861 made similar provisions.

The publication of the proceedings of the legislatures in India by or under their own authority has thus been, as a necessary adjunct to the freedom of vote and speech in these legislatures, privileged. Legislative procedure also gives every legislature the right, so as to obtain when necessary, such privacy as may secure freedom of debate, to exclude strangers and to prohibit the publication of its proceedings. However, neither the constitution nor any law made thereunder expressly protects an "unauthorized" publication by a member or a newspaper. The question arises whether an action at law would lie against a person republishing without the authority of a chamber, libellous or seditious matter forming a part of the proceedings of that chamber.

Such "unauthorised" publications may be broadly divided into three categories. First, when a speech is published, whether by a member of the Assembly, or an outsider, as a separate unconnected piece for the general public. Second, when such a speech is published *bona fide* by a member for his constituents. Third, when a fair and faithful report of the proceedings is published, without malice, in a newspaper.

There is no doubt that the first type of publication is not privileged. It would be no answer to an action for libel brought against a publisher that the libellous or seditious matter was a part of a debate in a chamber, or was a part of a report made by that chamber. For such a publication "becomes a separate publication, unconnected with any proceedings in Parliament."¹ And, as Lord Kenyon pointed out in *Lord Abingdon's case* (1795) it "should not be made a vehicle of slander against any individual; if it was, it was a libel."² In 1813, Mr. Creevey made a speech in the House of Commons. His speech was misreported in the press, and he sent a correct report to the editor of a local newspaper for publication. He was held liable to a criminal information for libel.³

¹ May, *Parliamentary Practice*, 13th edition, p. 108.

² *Rex v. Lord Abingdon*, 1 Esp. 226.

³ *Rex v. Creevey*, 1 M. and S. 278.

However, the other two types of publications stand on a different footing and their position can be best understood by referring, first, to the law in England. The publication of a speech by a member of the British Parliament for the information of his constituents is deemed privileged; *Davison v. Duncan*, (1857) 7 E. & B. 229.¹ Unless a plaintiff can prove malice, an honest and accurate unofficial report of proceedings in Parliament, is also privileged; *Wason v. Walter* (1868), L. R. 4 Q. B. 73. As Cockburn C. J. pointed out in the latter case:

"There is obviously a very material difference between the publication of a speech made in Parliament for the express purpose of attacking the conduct of an individual, and afterwards published with a like purpose or effect, and the faithful publication of parliamentary reports in their entirety, with a view to afford information to the public, and with a total absence of hostile intention or malicious motive towards anyone."²

He further laid down:

"If a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged."³

In India, no case has yet come for adjudication before the courts which could settle the law relating to libel based on an unauthorised report of parliamentary proceedings. Nor is there any dicta of learned judges, bearing on the point, to serve as a guide. The case of *Lala Lajpat Rai v. the Englishman Ltd.* (Appeal Case) is sometimes cited in this connection.⁴ There, the *Englishman* published in Calcutta an article giving "real reasons" for the arrest and deportation of Lala Lajpat Rai by the Government of India in 1907. The plaintiff, having brought an action for damages against the proprietors of the paper, was

¹ It is not always, however, easy to establish that a speech has been circulated only amongst one's constituents.

² In England an article founded on proceedings in Parliament, provided it is a fair and faithful comment on facts is privileged.

³ *Wason v. Walter* (1868), L. R. 4 Q. B. 73 at p. 85.

⁴ *Ibid.*, at p. 89.

⁵ *Calcutta Weekly*, Notes, Vol. 14, p. 724.

awarded Rs. 15,000 as damages. The defendants appealed on the ground that the "libel" in the article had been based on a statement made previously in the House of Commons by the Secretary of State for India. While the damages were reduced to Rs. 1500 the appeal was dismissed on the ground that "no authority can be cited for the proposition that a person is entitled to publish parliamentary proceedings as a statement of his own and in the form of an offending article." Harrington J. opined, however, "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." This decision, however, has no application to the present question. It merely recognised the privileged position even in India of the reports of the proceedings of the Parliament at Westminster. The applicability of the principle established in *Wason v. Walter* to the reports of the proceedings of assemblies in India was in no way considered.

The point has, however, been occasionally raised in the Indian Assemblies. But the opinions expressed have been conflicting and inconclusive. In February, 1932, the question was put to the Home Member in the Indian Legislative Assembly, "if under any Ordinances, or rules made or orders issued, by the Executive authority, newspapers could be penalised for publishing reports of the proceedings of the Legislative Assembly."⁵ The Home Member denied that any rules or orders of the kind suggested had been issued. He assured the House that freedom of speech in the Legislature was guaranteed by Sections 67 and 72D of the Government of India Act, 1919.⁶ But that "the protection afforded . . . does not extend to the publication of reports by newspapers of which the liability is determined by ordinary law."⁷ For the Home Member, the ordinary law included not only the Press Act of 1931, but also the Ordinances of 1932. The Opposition felt dissatisfied with the answer; the restrictions imposed by the Ordinances on the publication of Legislative proceedings in the press were regarded as encroach-

⁵ *Legislative Assembly Debates*, 10th February, 1932, p. 545.

⁶ The terms of the Government of India Act, 1919, Sections 67 and 72 are the same as those of the Government of India Act, 1935, Sections 28 and 71.

⁷ *Legislative Assembly Debates*, 10th February, 1932, p. 545.

ments on the privileges guaranteed by the Government of India Act, 1919. It was most pertinently suggested that an Act of the sovereign parliament could not be whittled down by subordinate legislation and in any case an Ordinance, although a law, was nevertheless made outside the Assembly, and hence ought not merely on grounds of expediency interfere with the privileges of the House. The Speaker himself asked the Home Member if he was prepared to state, "That so far as the publication of the proceedings of this House in the newspapers is concerned, no Ordinance will effect them."¹² The Home Member, not being certain as to the exact implications of the Ordinances, failed to give the assurance. Thereupon, the Speaker asked the opinion of the Law Member, who in a short written statement the next day, opined "the Ordinances have made no change in the ordinary law of the land in the matter of publication in the public press or otherwise of the proceedings of the legislature."¹³

While the Ordinances in question did not create new restrictions, it was clear that government believed that such Ordinances could be made, and that in any case the privilege in regard to publication of legislative proceedings did not exist in India even under the existing law.

The question was again raised in the Indian Assembly in 1936 and further discussed. The Government of United Provinces had demanded security from the publisher of the *Abhyudaya* of Allahabad, for publishing Hindi translation of the full text of a speech of a member of the Indian Legislative Assembly delivered in the Assembly on 6th September, 1935. Several members of the Assembly asserted that the privilege of freedom of speech in the Legislature implied freedom of publishing a speech fairly and accurately or in *verbatim*. Sir Abdul Rahim gave a lengthy and a lucid ruling which applied not merely to *Abhyudaya* case, but also to "unauthorised" publication of legislative proceedings in general, the consideration of which was not directly before the House. He held that the privilege enunciated in the Government of India Act, 1919, Section 67 (7), did not go further than to exempt a member of the Assembly from any proceedings in any court of law by reason of his speech or vote in the Chamber or by reason of anything contained in any official report of the proceedings. It did not purport to protect publication of any speech in other than official reports, however faithful or *bona fide* such publications might be.

¹² *Ibid.*, 12th Feb., 1932, p. 663.

¹³ *Ibid.*, 13th Feb., 1932, p. 722.

Having regard to the unambiguous terms in which the limitations to that freedom of speech had been defined in the statute, it was impossible according to the Speaker to extend the privilege to publications other than official reports.¹⁴ The position was again defined by the Speaker in the Indian Legislative Assembly on the 12th October, 1936, that legislative proceedings published outside the House, without the authority of the legislature, were not protected.

It may be pointed out at once that a ruling of the Speaker of the Indian Assembly or a declaration of the Executive cannot settle the position. For, neither is conclusive and cannot be binding on the courts. It is the courts which determine the nature and limit of parliamentary privileges, should it be necessary to do so in case of dispute; *Paty's case* (1704) 2 Ld. Raym. v. 1105; *Stockdale v. Hansard* (1839) 9 A. & E. 1. Thus the Speaker by his ruling or the executive by its declaration or for that matter even a Chamber by its resolution can neither create nor take away a privilege. In *Bradlaugh v. Gosset*, Stephen J. clearly defined that some of these privileges

"are to be exercised out of parliament, others within the walls of the House of Commons. Those which are to be exercised out of parliament are under the protection of this court, which as has been shown in many cases, will apply proper remedies if they are in any way invaded, and will in so doing be bound, not by resolutions of either House of Parliament, but by its own judgment as to the law of the land, of which the privileges of Parliament form a part. Others must be exercised, if at all, within the walls of the House of Commons; and it seems to me that, from the nature of the case, such rights must be dependent upon the resolutions of the House."

The privilege in question here is external to the legislatures and not a matter of mere internal discipline. Judiciary alone, therefore, is competent to determine its limit.

With due deference to the legal acumen of Sir Abdur Rahim, I suggest that his ruling failed to appreciate the true meanings of the law. India has, of course, a written constitution and the extent of the privileges of the members of the Assemblies must be found within the compass of the Indian Constitution. But in

¹⁴ *Legislative Assembly Debates*, 27th February 1936, pp. 1782-86.

interpreting the law, it is not enough to take into consideration the express words of the law, but also its implications. Freedom of publication is a natural consequence of the right of freedom of speech in legislatures guaranteed by the constitution which cannot be so construed as to reduce its guarantees to nullity. Sir Abdur Rahim himself admitted that the law in England is substantially the same as that embodied in Section 67 (7) of the Government of India Act, 1919 (and Articles 28 and 71 of the Government of India Act are identical with it). The Parliamentary Papers Act, 1840, made publication under the authority of either House of Parliament in England privileged. Neither this nor any other statute expressly extends the scope of this privilege to unauthorised, but fair and accurate, reporting in the Press; yet, the Act of 1840 was the origin and basis of protection for such publication in England. India has inherited this privilege from England along with her political institutions. The powers and privileges enjoyed by the British House of Commons are not vested in the Indian legislatures *ipso facto*, but there is no denying that in the absence of specific legislation, the English Parliamentary law has served as a guide to India.¹⁵ That England is a Common Law country makes no difference here, for the principles in *Wason v. Walter* are based on irresistible logic equally applicable to the interpretation of the statutory provisions in India. More, the High Courts in India have not merely followed the principles of Common Law in the absence of specific legislation but have even exercised in such cases the Common Law powers particularly to safeguard individual liberty.¹⁶ In fact,

¹⁵ The decisions of the English Courts must, subject to all necessary exceptions, continue to afford guidance to India. *Chief Commissioner of Income Tax Madras Vs. Amantapur Gold Mines Limited*, A. I. R. 1921 Madras 524.

¹⁶ For instance, Page J. laid down in *Sundermull Vs. Ladhu Ram Kolu Ram*, I. L. R. 50 Calcutta 667: that "the common law of England except where it has been abrogated and in so far as it is not inapplicable to Indian conditions, is part of the law of India." More remarkable is the dictum of Stone C. J. in *Secy. of State Vs. Rukhminibai* in I. L. R. 1938 Nagpur 54, "whether a particular branch of English common law should be applied in India depends upon whether it is in accordance with justice, equity, and good conscience, and in considering that question the courts have to consider the age and the circumstances in India in which the application is to be made. The history and the period at which the rule was developed should also be considered."

"This Section (Section 5 of I.P.C.) does not affect the common law principles introduced in the Presidency Towns when the late

every law-court in India is by law a court of equity and may therefore fill up obvious gaps in the law according to "equity, justice and good conscience."

In the interpretation of statutes the judiciary must discover and act upon the true intentions of the legislatures. It is true that in all ordinary cases literal construction is the sole form allowable. Yet in certain cases, as when the implications are too obvious and forceful to be ignored, or when the text contains an omission which renders the law ineffective the courts must supplement it. If fair and truthful reports of legislative proceedings in India were liable to action in the courts, the privileges granted by Sections 67 and 71 of the Government of India Act, 1935, would be rendered ineffective.

The days when secrecy of debates, as in the British Parliament, was insisted upon are long past. There is not a single instance in recent times when the legislatures in India or in England punished a person for reporting their proceedings. In India, the law has given every Assembly the right to secure privacy of debate and also to publish debates and proceedings outside it. The freedom of speech and action in a legislature means freedom from external influence and interference; it does not mean unrestrained licence within the Assembly. Should a member abuse the forms of debate, say anything offensive or insulting to the House, or the Chair, or the individual members of the House, use of language which the House regards defamatory or seditious, the House can deal with him by censure, suspension from the service of the House, and even by expulsion. The House has the right to expunge from its minutes, the republication outside it, of a speech, or a part thereof, which it regards defamatory or seditious. It enjoys the right to exclude strangers and to hold a "secret" session. Matter really objectionable can be and usually is deleted from the proceedings. By implication thus the matter which is allowed to be published must be deemed to be

Supreme Courts were established . . . and the High Courts have the same power either by inheritance under Section 9 of the Charter Act (24th and 25th Victoria Charter 104) replaced by the Government of India Act 1915 (5 and 6, George VI, C. 61) Section 106; or as inherent in them as Courts of Record, unrestricted by Clause 30 of the Letters' Patent 1865. Similarly the power and authority exercised by the Supreme Court outside the Presidency towns has become vested in the High Court subject, however, to the provisions of the Letters' Patent and the Legislative powers of Governor-General as indicated in *Re Maharani of Lahore* (1848) p. 428." Rattan Lal Dhiraj Lal "*Law of Crimes*" 15th Edition, p. 41.

privileged, worthy of widest publicity on grounds of public interest.

Subject to a ban on or expurgation of particular proceedings ordered by an Assembly, the law makes it obligatory upon the Executive to publish verbatim reports of the speeches delivered in the legislature. The Secretary of the Assembly, a public servant, actually discharges this function and is protected by law. The reports are available to the public, for their information, guidance and instruction. If, however, these reports when reproduced fairly and accurately by the Press, with the purpose of educating public opinion, were legally punishable, the position would be anomalous, nay absurd. This would not merely create an unreasonable government monopoly regarding such publications, but would destroy the very representative character of the Indian Assemblies, which necessarily implies a duty on their part to instruct and persuade a larger public of the country. Freedom of publication must be assumed to be implied for it is an essential incident to the constitutional functions, the dignity and the prestige of the legislatures, inherent in the very nature of things. Sir Abdur Rahim in the Central Assembly on the 10th February, 1932, said emphatically:

"If the debates are not allowed to be published, then the position will be reduced to this. The House will be turned into mere school debating society . . . we are here not only to speak to the Government Benches opposite, but to speak to a wider audience, the public. This is our privilege, this is our right and this is our duty."¹⁷

When the legislative session is a public one, the press, and for that matter the public, is allowed free access. A special gallery is reserved for the purpose, and the Press is given every facility for reporting. The reports are, of course, made on sufferance, for the Assembly can at any moment exclude strangers and clear the reporters' gallery; and, they are also published on sufferance, for, the Assembly may at any time resolve that any publication is a breach of privilege and deal with it accordingly. It is obvious that the legislatures were given this power only because it was presumed that the republication of speeches delivered within their four walls was privileged. Otherwise, the power of their banning publication would be redundant, that of holding secret sessions meaningless.

¹⁷ *Legislative Assembly Debates*, Vol. I, p. 661.

In *Wason v. Walter* Cockburn, C. J., declared that the analogy between reports of the courts of justice and those of the Parliament was complete.¹⁸ The privilege enjoyment by the reports of judicial proceedings must also be enjoyed by parliamentary reports and for the same reasons. The Indian Penal Code, Section 499, protects fair and faithful reports of judicial proceedings, but it does not extend the protection to legislative reports, obviously, because the law was enacted long before the introduction of representative democracy in this country. However, the analogy between the two types of reports being in every sense complete, for the principles underlying this privilege are applicable to the other, it will be illogical not to place them on the same footing. The privilege claimed for the fair and accurate reports of legislative proceedings as also for those of the courts of justice has a double basis: absence of malice; and public good. No doubt malice in law is not, as ordinarily understood, only illwill or spite against a person, but means an unlawful act done intentionally without just cause or excuse.¹⁹ The presumption of the existence of malice in such publications, however, would stand rebutted for although as Cockburn C. J. in *Wason v. Walter* put it, individuals may occasionally suffer from them, yet they are published without any particular reference to the individuals, but solely to afford information to the public and for the benefit of society. Besides, the compensating advantage to the public from these reports more than counterbalances the injury caused by them to the reputation of an individual. Both the courts and the legislatures have been thrown open to the public. "But," said the authors of the Indian Penal Code, "the advantage of throwing the courts open to the public will be small indeed, if the few who are able to press their way into the court are forbidden to report what has passed there to the vast members who are absent."²⁰ This logic applies to the legislative proceedings with even greater force. For Cockburn C. J. asked:

"Otherwise where would be our confidence in the Government of the country, or in the legislature by which our laws are framed and to whose charge the great interests of the country are committed? Where would be our attachment to the constitution under which we live—if the proceedings of the great

¹⁸ *Ibid.*

¹⁹ *Bromage v. Prosser* (1825) 4B. and C., at p. 255.

²⁰ Note R.

Council of the realm were shrouded in secrecy and concealed from the knowledge of the realm? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system be usefully carried on if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in Parliament, the undoubted right of the subject if the people are to be kept in ignorance of what is passing in either House?"²¹

An editor's task would become impossible if he had to scrutinize the reports. For him the safest course would be to leave out such reports, and if he did so, serious injury would be done to the public in denying information as to what its representatives were saying and doing.

In any case the 10th exception to Section 499 of the Indian Penal Code would cover such publications, for it protects a person making an imputation against another, in good faith to caution a person to whom it is made, or for public good.

There is only one other point which needs further elucidation. In England no publisher of "unauthorised" reports of parliamentary proceedings has ever been prosecuted under the law of sedition. Such reports are privileged provided no third individual is slandered. Action can be taken by the individuals concerned only when private rights of citizens are invaded.²² It has been urged, not without reason, that the position in India is the same. The executive cannot take action under the law of sedition.²³ Otherwise the power of the legislatures to have the publication of their proceedings would be meaningless. It is implicit, further, in the privileges guaranteed by the Government of India Act, 1935, Sections 28 and 71, that the speeches of the members of the legislatures may be reported by the press without running the risk of any punishment, molestation or obstruction at the hand of the executive authority; the freedom of speech of the member gives him the consequential privilege of publishing it, of course, fairly, and faithfully. During the debates on the "*Abhyudaya*" Sir N. N. Sircar, the then Law Member, however,

²¹ *Wason v. Walter*, *Ibid.*

²² *Vide* Erskin May, *Parliamentary Practice*, p. 108.

²³ *Legislative Assembly Debates*, 1936, Vol. I., p. 482 and p. 488.

expressed a different opinion. He argued that in *Wason v. Walter* there was a conflict of private and public interests, the latter, being naturally more important, predominated; if the offence charged is sedition, the public interests would require its punishment. But Sir Nripendra forgot that the public interest in the publication of legislative proceedings was even more important. The privilege is in fact a matter of higher interest to the legislature itself. One cannot so construe public interest as to oust a parliamentary privilege. It is necessary that an Assembly and the Members thereof should in no way be obstructed in the performance of their high and important duties. Mr. Jinnah rightly complained that the order of the U. P. Government in demanding a security from the "*Abhyudaya*" for republishing a speech delivered in the Indian Legislative Assembly was an executive order against which there was no remedy. The Law Member denied that this was so, for he maintained that the party aggrieved could go to the High Court for redress. This, however, was not a satisfactory answer. The jurisdiction of the High Court was limited to finding out whether the publication directly or indirectly promotes any of the objects mentioned in the Press Emergency Act of 1931. Whether the publication was privileged was not a matter for the examination by the High Court. In any case, even if the publishers could go up to the High Court, a member whose privilege was violated, unless he was himself the publisher could not seek redress from the judiciary.

For these reasons, it is suggested that "unauthorised" reports of legislative bodies in India, published fairly, accurately and without malice are privileged in India.

AUTHORITY OF THE SPEAKER IN AN INDIAN LEGISLATURE IN THE EVENT OF CONTUMACY ON THE PART OF A MEMBER*

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Legislators too are human. The pugnacious instinct in them does not die when they enter a legislature. In the heat of passions and party quibbles, they often lose temper and balance. They jump up, shout, shake fists, and hurl abuses, books and papers. There are cases when members crossed the floor, thumped and slapped others and threw rotten eggs at the Speaker. Organised and unorganised, spontaneous and pre-meditated, individual and collective, dilatory tactics, filibustering interruptions, obstructions, have been frequently witnessed in various legislatures. In the Mother of Parliaments, besides the famous cases of Mr. O'Donnell, Mr. Parnell, Mr. Fuller, the Irish Republicanists and the Communists, there are instances when the most cultured and sober persons, like Lord Hugh Cecil, Mr. F. E. Smith, and Mr. George Lansbury, lent themselves to act in a most disorderly manner.

Provision in some form or the other is, therefore made in every legislative assembly to meet with cases of contumacious conduct. The ultimate authority in matter of order invariably rests with the Chamber itself. But the president, being the chief instrument of a legislature in maintaining order, he is conferred upon with necessary power to enforce his decision on points of order. This power varies from legislature to legislature.

In the House of Commons the Speaker either on his own initiative or on its being brought to his notice, takes immediate notice of all breaches of order. Minor incidents are generally concluded simply by the members desisting from the conduct, or withdrawing the words objected to. But in case of a refusal to withdraw offensive language or in events of insulting behaviour, obstruction, and disregard of the authority of the chair, the speaker punishes the offending member by directing him under Standing Order 20 to withdraw from the rest of the sitting. In

such extreme cases as a member persisting in his grossly disorderly conduct or wilfully obstructing the business of the house or his contumacy culminating in his refusal to obey the directions of the chair, the offending members are named by the Speaker and the matter is referred to the House. Thereupon the Leader of the House moves that the said member be suspended from the service of the House. This motion is put without amendment, suspension, adjournment or debate. If the suspension is agreed to by the House, then the Speaker again directs the member to withdraw, and if he still shows obstinacy even when summoned under the Speaker's orders by the Sergeant-at-Arms, force is resorted to after the Speaker has drawn the attention of the House to the fact of its necessity. The suspension of the member continues for the session, unless the House terminates sooner. In case of uproar and disorder spreading to a considerable part of the House, the Speaker under S.O. No. 21 adjourns the House or suspends the sitting for a specified time.¹

Similar process is adopted in the legislatures of some Dominions. The lower houses of Canada and Australia in this respect are almost the replicas of the House of Commons. The Australian Senate permits use of physical force, thus differing from the House of Lords, which does not. There if a member enters into the Chamber after being suspended, the President orders the Usher of the Black Rod to remove him from the Chamber.² The Council of State of Ceylon has also a rule that a speaker may use necessary force in order to eject a member, who would not otherwise withdraw at his direction.³

The practice on the Continent was different. There the powers of the President of a Chamber in matters of discipline were usually limited to the Call to order. If that proved ineffective, the President appealed to the Chamber to take more drastic measures. In Germany and France the Presidents had power to exclude an unruly member. But like that of U.S.A., the difficulty was that the rulings of the presidents were always open to appeal to the Chambers, so that a member suspended one day could move for the revision of the ruling the next day. However, in France the President of the Chamber of Deputies took an action on 11th November, 1880, against a deputy, who entered the Chamber after being suspended by him. President

¹ *Introduction to the Procedure of the House of Commons*, by Cannon, p. 172.

² Rule 442.

³ S. O., No. 101, Part 4.

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December 1941—January 1942.

Gambetta closed the tribunes and threatened to close it again if the deputy persisted in his action.¹

The Authority under the Montford Reforms.

The situation in the Indian legislatures under the Montford Reforms was covered by the Indian Legislative Rule No. 17, which provided:

- (1) The President shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order.
- (2) He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Chamber, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same session, the President may direct the member to absent himself from the meeting of the Chamber for any period not longer than the remainder of the session, and the member so directed shall absent himself accordingly.
- (3) The President may, in the case of grave disorder arising in the Chamber, suspend any sitting for a time to be named by him.

The responsibility of preserving order was, therefore, imposed upon the President, and he was exclusively vested with powers enumerated therein to enforce discipline among members. Under Rule 15, decisions of the President on all points of order were declared to be final, and unlike the practice in the Continent and in U.S.A., the rulings were not open to revision by the House. The decisions of the chair like that of England could only be discussed on moving a substantive motion.

We notice that sub-section (2) of the Rule 17 gave a discretionary power to the President to order withdrawal of a member, whose conduct in his opinion was grossly disorderly, and that the member so asked was required to leave the Chamber. In case a member repeated the offence in the same session, his expulsion could be extended to the remaining period of the session. The sub-section (3) empowered the President to adjourn

¹ *Traité du Droit Politique et Parlementaire* (1922 ed.), by Eugène Pierre, Art. 485.

the House for a specified time if a grave disorder prevailed in the House. But there was a great speculation regarding the implication of sub-section (1). The official presidents of the legislative councils, almost all of them, held the view that under that clause they could invoke the aid of police in expelling an unruly member. Mr. Cotton, the first President (official) of the Bengal Legislative Council, evolved a formula that a member contumaciously refusing to accept a ruling of the chair should, in the first instance, be ordered by the President to withdraw. If he did not comply with the order immediately, the President should then send the Secretary to repeat the order. Should the member still decline to obey, the President should then announce to the House that such and such member had been twice directed to leave the Chamber, and twice had he refused to do so. He should then announce that unless the offending member withdrew forthwith the help of the police would be requisited for. Mr. Cotton was of the opinion that ordinarily a member at that stage would withdraw voluntarily. But Mr. Keane, the first official President of the U.P. Legislative Council, doubted very much, if members would of their own accord, or with the intervention of the Secretary, leave the Chamber. He thought that an adjournment of the House in such cases would be more expedient, for during that period the wiser counsels would prevail and the offending member would be induced by his friends to desist from returning to the House. Sir Frederick Whyte, the first official President of the Indian Legislative Assembly, held very strong views on the point. He affirmed that a president should see that an order once given was enforced at all costs. Personally, he was of the opinion that he would be very loathe to order the withdrawal of a member, but if he was constrained to issue such orders, he would at once make it clear that he would not hesitate to employ physical force to eject that member from the Chamber. As to the expediency of adjourning the House, he agreed that it might with benefit be resorted to in case of a general uproar, or when the House as a whole or a considerable part of it showed tendency to associate itself with the offending member. But on principle he was against the adjourning of the House merely on account of the contumacy of a single member. Sir Ibrahim Rahmat Ullah, the first official President of the Bombay Legislative Council, strongly felt that the President should himself ensure immediate compliance at all costs with any order given by him and that no help whatsoever of any intermediary should be sought for that purpose.

However, the question remained merely an academic one. The occasion to apply force for excluding a member never arose. After the case of Kumar Shanker Roy Chowdhury and others vs. The Hon'ble Mr. H. E. A. Cotton and others (1924) the presiding officers were anxious not to force issues to such a pitch. They thought that besides the dignity of the chair being involved in going up to the courts, the police force employed in the task of executing their orders stood in danger of being indemnified in events of proceedings taken against them.

Modifications effected in by the Act of 1935.

The Government of India Act, 1935, made substantial alterations in the previous position in three ways. First, the Act transferred the powers of making rules from the Governor-General in Council to a Chamber of a legislature.⁵ Secondly, the Act exempted the speakers from the jurisdiction of the courts in respect of their presidential functions.⁶ Thirdly, the act conceded to the legislatures the power of conferring upon its officers, the authority to remove, or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.⁷ Thus with respect to the disciplinary powers, the speaker of a provincial legislative chamber after 1937 derives his authority from the legislature, and as such he is presumed to exercise it in association with the House. So the situation created by the contumacious circumstances in a provincial legislature is now governed by the rules of the respective Chambers, which are either newly framed in light of the S. 71(3) of the Act, or are merely a copy of the old rule No. 17. To illustrate, in the North-West Frontier Legislative Assembly authority to apply force is given to the Speaker, cf. Part 4 of Rule 56 reads:

"If the member, who has been ordered to withdraw or whose suspension has been ordered by the House, refused to withdraw the Speaker may order his removal by force."

In the Punjab no new rules were adopted. The Rule 77 was to all intents and purposes a copy of the previous Rule No. 17. The Rule No. 77 runs as follows:—

(1) "The Speaker shall preserve order and have all

⁵ Section 84.

⁶ Section 87.

⁷ Section 71(3).

powers necessary for the purpose of enforcing his decision on all points of order."

(2) "He may direct any member whose conduct is, in his opinion, grossly disorderly to withdraw immediately from the Assembly and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same session, the speaker may direct the member to absent himself from the meetings of the Assembly for any period not longer than the remainder of the session and the member so directed shall absent himself accordingly."

(3) "The Speaker may, in the case of grave disorder arising in the Assembly, suspend any sitting for a time to be named by him."

The full implication of this rule, however, came to light on the 16th January, 1939, when two members on being named by the Deputy Speaker refused to withdraw from the House. The Deputy Speaker thereupon ordered certain police officers to eject forcibly the offending members. A point of order whether the rules permitted the application of physical force and whether the chair could legally ask the police officer to remove a member was then raised. Those who justified the conduct of the Deputy Speaker presumed that the power of removing forcibly an unruly member was implied in the words 'and have all powers necessary for the purpose of enforcing his decisions on all points of order.' They argued that the authority given to the chair under sub-sections 2 and 3 were independent of and supplementary to those latent in the sub-section (1). For the justification of invoking the aid of the police, the Advocate-General advanced the theory of trespass. He argued that as soon as a member refused to leave the chamber, he became a trespasser, and therefore as such, any person could legally be asked by the chair to remove the offending member. On the other hand, those, who objected to the action of the Deputy Speaker, maintained that as the proceedings of the legislature were governed only by the Act and the Rules; so consistent with the Rule 77, the chair could either name a member or adjourn the House. They pointed out that until the Assembly was to assume powers under S. 71(3) of the 1935 Act, the chair had to draw upon Rule 77, which warranted no forcible expulsion. As to the legality and propriety of asking a police officer to turn out a member, they held that besides its being

derogatory to the dignity of the House and its members, the entering in of a non-member was trespassing, and, as such, all actions of a trespasser, even performed in accordance with the directions of the chair, were open to legal consequences. In reply to the argument of the Advocate-General, they said that members did not attend the House by permission or by courtesy, but by right. Therefore, any violation of a rule on their part could not deprive them of their right of membership.⁸

In fact, there is weight in the arguments of both the sides. Consistent with the principles governing the interpretation of the Statutes, it cannot be held that the sub-sections 2 and 3 merely defined the authority conferred upon the chair by sub-section (1). Taking sub-section (1) to be independent of the sub-sections following subsequently, it can reasonably be presumed that it implies all reasonable means for the enforcement of the decisions of the chair, including even the use of physical force. The first batch of the presidents in India, as we have seen, considered the employment of police force as a valid and necessary step for implementing their orders of withdrawal.

So while the legality of the use of force may be accepted, the argument of the opposition was unassailable in so far as that the police officer obeying the Speaker exposed himself to all legal actions. The conclusion, therefore, is that while it will be seriously limiting the authority of the chair to assert that a speaker under the Rule 77 could merely name a member, and could not effect his withdrawal, it would be erring on the side of over-confidence to presume that the employment of an unauthorised person, in so far that it is not explicitly sanctioned by a law, will be free from any legal difficulty. Under the Act, of 1935, a Speaker, of course, enjoys immunity from any legal action, but not the person who helps him to enforce his decision.

In order to make a definite provision with regard to the enforcement of the orders of the Speaker and their compliance by the members, the Government in the Punjab got passed the Punjab Legislative Assembly (Offices) Act (1939), which authorises the Governor, or such person as he may direct, to appoint a Sergeant-at-Arms, and one or more deputy Sergeant-at-arms. The duties of the Sergeant-at-Arms and his deputies are to attend on the Speaker, to keep the doors of the Assembly Building and to execute the orders given by the Speaker. For these purposes they are authorised to enlist to their aid such number of the

⁸ *The Punjab Legislative Assembly Debates*, Vol. 7, 1939.

servants of the Crown or of the Assembly as they may consider necessary.

The operative part of the Act is the 4th clause, which confers upon the chair a wider and elastic authority. The Speaker is empowered to ask the Sergeant-at-Arms to remove a member even if he infringes a rule of procedure or otherwise behaves in a disorderly manner. Under the old rule, only a grossly disorderly conduct, with a definite meaning attached to it, constituted an offence.

There are several instances in India of members behaving in a disorderly manner, but the 1939 incident of the Punjab Assembly marks an end to which an unruliness of a member under provoking circumstances can develop. That unfortunate incident serves as an eye-opener to other legislatures. In the first place, it proves the rule that the speakers must not only be impartial but be above all suspicions of partiality. In the second place, it shows that for the maintenance of parliamentary decorum and the preservation of order, the hands of the speaker must be strengthened. The Speaker has an important rôle to play. He is to conduct the proceedings in a manner that neither the minority is deprived of its rights and opportunity to criticise the policy and the measures of the government, nor the government is prevented in its task of obtaining legislative sanction for its administration. Therefore, his authority must necessarily be wide and ample, or else the disorder in the legislature will cause suspension of all legislative activity.

It is no reflection on the dignity and prestige of an Indian Legislature, if a Sergeant-at-Arms waits upon the Speaker or enforces his order in event of contumacy on the part of an offending member. The wilful contempt of the authority of the chair and the frequent breaking out of pandemonium do not enhance the reputation of a Chamber. If the minority has any serious grievances against the Speaker, it may well high resort to moving a censure motion against him rather than it should choose to demonstrate its lack of confidence in him by challenging and disregarding his authority. Such incidents set dangerous precedents for the religious minority and the reactionary groups to clog the legislative machinery. It is true that the trouble is inherent in the situation; for as long as the heterogeneous composition of the legislatures and the fundamental differences in the political parties continue, cleavages and clashes would not cease. But till such time as our legislatures get rid of these fundamental defects; the present legislative bodies in India must function and the legislators must discharge their obligations to their constituents.

So if meanwhile healthy practices and conventions take a firm root in India, the present legislatures, however defective they may be, will certainly pave the way for the successful functioning of parliamentary government in future India.

POSITION OF THE FEDERAL COURT IN THE CONSTITUTIONAL SYSTEM OF INDIA

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According to Prof. Dicey, federalism means legalism, *i.e.*, the predominance of the judiciary in the constitution. The Court in a federation becomes the pivot on which the constitutional arrangements of a federal country run. The bench in a federation determines the limits to the authority both of the government and of the legislature and its decision is without appeal. Hence, as Chief Justice Marshall in the famous case *Meyers vs. Limited States* points out, "The Bench of the Judges is not only the guardian but also enactive of the constitution. The Joint Parliamentary Committee, it is urged, also bears the same view in its proposal for the establishment of a federation in India. Besides, the importance of the Federal Court in India arises from the fact that the Federal Court will not only interpret and protect the rights of individuals, Provinces and the Centre but also of Indian States which are semi-independent and outside British India that require to be protected and interpreted. This Court assures the Federation as well as the constituent states of an independent field of governmental activity and "restrains the two sets of legislative and executive organisation from transgressing the sphere appointed for them in the constitution." The aims and ideals for which the Federal Court has been established has been very succinctly put forward by Chief Justice Sir Maurice Gwyer of the Federal Court of India in his augural address of the Federal Court: "The Federal Court is significant for two reasons,—firstly because of the unifying influence of the Central Judicature and secondly because the establishment of the Court implies a recognition of the fact that a new and perhaps the final stage of the constitutional evolution of India has begun. This is the first all-India Court of law and we may see in the Supreme Court of Canada and the High Court of Australia, no less than in that great tribunal, the Supreme Court of the Limited States, the powerful forces which such a Court is able to release and direct and the far-reaching influence which it may exercise upon history and fortunes of a state. It becomes at once the crucible on which

the flux of current and political thought is tested and refined and the anvil on which the more stable and permanent elements of that thought are hammered into shape, to take their place in the armoury of ideas which each generation seeks to solve its own problems or at least to make easier the path of its successors. The time is not ripe for the creation of a Central Judicature of this kind Independent of governments and parties and unaffected by the vicissitudes of policies, its primary duty is to interpret the constitution and in the absence of an impartial and independent arbiter, might inflame passions and even issue in violence. A second and not less important duty is one to which the Court in its interpretation of the constitution might be inspired by an enlightened liberality. It will always be our endeavour to look at the constitution of India, whether in its present form or in any other form which it may assume hereafter, not with the cold eye of an anatomist but as a living and breathing organism which contains within itself, as all life must, the seeds of future growth and development. . . ." (*Federal Court Report*, 1939, Vol. I, pp. 1—8.)

In making provision for the establishment of the Federal Court, the Government of India Act, 1935, follows the precedents set by the Constitution of the Limited States of America, Australia and, to some extent, procedure set out by the Supreme Court Procedure of Germany and Switzerland. In the White Paper, the proposal was made that there should be established a Supreme Court to act as the Final Court of Appeal in British India from the Provincial High Courts in matters other than those falling within the jurisdiction of the Federal Court. The object was, however, to limit the right of appeal from Indian High Courts to the Privy Council. But there were raised the objections that the establishment of a Supreme Court would mean an unnecessary and unjustifiable expense. The Joint Parliamentary Committee did not recommend the proposal for the establishment of a Supreme Court which would be independent of Federal Court as there would be overlapping jurisdictions. The establishment of the Court of Appeal was desirable and could be conveniently effected by an extension of the jurisdiction of the Federal Court. Such a Court would sit in two chambers—the first dealing with the Federal cases and the second dealing with British India appeals. The two Chambers would remain distinct though the judges of the one may sit in the other. The recommendation of the Joint Parliamentary Committee has been given effect to in section 206 (S. M. Bose, *Working Constitution of India*). Thus, according to section 206, the Federal Legislature has been given

powers to enlarge, by Act introduced in the Legislature with the previous sanction of the Governor-General in his discretion, an appellate jurisdiction of the Federal Court, so as to make it a Final Court of Appeal from High Courts in ordinary non-constitutional matters, in substitution for the present right of appeal to the Privy Council and to empower it to hear appeals in Civil cases from High Courts in British India without any certificate. But in such cases the amount or value of the subject-matter of dispute in the Court must be fifty thousand rupees, or such sum not under fifteen thousand rupees as the Act may specify, or the judgment, decree or final order must involve directly or indirectly property of the like value or else the Federal Court must have given special leave to appeal.

Various writers on constitutional law of India have given various kinds of jurisdictions of the Federal. The Act, however, specially mentions two kinds of jurisdictions,—original and appellate, and others are placed under miscellaneous jurisdictions or, to follow the logical division by Dichotomy, jurisdictions which are neither original nor appellate. In the first place, according to Section 204, the Federal Court shall have an original jurisdiction in any dispute but even the following constituent units—(a) Federation Provinces, (b) Constituent States accepting Federation by the execution of the Instrument of Accession and under Section 6(5) and schedule II which are however known as "Protected Provisions." The original jurisdiction involves matters relating to the interpretation of the Government of India Act, order-in-council thereunder or Federal laws or determination of rights and obligations thereunder. But with regard to Native States, the jurisdiction of the Federal Court has rather been curtailed. Under Section 204(i) the said jurisdiction shall not extend to any dispute which concerns the interpretation of the Act or order-in-council or any power vested in the Federation by the Instrument of Accession. Sub-Section (2) of the said Act further points out that the Federal Court shall not pronounce any judgment other than declaratory judgment. Thus, we find that the original jurisdiction of the Federal Court is much more limited than that of Australian High Court. The High Court of Australia has original jurisdiction in matters arising under (i) treaties, (ii) as affecting consuls or (iii) representatives of states in which the commonwealth or any other person is a party.

Secondly, the second class of jurisdiction relates to the appellate jurisdiction of the Federal Court. Sections 205-07 of the Act deal with the appellate jurisdiction of the Federal Court. The Federal Court, according to these sections, will hear appeals

from cases decided by the High Courts in British India and the Federal States involving matters what may be compendiously called constitutional questions. But in these cases, a special certificate is to be granted by the High Courts that it involves a substantial question of law as to the interpretation of the Act, or order-in-council made thereunder or the extent of legislative and executive authority vested in the Federation by virtue of the Instrument of Accession of the State or arising under an agreement under Part VI of the Act relating to the administration of Federal law in the States (*Prince vs. Gagan* 8 App. Cas. 103, *Raghunath Prasad Shingha vs. Pratapgar Deputy Commissioner*, R54. Ind. App. 126).

In the *third* place, the Federal Court shall have an advisory jurisdiction like that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833, which provides that on a reference by His Majesty to the Committee of any matter, the Committee shall hear and consider the same and shall advise His Majesty thereon but in case of India the Governor-General is at a discretion to refer any matter to the Federal Court. Thus Section 213 says, "if at any time the Governor-General thinks that a question of law has arisen or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to the Federal Court for consideration and the Court may, after such hearing as it thinks fit, report to the Governor-General thereon." His Excellency the Governor-General made first special reference to the Federal Court under Sec. 213 of the constitution, relating to the legality of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation, 1938 (*Federal Court Report*, 1939, Vol. I, pp. 18—36). Thus, the plain meaning of the Section 213 appears to be that the Governor-General without consulting his ministers can refer any question he chooses, while the King in referring any question to the Judicial Committee acts on the advice of his ministers. Reference may be made here to the important observation of the Judicial Committee in *Attorney-General, Ontario, vs. Attorney-General, Canada*, on a similar provision an Act of Dominion Parliament to obtain by direct request answers from the Supreme Court of Canada on important questions of law and fact. It was objected on behalf of the provinces that the Act was *ultra vires*, while holding that it was *intra vires*, the Judicial Committee dealt with at length the objections made as to the impropriety of such reference to the Supreme Court. In 1935, at the Dominion-

Provincial Conference, it was held that Canada should have the same power as other Dominions to amend the constitution and thus the age-long conflict between the Provinces and the Dominions seems to be obliterated.

Fourthly, as regards right of appeal to the Privy Council, it has been provided in Section 206 that the Federal Court shall hear appeal in such cases as decided by the High Courts in British India as may be prescribed by the Act of the Federal Legislature. The amount or value of the subject-matter must be fifty thousand rupees or not less than fifteen thousand rupees as the Act may specify. This is the only matter in which the Federal Legislature has the right to make amendments under the Government of India Act, 1935. It is here interesting to compare the position of the Dominions with that of India with regard to appeal cases. Canada has barred all appeals in criminal cases and could do likewise for civil cases if the Dominions and Provinces co-operate to that end. The Irish Free State as settled by Art. 66 of the Irish Constitution and as decided by Lord Shanksy in *Moore and Others vs. Attorney-General of the Irish Free State* has barred all appeals. South Africa has the power to follow the example of the Free State. But at present, there is a right of appeal from judgments of the Appellate Division of the Supreme Court under Colonial Courts of Admiralty Act, 1890. The Australian Commonwealth can bar all appeals that lie from State Courts by authority of the Imperial orders-in-council under the Judicial Committee Act. Newzealand could bar all appeals if its Parliament was to adopt the statute of Westminster. At present, there is a right of appeal from judgments of the Supreme Court of Newzealand in all civil cases involving a minimum sum of money and there is no restriction of special leave to appeal. But unfortunately in case of India, there is the right of appeal in any matter involving constitutional questions and in such cases by leave of the Federal Court or by special leave of the Judicial Committee. Finally, appeals from the decisions of the High Courts in cases where there is no right of appeal to the Federal Court will lie to the Judicial Committee of the Privy Council either as of right or of special leave.

Fifthly, as regards the executive authority of the Federal Court under the constitution of the U.S.A., the Supreme Court operates directly upon individual citizens. But in Switzerland and Germany, the Federal Courts do not operate upon the individual citizens. The American Courts possessing a hierarchy of judicial experts and officers are equipped with powers efficient to compel obedience to laws embodied in the Constitution

or in the Congress. But under Section 201(2), the Federal Court in the exercise of original jurisdiction can pronounce only declaratory judgments. Section 209(1) says that when it allows an appeal, it is to remit the case to the court from which the appeal was brought with a declaration as to the decree or order and the lower court shall give effect to the decision of the Federal Court.

Sixthly, it is worthy of note that there is no direct provision for the enforcement of Federal laws and orders in the States. The executive authority of the Federation in the States is to be given effect to by the States. According to Section 86 of the Civil Procedure Code, the Ruler of a State is exempt in British India from the jurisdiction of the Courts except with the assent of the Governor-General. Besides as decided in *Statham vs. Statham* and *Maharaja of Baroda* (1912 PD. 92) and *Miglull vs. Sultan of Zahore* (Pitt Cobbet, *Leading Cases on International Law*, Vols. I and II), the Ruler of a State is exempt from jurisdiction in Great Britain. Hence having regard to the internal sovereignty of the States and in the absence of Federal agency directly operating in the States, the only method of securing the object is to get the orders of the Courts enforced in the States through the State Agencies and this is to be done by Letters of Request to the Rulers concerned (Section 211). Thus the Federal Court can look upon the Rulers as ministerial officers in this respect, may claim jurisdiction over them and compel them to do their duties. But after the Letter of Request has been transmitted, the Federal Court loses all its power and is absolutely at the mercy of the State Court.

Lastly, the Federal Court has some miscellaneous functions. All authorities, civil and criminal, throughout the Federation will be bound to recognise and enforce the decisions of the Federal Court as binding upon themselves. Powers for attending persons and discovery or production of documents and for dealing with contempt of court have been conferred to the Federal Court to grant remedies. Besides, the Federal Court has the right to hear appeals from the decisions of a Railway tribunal and from the decisions as to the amount of States' contribution in lieu of corporation tax [Section 139(3)].

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THE INDIAN HIGH COURTS AND THE WRITS
OF CERTIORARI AND PROHIBITION

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The purpose of this paper is to examine the nature and extent of the powers possessed by the Indian High Courts to issue the writs of *certiorari* and prohibition.

I. *The Writs of Certiorari and Prohibition and their objects*.—Originally these writs were the principal instruments by which a Superior Court in England used to control an inferior Court of Record.¹ But in recent years the Courts of Law there have taken the view that the writs can also be directed to rectify an error of jurisdiction on the part of the Executive Authorities who are by Statute or Charter entrusted with a judicial function.²

II. *The Position in India*.—In India the High Courts have inherited the power to issue the writs of *certiorari* and prohibition from the Supreme Courts which were by their respective Charters³ empowered to exercise all such jurisdiction and authority as the Court of King's Bench in England could. The nature and extent of this power of the Indian High Courts were considered in a number of cases. In *Nundo Lal Bose vs. The Corporation of the Town of Calcutta*⁴ Garth, C. J. observed: "The authority of this Court to remove the proceedings of

* A paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December 1941—January 1942.

¹ See Halsbury's *Laws of England*, Vol. 9, p. 838.

² This change in the purpose of the writ has been brought about by an elastic interpretation of the word 'Court' which according to a recent decision (*Rev. v. Electricity Commissioners* (1924), 1 K. B., p. 171) includes "any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially."

³ *Vide* the Charter for erecting a Supreme Court of Judicature at Fort William in Bengal, dated 26th March, 1774; also see the Charter of the Supreme Court of Madras, 26th December, 1801, and the Charter of the Supreme Court of Bombay, 1823.

⁴ (1885) *I.L.R.*, 11, Cal., p. 275.

inferior Courts in the exercise of their judicial functions is undoubted. It is an authority derived from the old Supreme Court, and is similar to that which was exercised by the Queen's Bench in England." In the case of *In re Natarajan Iyer*⁵ the Madras High Court admitted by implication that it possessed the power to issue the writ of *certiorari*. But the trying Judges differed on the question whether such a writ could be issued on an authority exercising judicial functions in the Mufissil areas.⁶ In the opinion of Sundara Ayyer, J., the power of the Madras High Court to issue the writ was limited within the territorial boundaries of its original Civil Jurisdiction, and therefore, he held that "this Court has no power to issue the writ on an officer outside Madras."⁷ In support of this contention he referred among others to clause 8 of the Charter of the Supreme Court of Madras, 1801, which authorised the Chief Justice and the Puisne Judges of the Supreme Court of Madras "to have such jurisdiction and authority as our justices of our Court of King's Bench have and may lawfully exercise within that part of Great Britain called England as far as circumstances will admit," and then observed: "The object of clause 8 was to confer certain specific powers on the Chief Justice and the Puisne Judges . . . Each one of the Judges is a Justice of the Peace, and possesses the powers laid down in clause 8, and the powers consist in the jurisdiction and authority which the Justices of the Court of King's Bench had at the time, apparently as justices respectively and not the jurisdiction and authority of the Court of King's Bench as such." As the Judges of the Court of King's Bench severally had no power to issue the writ of *certiorari* either under the English Common Law or under any Statute, so the Chief Justice and Judges of the High Court of Madras had no such power. Sadasiva Ayyer, J., however read the relevant statutes in a different manner, and was unable to agree that clause 8 of the Letters Patent of the Madras High Court conferred powers on the Chief Justice and Puisne Judges in their individual capacity and that it was not intended to give them powers as constituting the Supreme Court.⁸ He referred in this connection to the constitu-

⁵ (1913) *I.L.R.*, 36, Mad., p. 72.

⁶ Although their Lordships disagreed on this issue they were unanimous that the case under consideration was not a suitable case for issuing the writ.

⁷ His Lordship had, presumably, in his mind the Presidency Town of Madras.

⁸ See (1913) *I.L.R.*, 36, Mad., p. 91.

tional position with regard to the issue of a writ of *habeas corpus* and then said: "The writ of *habeas corpus* when it is issued by a single judge or bench of judges is issued because the judge or judges form the court for that particular matter, and I am, therefore, clear that the writs of *certiorari* cannot be put on a different footing from the writ of *habeas corpus*, and if the writ of *habeas corpus* can issue into the mufissil by the powers vested in the Supreme Court (and inherited by the High Court of Madras) under clause 8 of the Supreme Courts' Letters Patent, the writ of *certiorari* can also run in the mufissil under the same powers."⁹ In his Lordship's view, therefore, "the power to issue the writ of *certiorari* to quash judicial proceedings passed by persons in the mufissil does belong to the High Court though of course the power should not be invoked except in very extraordinary cases."¹⁰

While we consider that the way in which Justice Sundara Ayyer attempted to distinguish between the Supreme Court on the one hand and the judges thereof on the other was highly artificial and extremely far-fetched, we cannot but note the anomalous position with regard to the High Court's power to issue the writs. In the absence of any definite ruling the question of the territorial limits of the High Courts' power to issue the writ of *certiorari* remains still uncertain. It appears that the Bombay High Court too held "that it had power to issue a writ within its original jurisdiction."¹¹

In *Besant vs. Advocate-General of Madras*¹² one of the main issues considered by the Privy Council was whether the High Courts in India, specially, the High Courts of Bombay, Madras and Calcutta, possessed the power to issue the writ of *certiorari*. There it was contended on behalf of the Respondent "that there is no power in the High Court (of Madras) to issue a writ of *certiorari* or alternately that the provisions of Section 22 (of the Indian Press Act, 1910) forbid recourse to this writ in cases which come under the Press Act." As to the first point, their Lordships held "that at any rate the three High Courts of Calcutta, Madras

⁹ See *ibid.*, p. 92.

¹⁰ See *ibid.*, p. 93. Although the learned judges differed on "This rather academic though important question," they agreed on all the other points and therefore they dismissed the petition.

¹¹ See *ibid.*, p. 81, where Sundara Ayyer, J., referred to some cases decided by the Bombay High Court.

¹² (1920) *I.L.R.*, 43, Mad.

and Bombay possessed the power of issuing the writ,"¹³ and that, although the Civil and the Criminal Procedure Codes provided for most cases a much more convenient remedy, their Lordships were "not disposed to think that the provisions of Section 435 of the Criminal Procedure Code and Section 115 of the Civil Procedure Code of 1908 are exhaustive," their Lordships could "imagine cases, though rare ones, which may not fall under either of these Sections." For such cases their Lordships did not consider "that the powers of the High Courts, which have inherited the ordinary or extraordinary jurisdiction of the Supreme Court to issue writs of *certiorari*, can be said to have been taken away".¹⁴

On the second point, their Lordships observed "Even were it to be said that the order was of that quasi-judicial kind to which *certiorari* has sometimes been applied in England or in India, the Press Act may quite reasonably have intended to take it away, and there is no reason why full effect should not be given to its language." It should be noted here that the relevant section, *i.e.*, Section 22 of the Press Act did not expressly say that the High Courts' power, if any, to issue the writ of *certiorari*, was thereby taken away. It simply laid down: "every declaration of forfeiture purporting to be made under this Act shall as against all persons be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding by any Court except the High Court on such application as aforesaid"

According to the Privy Council then the High Courts in India, at least those of Calcutta, Madras and Bombay, have inherited from the Supreme Courts the power to issue the writ of *certiorari* in extreme cases not covered by Section 435 of the Criminal Procedure Code and Section 115 of the Civil Procedure Code. Further, this power can be taken away even by implication, *i.e.*, by such an enactment as 'the decision concerned shall be conclusive evidence that it has been in accordance with law,' or as 'the decision challenged in any court.' Such a ruling, we may note here, is against the English practice that the writ of *certiorari* shall be issued except when the power to issue it is taken away in express terms.¹⁵

¹³ See *ibid.*, p. 159.

¹⁴ See *ibid.*

¹⁵ See Halsbury's *Laws of England*, Vol. IX, p. 861, where the author observes: "*certiorari* can only be taken away by express negative words. It is not taken away by words which direct that certain matters shall be 'finally determined' in the inferior

In the case of *Venkataratnam v. The Secretary of State for India in Council*¹⁶ the High Court of Madras, which was asked to issue a writ of *certiorari* on the Governor of Madras-in-Council, admitted that, subject to any statutory restriction, it possessed the same jurisdiction in *certiorari* as the Court in England.¹⁷ Now Section 106(1) of the Government of India Act (1915) exempted the Governor acting alone or with his ministers and Council and the Governor-General-in-Council from any jurisdiction of a High Court in its original or appellate capacity. Consequently their Lordships held that "the High Court of Madras derived no jurisdiction or power over the Governor of Madras and Council." In this case the question of the territorial jurisdiction of the High Court to issue the writ of *certiorari* was raised again. It was suggested "that the writ cannot be issued outside the limits of the city." But Subba Rao, J., held that "the jurisdiction possessed by the High Court in the matter of *certiorari* is supervisory or corrective and, on the English analogy, extends over all inferior tribunals amenable to its authority."¹⁸

In the case of *In re National Carbon Company Incorporated*,¹⁹ it was contended that clause 21 of the Charter of the Supreme Court "empowered and authorised" it "to issue a writ or writs of *mandamus*, *certiorari*, *procedendo*, or error," and "that there is

court, nor by proviso that "no other court shall intermeddle" with regard to certain matters as to which jurisdiction is conferred on the inferior court." We may also refer in this connection to the following statement of Seshagiri Aiyar, J., in *Annie Besant In re*: "It is now well settled that unless the power to issue a writ of *certiorari* is expressly taken away, it inheres in the Court. It was held in *R. v. Reeve*, (1760), 2 Burr., 1040, that the writ being one for the benefit of the subject, cannot be taken away without express negative words. . . . The English Judges have been so jealous in preserving this right that they have held that even when the legislature provided that certain matters shall be finally determined by an inferior court, the Court of King's Bench was not powerless. . . . Moreover, even if the right is taken away, the High Court can interfere, if there has been a want of jurisdiction in the inferior court." (1917) M.L.J., Vol. 32, p. 169. In *The Queen v. The South Wales Railway Co.*, (1849), 13 Q.B., 988, Coleridge, J., held that where want of jurisdiction was made out the statutory prohibition did not apply and the inherent jurisdiction of the King's Bench was unrestrained.

¹⁶ (1930) I.L.R., 53, Mad., p. 989.

¹⁷ Per Subba Rao, J., at p. 998—*Ibid.*

¹⁸ See *ibid.*, p. 1000.

¹⁹ (1934) I.L.R., 61, Cal., p. 450.

no mention of any authority to issue a writ of prohibition," and further that "there is no record of such a writ ever having in fact issued from the Supreme Court or the High Court." But Panckridge, J., did not accept this argument. The first reason for his Lordship's having given that decision was that "the draftsmanship of the Charter is open to criticism, and it may be that there is here an instance of omission through oversight."²⁰ The second reason was that his Lordship could not agree that "the language of clause 21 can be used to control the language of clause 4 (of the Charter) in the manner suggested," and that "it would need far more direct language to convince me (his Lordship) that it was intended by clause 21 to exclude, from the powers of the Court of King's Bench conferred on the new Court by clause 4, the power to issue a writ of prohibition."²¹

III. *Conclusion and Suggestions.*—The cases referred to in the preceding pages disclose certain anomalies in the present position with regard to the power of the Indian High Courts to issue the writs of *certiorari* and prohibition. First, as the power to issue the writs in the case of the High Courts at Calcutta, Bombay and Madras has been held to have been derived from the Charters of their respective Supreme Courts of Calcutta, Bombay and Madras, it is doubtful whether these High Courts which are not the descendants of the Supreme Courts, have this power. Secondly, even with regard to the High Courts at Calcutta, Bombay and Madras judicial opinion differs as to whether the writs can be issued outside the territorial limits of the Original Civil jurisdiction of each High Court. Thirdly, although we admit that the ruling of the Privy Council is law on the point, there is a wide divergence of judicial views as to the wording of the law which would be adequate to take away the power to issue the writ where such a power is vested in any High Court. The Judges of the Madras High Court themselves could not agree²² as to whether Section 22 of the Indian Press Act, 1910, deprived the said Court

²⁰ See *ibid.*, p. 460.

²¹ See *ibid.*, p. 460-61.

²² We may refer in this connection to the following statement of the Judges: "I find nothing in Section 22 of the Press Act which can be said to have deprived the High Court of this power"—per Sir A. Rahim, O.C.J., Madras High Court. "I am of opinion that by reason of Section 22 it is not open to us to set aside the Chief Presidency Magistrate's order"—per Anyling, J., "I am therefore clear that S. 22 has not taken away the right" (to issue the writ of *certiorari*)—per Seshagiri Aiyar, J. The reference here is (1917) *M.L.J.*, Vol. 32, pp. 153, 164 and 169 respectively.

of the power to issue the writ of *certiorari*; and the Privy Council took a view of the question which, it is submitted, was contrary to the English practice in this regard, specially in view of the fact that the power possessed in respect of such matters by the Supreme Court under the respective Charter was similar to that of the Court of King's Bench in England.

In view of the extreme importance of these writs as instruments to keep the Executive Authorities vested with judicial power within the bounds of their Statutory authority, it is necessary that these anomalies should be removed and that the High Courts in India should be given the power to issue these writs by specific legislation to that effect. There is no doubt that Section 115 of the Code of Civil Procedure and Section 435 of the Criminal Procedure Code confer upon all the High Courts in India the power to issue orders somewhat analogous to the writ of *certiorari*. It is also admitted that these two sections give a convenient remedy against unlawful assumption of jurisdiction by the inferior Courts. But the power of revision and control given under these sections is applicable in respect of the proceedings of the ordinary Civil and Criminal Courts only,²³ and is not available against the Executive Authorities performing judicial functions. The need for necessary legislation is therefore imperative.

In this connection we may mention that in England, too, a statutory basis has been given to the power of the High Court to issue these writs. This has been done by one single section in the Administration of Justice (Miscellaneous Provisions) Act,

²³ By Section 115 of the Civil Procedure Code the High Court is authorised to "Call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto and if such subordinate Court appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity the High Court may make such order in the case as it thinks fit." The phrase "Subordinate Court" in this section has been interpreted to mean "a Court over which the High Court has appellate jurisdiction." See *Balkrishna v. Collector, Bombay*. For further reference on the point see D. F. Mullah's *Edu. of The Code of Civil Procedure* (10th Edn.), p. 379. Under Section 435 of the Criminal Procedure Code also the High Court can exercise control over an inferior Criminal Court which means a Court inferior to the High Court so far as regards the particular matter in respect of which it is asked to exercise its jurisdiction. Under this section the High Court cannot revise an order passed by any court other than Criminal Court. See *Encyclopaedia of the General Acts and Codes of India*, Vol. II, pages 789-90.

1938. This Section, while forbidding the issue of the *writs* of *certiorari* and Prohibition by the High Court, has empowered it to issue *orders* or prohibition and *certiorari* in any case where the High Court would, but for the prohibitions contained in the act, have had jurisdiction to issue to those writs.²⁴

Here Parliament could afford to be so brief because there is a huge body of judicial decisions dwelling upon the various aspects of the writs of *certiorari* and prohibition. Any Indian Legislation regarding these writs will have to be much more elaborate. It goes without saying that it should aim at removing the anomalies which have been mentioned before. But in our view such a legislation should provide for something more. Firstly, while it should be made distinctly clear that the writs would issue only in respect of the judicial Act of the Executive Authorities, a criterion should be set by law by which the High Courts might be in a position to distinguish, for the purpose of the writs, a judicial from a purely executive act. In view of the fact that the objective of these writs is to safeguard individual rights from being unduly encroached upon by Executive Authorities exercising judicial functions, we may suggest that the law should provide that whenever the Executive Authorities are endowed with a power to make decisions which *finally* determine some important rights of the individual, the power should be regarded as judicial for the purpose of issuing these writs.²⁵ Secondly, provision should also be made as to the circumstances in which the writs might be issued. Hitherto the High Courts of Calcutta, Bombay and Madras have followed the English decisions in this respect and have issued the writs in the case of a 'defect of jurisdiction' on the part of an inferior Court of Law. The phrase 'defect of jurisdiction' has no doubt been given a wide connotation by the English Courts.²⁶ But here, too, the standard has varied

²⁴ See Sections 7(1), (2) and (3) of the Act.

²⁵ We may mention here how uncertain the position is in England in this matter. There the Courts have widely differed on the point and there are instances where the same act was held by one court to be a ministerial act and by another to be a judicial one. See Robson, *Justice and Administrative Law*, pp. 9-10.

²⁶ For instance, according to the decision in the case *Re v. Board of Education* (1910), 2 K.B., p. 165, this phrase comprehends such things as "intentional usurpation of mistaken assumption of jurisdiction beyond that given to the tribunal" in question, "the refusal of (a) true jurisdiction by the adoption of extraneous considerations in arriving at (certain) conclusions or deciding a point other than that brought before them." Defect of jurisdiction may again arise from the absence of some essential preliminary proceeding, like the service of a notice, or the non-observance of

often and on and the English Courts, in setting up that standard, accepted limitations which, we think, are quite inapplicable nowadays.

It may be admitted that some limitations on the power to issue the writs might not have been unjustified when these were judicial instruments to rectify the commissions and the omissions of the ordinary Court of Law which was generally believed to possess by training and tradition such habitual integrity, impartiality and legal acumen as not to misconstrue a law or miscalculate the sufficiency or the weight of an evidence. But the imposition of the same limitations on the scope of the writs when they are issued against Executive Authorities discharging judicial functions is not only unfair but also prejudicial to the interests of those whose rights the Executive Authorities adjudicate upon. It is submitted, therefore, that the High Court should be enabled to issue the writs not only on the ground of a 'defect of jurisdiction' in its widest sense, but also when the decision of the Executive Authorities is, *prima facie*, illegal and unreasonable. It may, however, be argued that such an extension will defeat the very ends of Executive Justice and mean an undesirable impediment in the proper administration thereof. But we think that the mere existence of an extensive power of this nature in the High Court will have such a wholesome effect upon the Executive Authorities invested with judicial powers as to call for its exercise very rarely. Thirdly, the cost of moving the High Court to issue the writs should also be kept within the reasonable reach of the possible parties praying therefor.

Even when all these steps have been taken, much of the Executive Justice will remain outside the pale of these wholesome writs. For whenever judicial power is conferred on the Provincial or the Central Executive Authorities it is conferred upon the Provincial Government and the Central Government. Now Provincial Government and Central Government are for all purposes of law the Provincial Governors and the Governor-General,²⁷ both of whom are outside the jurisdiction of the High Court or any other Court of Law. This exemption has been provided for by Section 306 of the Government of India Act, 1935. It is therefore submitted that the Court of Law in India should be enabled to make a distinction between Executive and

the statutory requirement that the parties shall be given an opportunity of being heard before their case is decided upon.

²⁷ We have in view the full operation of the Government of India Act, 1935,

Judicial functions of the Provincial and Central Governments in India, and to hold them amenable to its control and regulation in respect of the latter, while granting immunity from its jurisdiction with respect to the former.

REVIEW

DEMOCRACY IN THE SADDLE by Sri Ram Sharma, *Professor of History and Politics, D.A.V. College, Lahore.* The Minerva Book Shop, Lahore, 1940, pp. 133.

This book consists of fourteen studies made by the learned author in the years between 1935 and 1940 on various aspects of the Government of India Act, 1935. One of the studies is devoted to analysing the special features of the proposed Indian Federation. In the rest of the book is found a critical examination of Provincial Autonomy as conceived under the Act of 1935, and the way in which it actually worked in the Punjab. The tenets of pure democracy as formulated in theoretical treatises on the subject and the constitutional conventions that have been developed in England are taken as the basis for passing judgements on the extent to which democratic government has achieved success in the Punjab. It is the view of the author that judged by these tests democracy has on the whole not been much of a success in that province. In this connection there is a critical description of the place of the Opposition in a democratic legislature, the role of the speaker, the significance of parliamentary procedure, the importance of freedom of the press and the nature of party organization. Every one of these features is looked at from what may be called the orthodox academic standpoint. In discussing whether the speaker should continue to be attached to a political party, whether the Governors should preside over cabinet meetings, whether the Congress High Command should dictate to Congress Ministries the policy they should adopt in carrying on provincial administration etc., the author argues his case with a good deal of freshness and vigour. His general apprehension that the precedents and conventions that the Punjab Ministry have been setting up are opposed to the principles of democracy deserve careful consideration. The value of the book lies in its fearless exposition of some of the shortcomings of the actual functioning of autonomous government in one of the important provinces of the country.

The question however is whether he has made a right approach to the subject. The object of the framers of the Act of 1935 was not the introduction of democracy into the Provinces. The Provincial autonomy set up under it is—as has been so well described by the author himself—a limited kind of autonomy. The checks and safeguards for which it has provided make it a modified form of autocracy. The Governor is the central pivot of the constitution. When one therefore examines the actual working of such a constitution one has to estimate the degree to which it has conformed to the intentions of its makers. To criticise it from the point of view of extreme democratic theory and principles is to take a mistaken view of it. The author also seems to be of the view that only those conventions and precedents which have come into vogue

in Britain should be adopted in the Punjab. There is no sacredness about British Conventions. The Speaker in the United States occupies a position quite different from the Speaker in the English House of Commons. The same is the case in regard to several other matters referred to by the author. There is no reason why in the Punjab other precedents and conventions should not grow. Above all the system of autonomous government has been at work only for a short period. It is therefore premature to pass any judgment on the nature of its working.

M. VENKATARAMAIAH.

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/-. *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.

10th February, 1942.

Yours Sincerely,
J. N. KHOSLA,
Reader in Political Science,
University of the Punjab, University
Hall, Lahore.

The Indian Journal of Political Science

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THE ECOLOGY BEHIND POLITICS

BY

DR. RADHA KAMAL MUKERJEE,
University of Lucknow

Needs of Economic Diversity and Orientation

For the unity and health of a nation there is needed diversity of resources and technics. Agriculture should supplement industry and trade and *vice-versa*. For the development of agriculture are needed forests in the mountains, pastures in the mountain slopes and market-towns on the rivers. For urban ways of living are necessary the rural. Above all, there is needed a rational balance of the different economic procedures and their developments. There is an organic inter-connection between the various economical uses of land in a given country. Scientific agriculture in the fertile plains, forestry in the hills and pasture-farming in poor and cheap lands help one another. On the other hand, the ascent of agriculture to the hillsides and depletion of forests, excessive or indiscriminate grazing in pasture lands and continuous encroachment on marshes and streams spell the economic decline of the nation as much as the development of a few giant cities or metropolises. Between the different economic procedures in the various regions or sections of a region a definite orientation and organisation are essential. The economic planning movement aims at achieving this integration through the rational direction of all the available resources distributed among the various sections of a country. The inter-articulation of a country according to agricultural regions, cereal zones, raw produce zones, stock raising zones, forest zones, or mineral regions and manufacturing regions underlies a far-sighted agricultural planning, as that of Russia. In countries like Russia, the United States or India with their vast expanses of territory, unmarked by political boundaries or tariff lines, the locality or natural region is free to develop in a manner quite impossible in Western and Central Europe. In a considerable part of Europe political boundaries thwart the orientation and development of economic regions. This has aggravated occupational disbalance which has been responsible chiefly for the evils of unemployment and over-population. Protection and inflation have been the twin political weapons used

to promote industrialisation under economic handicaps, and the more there has been over-production, the greater has been the demand for raising the tariff wall. The sub-division of homogeneous economic regions into distinct political states, over-industrialisation, under-production in agriculture, and over-population have been linked together in a vicious circle in Europe from which there can be no escape until there be a fundamental readjustment of political and economic organisation. In a divided Europe, over-populated and lacking political and economic balance, there is perpetual fluctuation of the balance of power, and struggle is perpetually renewed by the insurgent forces of racialism and nationalism bringing the entire continent into periodic political upheavals.

In the continental states, where there are no artificial limitation offering obstacles to the development of natural economic regions, the problems of economic orientation are not dissimilar. The conflicting interests of different zones, sections and groups or producers must everywhere be brought into some kind of balance in the economic structure of the nation. Especially is this necessary in a democratic federal state, as the United States, Soviet Russia and British and Indian India of the future. In a vast and heterogeneous nation, regional geography and ecology are central facts, and the tasks of statesmanship consist in co-ordinating the divergent lines of development and special interests of different regions and sections and bringing them all together in a common economic policy. On the one hand, the economic diversity between the regions of the U.S.A., U.S.S.R. and India is one of the strongest binders fostering a national unity operating through regional divisions of labour. On the other hand, federalism as a political experiment is bound to fail in the absence of economic inter-penetration and right balancing of the interests of different regions, localities and sections.

It is well known that in the United States when the first experiments towards a confederation were launched the disparity between urban industrial interests of the Middle and New England States and the agricultural regions of the South and the West brought about a series of political conflicts which endangered unification. Opposition developed between the agricultural States who generally wanted a tariff for revenue only and those of the Middle and New England States who hoped that duties might be made high enough to protect manufactures also. This conflict indeed became permanent in American financial history, a strong evidence of the divergence of economic politics of agricultural, manufacturing and mining regions, which are now being

welded together with greater or less success, into a unified national policy of the Federation. As a recent American writer has observed: "Turner's sectionalism in American history—to be carefully distinguished from regionalism—is based largely on differences in economic structure and needs. The shift of industry from the north-east to the middle states has been accompanied by changes in political beliefs, and it is noteworthy that the states to break the "Solid South" in 1928 are leaders in industrialisation."¹ In India the opposition between the textile manufacturing regions in the West and the rest of the Provinces early expressed itself in similar disputes relating to the rates of the cotton duties. The success of the Indian federal experiment would depend in large measure upon a balanced development of industries and agriculture as parts of a regional whole.

The Tasks of Regionalism.

But regional planning is something more than economic planning. As plant and animal ecology deals with the complex and subtle linkages between different species of plants and animals and the processes of uplift of the entire biotic community of the ecological area, so regional planning deals with climate, resources and landscape, laws, customs, economic and social institutions, necessary to bring about a close harmony and progress of the human community in relation to the region's forces and possibilities. Soil, topography, climate, flora and fauna offer the fundamental life-giving essentials which bring about a regionally organised social development. With man's cultivation and industry, his understanding and use of the soil and the plant and animal resources that are bound up with one another in subtle cause and effect relationships are blended social customs, traditions and ways of living. These give the individual easy guidance for his struggle for living and status and the community a distinctiveness essential for its survival. Sunshine and rainfall, crop and animal, man's encountering the procession of the seasons, his multiplication, distribution and circulation are tied with one another and with the pattern of culture of the region which thereby acquires stability and orientation. The region is a common and co-ordinate set of stimuli, eliciting a similarity of responses, habits and feelings which are re-inforced by gregariousness, and which are moulded and stabilised into a characteristic mental type and pattern of living. The region is

¹ Moore: *What is Regionalism?*, Southern Policy Papers No. 10.

also a result of co-ordinate set of reactions which become crystallised into the legacy of occupations, traditions and culture. The latter direct man's impulses, interests and values along certain common channels which make life easier and smoother for the community in the region. People and resources, technology, traditions and values react upon one another, and give to the region a distinct "personality" and to the culture a distinct "areal" organisation.² Men's lives and memories, mental patterns and aesthetic habits, institutions and behaviours are inseparable from the region, which accordingly elicits ardent pride and loyalty that sustain the human spirit. Regionalism thus is no mere geographical or economic concept; it is as wide and deep as man's collective adaptation to the needs of wresting life sustenance and appropriate human values from the bit of the earth which is the cradle of the community. Now social adaptation and selection are not sure and certain of their purpose. In the modern world man's machine technology which is a means of economic adaptation as well as his increased tempo of life, mobility, fluidity of social relations and stress of the contractual-pecuniary standard which are mental and social adjustments to the pressures and procedures of the new technology have brought about a serious unbalance between man, society and the region. Culture is now being uprooted from its solid, ecological base. Its norms of mechanical efficiency, competition and pecuniary valuation are associated with a reckless depletion of the heritage of the soil, trees and waters causing a serious regional disequilibrium, and aggravating the human struggle for existence. The disruption and dis-integration of the region accompany also occupational disequilibrium, and disorder in man's economic, institutional and political relations. Regionalism is essentially the art of linking ecological, technological and cultural development in terms of stability and survival of resources, community and culture. Its aim is to restore social equilibrium through eliminating the misfits of man's technology and economy as well as lags of human values and culture. Such restoration today largely lies in the regulation of giant machine organisation and reduction of tempo of life, redistribution of industry and population, re-orientation of rural and urban ways of living and a new equilibrium between people and the heritage of the region. Regional planning would not accept only the pecuniary valuation of technology and economy but recognises human values as the ultimate product of the regional adjustment. In the region technology

² See *Regional Sociology*, chapter XIII.

transforms resources and raw materials into finished goods which are converted into real income, leisure and recreation or into capital goods which are reservoirs of energy replacing the goods destroyed in the course of production. Along, therefore, with the perennial flow of goods and services, a volume of capital goods or energy stores flowing one way and a stream of consumers' goods and values flowing the other, we have the flow of social, economic, educational, recreational and ameliorative institutions, permanent social products which offer easy guidance to a people in its adaptation and give to the region a distinct character, differentiating it from others till at length "it becomes, as it were, a medal struck in the likeness of a people." It is the people who unfold the individuality, the distinct culture or personality of a region by means of its tools and traditions transforming its resources and materials for their needs, interests and values. The cultural framework is woven into the ecological skeleton of the region: it exhibits constant change, inter-dependence and specialisation of parts, improvement or deterioration with most significant effects upon the equipment and behaviour of a people, and the naturalness and stability of its region. Regionalism aims at a continuity of this vast flow of resources, energies and services for the permanence of the community through conversation and implementation, not through exploitation, and the transformation of these resources, energies and services into higher and higher values furnishing a permanent dynamics for human culture, free from the artificiality and emptiness of the technological society.

Schemes of National Regional Planning

Comprehensive schemes of national regional planning involve, therefore, a careful balancing of man's economic interests and cultural activities which aim at the ultimate values. Economically, socially and politically, regional planning gives up the narrow standpoint of price economics. Economically, regional planning seeks the goal of conservation in a reduction of the rate of disappearance or consumption of exhaustible resources and a corresponding increase in the unused surplus left at the end of a period for the purpose of benefiting posterity. It also aims at the conservation and development of local skills and aptitudes of peoples without the degradation that the nineteenth century industrial development brought about everywhere. The social aims of regional planning are to arrest the concentration of population and industry in a few super-cities or metropolises and the growth of agglomerations or "connurbations" i.e., the grouping of settlements

which are attached to one another and are oriented to one big city or metropolis; to create independent little towns where a further increase of population in the region can be absorbed and people may live more harmoniously with nature and industry. Corresponding to the slum areas in the great cities there are blighted areas in prosperous river plains which used to feed the entire nation but whose farming and agricultural water-supply have been ruined by decades of soil erosion, deforestation, decay and meandering of rivers. Destruction of forests, soil erosion, reclamation of swamps and canalisation give rise to problems which must all be approached from the point of view of an entire river valley as a unified whole. Otherwise one province or state in the up-river areas can ruin others in the lower areas. Regional planning and co-ordination of land, forest and water resources can alone prevent increasing recurrent national losses due to desiccation, soil erosion, flood and spread of swamps and jungles, which are encountered in many agricultural states in the world today. Without some kind of regional integration different Provinces and regions with their divergent interests in agriculture, irrigation and navigation range themselves in conflicting camps which may thwart national unity.³ Deficit regions and Provinces with eroded field, choked streams and recurrent droughts can only be rescued through inter-regional and national co-operative planning.

The co-ordination of the tasks of agriculture, irrigation, hydro-electric development and navigation stresses in modern states the significance of contrasts and uniformities of regions. In fact agricultural planning rests on a nation-wide division of labour and interdependence of crop and resource regions; regionalism serves as the major key to both agricultural recovery and reconstruction. As the distance from the market or the cost of transport increases there is a tendency for agriculture to become more and more extensive. Market gardening and horticulture, intensive peasant farming and large scale agricultural enterprises or plantations are arranged in concentric zones around the markets. The same idea of zonal types of culture also applies to the systems of regional and world economy, the more distant and sparsely populated regions growing food and raw materials for the industrialised and thickly populated areas. Thunen's theory of localisation and Le Play-Geddes' theory of the valley section are the indispensable foundations of agricultural theory and planning. Further, the sizes of agricultural units have reference to crops and agricultural practices and these would differ in different regions. Large

estates extend the zone of cereal growing, peasant holdings that of stock raising and market gardening. All these have an important bearing upon the land policy of different regions. The size of the holding, the situation of the land distant from or near to the market, subsistence and commercial farming are all fundamental features in the movement of land rents and values. The new arts of sectional agricultural planning and farm accountancy represent the application of these ideas to agricultural reconstruction. Another line of research, which renders valuable service to economics, is the study of the size of agricultural units, crop and type of farming in relation to social organisation, attitudes and culture of the agrarian population. Such work has been successfully carried out for Negro cotton culture by the American sociologists. Such regional or sectional surveys or plans of agricultural planning are supported and strengthened by the new movements of a more rational land utilisation, erosion control afforestation and river management which tend to be organised on a sectional or regional basis. Without regional planning, again, the dispersion of industry from the cities into the country, and the development of a decentralised and well-balanced industrial structure, freed in large measure from the antagonism of classes are not possible. No doubt class conflicts in the present political system are an expression of the modern ill-balanced and centralised industrial structure, with its sudden fluctuations of employment and mass purchasing power, which can be mitigated or eliminated by the strategy of industrial and regional planning.

Politically, the aim of regional planning is to utilise social and cultural traditions in homogeneous areas for building up an active citizenship. Both the Great Society and the State have through the stress of the ideal of mechanical efficiency paid little regard to local and functional groups and associations. Regional planning instead of permitting the steam roller of centralisation to obliterate all voluntary bodies would tend to make the fullest use of them for a wide variety of services, selecting institutions which have a higher community value. The recent developments of motor transport and the aeroplane, the radio, telephone and the giant power and of the co-operative organisation in agriculture, marketing and finance, have greatly strengthened the methods and strategy of localism and regionalism. In the democratic countries in the West there is discerned today a distinct tendency towards associating with the state a large number of voluntary bodies whose organised social services have often pioneered the way for governmental action. Adams points out that this co-operative commonwealth of statutory and voluntary bodies, local and central,

³ Mukerjee: *The Changing Face of Bengal*, p. 286.

has nowhere developed more than in Great Britain. It is of course far from its full expression, but "the associative principle is enabling a great variety and richness of community effort to advance the standard of well being, is bringing about a breaking down of class divisions and the growth of good neighbourliness and is increasing the power and usefulness of public opinion." The introduction of regional autonomy and decentralisation and exaltation of functions in corporations, professions, co-operatives and voluntary bodies can lead to the active participation of the common man in the work of government, temper the tone of class-ridden state and favour a new ethic of service and solidarity.

The region with its characteristic agricultural conditions and structure, land tenure and policy, its distinctive social composition, its unique traditions, customs and historical events, its folk music, art and literature nourishes sentiments and loyalties, which cannot be obliterated without danger to the personality organisation of its inhabitants. On the other hand, the sense of community of the region is a valuable national asset which should be cherished in order that democracy may not drift towards a wooden bureaucracy. Parochialism or the narrow spirit of the village or town has been found to be as much a misfit in this modern age of easy communication and transportation as the uniformity and standardisation brought about by the centralised administration and long-range control of the nineteenth century Leviathan or the twentieth century totalitarian state. Many nations which have experienced the corroding and devastating effects of the formalism and impersonalism of national organisations look up to regional initiatives and experiments as giving adequate opportunities of expression for the democratic spirit of neighbourhood. As a matter of fact democratic as contrasted with totalitarian planning largely rests on regionalism utilising the accumulated force of tradition and environment in natural and historical, rather than arbitrarily defined, political regions. The region thus as the focus of political consciousness not only becomes the corrective of the wastes and weaknesses of nation-wide regimentation of the giant state but also rescues the technological society, through the varied regional artistic expressions of folk culture from the exaggerated stress of pecuniary, non-humanistic values and tendencies. But the full cultural potentialities of the region as a synthesis, a living frame of the unity of folk, mind and place through labour, have not been adequately realised. These have been chiefly realised in Europe and America so far in respect of the rational ordering and co-ordination of economic activities and plans. Thus regionalism remains as yet a developing programme

though indispensable in the evolution of an advanced and rationally ordered civilisation.

Regionalism in Politics

As a result mostly of Le Play-Vidal de La Blache geographical movement in France, Germany and England and recently in the United States we come across practical schemes of orderly planning especially of industrial regions so as to utilise all elements in the physical environment for social well-being as distinct from the ruthless exploitation of particular elements, for example, coal in England and Germany regardless of the wider social consequences which mark the stages of industrial revolution. In Germany in the Lower Rhine region, which is the most highly industrialised area in the whole country, a reformation of municipal boundaries has been taking place under the name of *Nengliederung* or *Eingemindung* and also a better co-ordination of the distribution of coal and iron on the one hand and the export of manufactures and import trade in the most important raw materials and a considerable proportion of the food products on the other. While regional planning in Germany has been mostly industrial planning, in other countries, particularly in France and Sweden, it seeks to harmonize the interests of large industrial cities, satellite towns, country towns and villages in a common scheme in which each has its place. Historical data are used in the reconstructions of rural cultural areas, often by meticulous field surveys, which have been valuable aids in determining the areas' inherited conditions of settlement, land utilisation and communications. In France where the older regional life has persisted in most provincial towns geographers have devoted considerable attention to socio-economic regionalism and have collaborated actively with official and unofficial bodies for these objects. Communes could now form unions or syndicates for carrying on regional activities such as canals; aqueducts and water works; bridges and roads, transport services, drainage and sanitation. There are thus many inter-municipal bodies which have undertaken a number of regional activities while provision is also made for inter-departmental syndicates. Municipal Chambers of Commerce are also organised for several traditional regions of French history. "Our major objective," observe Brunhes and Vallaux, "should be sought in the rational grouping of the forces of production, of labour, of distribution, and of transport for the states of the future, so as to enable them to profit by the new forms of activity and of wealth, while at the same time respecting histori-

cal continuity." Regional councils have now been established in France in economic engineering, judicial and educational fields and regionalism has also found abundant expression in regional literature and other artistic expressions. Along with socio-economic regionalism there is now a demand in France for the representation of natural integrations in politics and a bold re-division of the country so that each area should have a definite personality with divergent resources, if possible, a well-defined central city and the legacy of a connected historical tradition. Lecoy says, "We look forward to a second Chamber of Deputies, based upon those local groupings in which the citizen lives his true life, in which he works and thinks; upon groupings endowed with a life of their own, and constituting, in the true sense of the word, communities, because there exists between their inhabitants identities of thoughts, of interests, and of needs." In Great Britain Fawcett has envisaged a polity based not on political entities but on ecological facts. In his Provinces of England, he has raised the question whether the country units developed in relation to social and historical circumstances, which have largely disappeared could be superseded by larger administrative units more in harmony with the modern economic regions. Similarly G. D. H. Cole has recently suggested the formation of Provincial Councils for industrial areas or "connurbations" with Regional Councils for the "Regions" with each area while within each region there would continue to be lesser authorities for boroughs and districts for the co-ordination of the different "Provinces" there should be a Federal Council including representatives of the whole area, and possessing certain over-riding powers of planning and development for each portion of the country.⁴ In Soviet Russia, in Italy, in Spain and in Poland the same tendency of regionalism has been followed. In Soviet Russia scientists through their intensive studies of the distribution of resources and economic patterns are devising both principles and practical policies for their co-ordinated development in terms of regional integration and the constitution recognises, theoretically at least, the right of any of the republics to secede at pleasure. In Italy though the centralised system of Fascism has left little room for political and administrative regionalism, yet the Fascist programme of the *Bonifica Integrale* through land reclamation, agricultural improvement and construction of arterial roads has materially contributed towards the social and economic development of some ancient but

⁴ The Future of Local Government, *Political Quarterly*, October-December, 1941.

ruined regions. In Spain Catalan regionalism has a long history. It began as a cultural movement but became definitely political and obtained recognition from the Spanish Republic which granted Catalonia certain civil legislative powers and its own municipal administration. Similarly Basque cultural regionalism paved the way for the desire for autonomy which received recognition leading to the creation of the most progressive communal and municipal administration in this country. The Galician movement has, however, remained mostly educational and cultural in Spain. In Poland as well a cultural regionalism with administrative and economic aims developed out of cultural regionalism and there has been demand for revision of the map as well as decentralisation and self-government at least in respect of cultural and economic activities and the administration of justice. In the Balkan States the conflict between the unity of state administration and the cultural claims of regional homelands has been acute for many years due to the uncertainty in political boundaries. In the United States regionalism based on natural ecological divisions has represented even a stronger socio-economic movement and is the natural culture of the influx of peoples from different parts of Europe. Thus Keyserling observes: "America is at bottom a new land of budding locates us, very much as Europe was at the end of the migration of the peoples," and it seems to be sub-divided "into large provinces of a comparatively unified character, provinces out of which there would undoubtedly have grown in earlier days and under different conditions separated cultures." Comparing European with American regionalism, Morgan observes: "Regions like New England or the South are of a larger order of magnitude than those of France or Spain. It is conceivable that locations are growing within New England or the South, and it is these which are more nearly equivalent to the regions in European countries."⁵ Besides the New England and the South other regions with a distinctive cultural pattern are the Middle West, the Plains Area and the Pacific North-West. It is, however, only with reference to the South that Odum, Vance and others have systematically surveyed and interpreted regional culture. While sociologists in the U.S.A. have studied the localities and regions as distinct from the state, section or division as the appropriate unit of meticulous folk and cultural studies, state planning has often adopted as its

⁵ Three Aspects of Regional Consciousness, *The Sociological Review*, January 1939.

unit the various ecological integrations, regions of agriculture, forestry, industry and resource patterns in general. In this country much of legislation has been increasingly sponsored by politically powerful functional groups whose interests coincide more or less exactly with some geographical area. Thus the Mid-west farm bloc and the New England manufacturing group promote legislation favourable to occupational groups rather than to geographic areas and have brought the importance of such classes home to all politicians. The interstate efforts to provide labour standards and crime prevention and detection, the rise of metropolitan planning, and the emergence of at least two groups of states for planning and advertising purposes point in the same direction as the Tennessee Valley Authority and lend weight to the arguments that the U.S.A. need sub-national but extra-state administrative units. Vance observes: "There are two great economic complexes that may be expected to force regionalism on the attention of the State. The first of these is the railroads, and the task is one of consolidation, elimination and unification of systems until each crop and national resource province shall be efficiently inter-connected with metropolitan centres. The second is the pressing problem of electrical power. Hydro-electric development band on the natural distribution of flowing rivers and water-power demands co-ordination of large areas."⁶ This need has actually been met by the various agencies of the national government by the establishment of more than one hundred "regional" administrative areas. Several schemes have been mooted to make for a decentralised but united administration which may preserve the unique possibilities of different regions for the benefit of the nation. The federal government might divide the nation into any feasible number of regions, in each of which there might be one central office for furnishing information to inquirers and for correlating the activities of the various federal agencies operating within the region. At the other extreme, the states might be abolished and their places taken by regional assemblies with legislative authority, subject only to a greatly reduced national congress and the constitutional interpretation of the Supreme Court. Both schemes have been proposed along with a host of others falling somewhere between these two. There already exist two regional planning commissions which might easily be converted into administrative bodies by the delegation of state and national powers to them. The

⁶ *Human Geography of the South*, p.17.

inter-state compact and the federal corporation are also offered as means of meeting the situation.⁷

In the urban industrial regions cultural change and social mobility are quick and respond easily to changed technique and scientific progress. But the regional culture of an agricultural people takes much longer or may even retain its power as the definite society, sometimes weathering several technological changes and finding itself more harmoniously in accord with later technologies than with those it resisted. Rural co-operative and electrification or the use of cheap motors in industry are more easily annihilated to the folk culture as these increase its social and technical efficiency. Or the folk society may reflect a dominant, rather than a recessive, adaptive culture, Odum, a strong advocate of socio-economic regionalism, finds in the imbalance between folk society and the organisational technical society the key not only to accelerated social change but also to contemporary social deterioration and senescence. He gives example of an agrarian culture resisting the urban-industrial technology and later adapting to newer cultural trends, or of the power of the Negro to adapt certain language and religious form so completely as to make them his own, or in the case of a conquered people dominating the culture of the conquerors. Thus, in spite of all the modern technological standardization, there are evidences of increased rather than decreased folk regionalism in some instances. In India in spite of the fact that regionalism based on affinities of language, race and caste tradition is much stronger than in most countries of the world and has left a deep impress in arts and industries, vernacular literature, religion and culture, it has been neglected as the constructive factor in economic, social and political planning. The Simon Commission, though it realised the necessity of delimiting political boundaries according to regional and cultural affinities, left the problem completely unsolved. In several Provinces under the newly established autonomy, the provincial boundaries now offer serious obstacles to the development of natural economic regions and various schemes for redistribution of political boundaries are now afoot though these stress chiefly the factors of the unity of language religion and culture.

⁷ See Moore: *What is Regionalism?*, Southern Policy Papers No. 10; also Hertzler: *Sociological Aspects of American Regionalism*, *Social Forces*, October 1939.

Dissociation of Nationality from its Ecological Background in Europe

But these drawbacks of difficulties are small as compared with those which attended the creation of the new states in Europe by the Treaty of Versailles. Economic nationalism here for an age neglected or thwarted the accumulated force of regional conditions and possibilities which govern natural economic orientation. Thus the Lower Rhine and Holland form one commercial limit. Lorraine and Luxemburg form with the Ruhr district one iron and steel area. As a matter of fact the great central industrial zone of Europe covering the coal basin, which with interruptions stretches from the Ruhr to Belgium and Northern France, the Saar basin, and the Upper-Silesian-Polish coal-field is held together by mutual dependence for raw materials, power resources, market and credit conditions, etc. Moreover, before the war, it possessed a carefully balanced and closely interwoven currency system which practically represented a European currency unit.⁸ In the map of Europe prior to the second European war the affinities of culture and language were generally accepted as criteria for the formation of the nationality groups. Culture and language no doubt are powerful binders but these are less primary than the ecological realities and processes which represent the physical base of man's social heritage. On account of the dissociation of the idea of nationality from its ecological background the struggle between the principles of ecologic or economic orientation, on the one hand, and of political autonomy based on the like-mindedness due to common language and culture on the other will give no peace to Central Europe while Russian Collectivism, whose boundaries in both Asia and Europe are shifting, and which is neither assimilated nor restored to European normality always remains as a mighty challenge to European polity and culture. Ecologic forces being more stable and persistent have shattered the dream of a Mittel Europe. On the other hand, the multiplication of political units only on the basis of community of language and culture disregards the possibilities of greater economic integration and planning that are demanded by both free competition and rationalisation. In a Europe overpopulated as she is today, the creation of many new tariff barriers not only aggravates chronic unemployment and over-production in certain industries or branches of industry and stands in the way of that rational division of labour which would have created new

⁸ Alfred Weber's contribution to Heimann, Hanns (Editor), *Europäische Zollunion, Beltage Zu Problem und Lösung*.

wealth and economic opportunity, but promotes inter-racial hostility and race of armaments sowing the seeds of wars in the future. "The general distribution of produce," observes Josiah Stamp "has no relation whatever to existing political areas; these existing political areas are, however, becoming more instead of less insistent upon their claims to regulate such matters." Thus the logic of nationalism runs counter to the law of population in Europe.

War aggravates the symptoms of over-population by the destruction of wealth and deployment of capital resources, sciences, and technical skill to the production of munitions and other raw materials; it leads to the curtailment of freedom and economic opportunities for the masses of the people, and thus create over-population in respect of the restricted environment. It prevents that shift of occupations, which are Nature's safe-guarding mechanisms for the creation of maximum of life, and that regulated distribution of wealth which opens the door to the masses to a new freedom and standard of living. Above all, it bolsters up a social organisation and structure of population which prevent the national and international division of labour and resources which are the chief means of maintaining an optimum population in the restricted environment.

Location versus Centralisation

The question whether society will prefer the maximum of local initiative and autonomy, even at the cost of inefficient administration, to centralisation is determined by technological development on the one hand which abolishes distance and by social aims on the other. A society whose chief object is military efficiency must demand centralisation and handle all vital social services through central organs. A highly industrialised community, which carries on large industrial and financial undertakings through trusts, cartels and corporations would prefer efficiency and productory to the waste and disorder of small, independent units of production, and accept the curse of bigness, whether of corporations or of political units. The peaceful agricultural communities of the East have preserved a characteristic social heritage of localism and regionalism in industry and art, education and collective living in a manner unknown in Europe and America. Such localism and regionalism are of course connected with diversities of races, peoples and cultures which are oriented into clans, castes, guilds and brotherhood. Now a caste or guild in India and China mould the whole social and economic life of

their region and develop a professional conscience which is an important factor in social progress. In a certain sense castes and guilds in India and China are local federations on a minute scale. There are in India caste assemblies extending their jurisdiction over a wild field from the sub-caste to the whole brotherhood, inhabiting a large number of villages and extending over a region overstepping administrative boundaries. There are guilds or occupational groups arising independently or it may be out of kinship or neighbourhood relationship or an admixture of both, which have similar extending circles of authority over a whole region or community. There are, again, territorial Panchayats or folk-moots in which political, ethnical and occupational elements are fused and of which the jurisdictions extend over villages and groups of villages. Group organisation in the East takes the forms of regionalism and functionalism, which have kept alive multitudinous autonomous local units and united them in a loose federalism in which the central authority is a convenience rather than a state. In Europe in the 19th century the larger national state emerged out of the ruins of feudalism and completely subordinated or abolished all autonomous local and functional groups.

The telegraph, the telephone, the radio and the cinema, apart from the steam engine and motor, now offer opportunities for reconciling the efficiency of powerful centralised government with active citizenship and responsibility in small functional and local groups; and the most vital problem of modern politics is to readjust the relation between the actual units of collective living and the units of formal social control under the aegis of the new technology. But the greatest obstacle to this is that those non-economic values, which are associated with localism and regionalism, are yet subordinated to the aims of political, financial and industrial power without which no nation regards itself as big or safe enough. If a people's purposes and ideals be definitely social and cultural rather than mechanical, economic and military fitness, the techniques of social planning will have to be different. The improvement of methods of communication and transport, which has enormously reduced the difficulties of maintaining contact calls for an effective regional planning in which the intelligent and orderly pursuit of cultural aims in small intimate local groups and regions could now be reconciled with an active participation in public policies and programme intended for the entire nation. The dangers of the past ages arising from the autonomous groupings and regions have been abolished by modern transportation and communication which have made possible an

enlargement of outlook, feelings and sentiments. As a matter of fact it has been even found feasible and convenient to enlarge the field of treatment of important regional problems in the United States or France such as those of flood control, river management, and navigation, crime, education, recreation, marketing, communications and sanitation by setting up inter-regional administrative bodies which overstep local and political boundaries. Among the supplementary devices may be mentioned various forms of inter-state agreements such as inter-state commissions in the U.S.A. to consult on a number of problems and inter-state compacts and ad hoc authorities perhaps best exemplified by the inter-state crime compacts, the inter-state commission on the Delaware River Basin and the New York Port authority. Social surveys have in that country indicated that the areal unit, suitable for dealing with a specific phenomenon such as crime does not correspond with the region, when treated from the standpoint of education, recreation, taxation or industry. Thus various functions are being distributed or redistributed to various levels of government and administrative areas are also sought to be adapted to these.⁹ In such cases flexibility and initiative associated with localism have been combined with efficiency and intelligent anticipation of distant but achievable goals.

The chief reason why the structure of social control and government cannot be adjusted to technological changes of the modern age is that nations live in a perpetual fear of others, have made a fetish of mechanical and administrative efficiency, permitting or tolerating an excessive centralisation that shatters the internal cohesiveness and solidarity of all small, intimate, local or occupational groupings and regions. The significance of the modern planning movement, which has obtained adherents in every part of the world, is that it envisages new techniques of collective social guidance and control, which by utilising modern technology will rescue contemporary civilisation from the ruthless steam-roller obliteration of all vital local cultural values, interests and initiatives. But this could hardly succeed in a world, so inter-dependent as this, where some nations aim chiefly at military ends rendering tribute to a powerful bureaucracy or dictatorship, which now seek to impose their wills upon other peoples, and follow national goals irrespective of the interest and welfare of other nations.

⁹ Louisworth: *Localism, Regionalism and Centralisation*, *American Journal of Sociology*, January, 1937.

THE SOCIAL CONTRACT AND THE FOUNDATIONS OF THE ISLAMIC STATE

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I

The Judgment of History is against Contract

Is the Social Contract theory wholly unhistorical? Is it a pure fiction? Is it wholly unreal and imaginary? These questions are always answered in the affirmative and no one has yet said 'no' to their answers. The whole thing is more astounding because it has been declared that the Social Contract theory is as old as speculation itself. It has, therefore, its own *history* without itself being *historical* in any sense. By *historical* here we mean that in the whole history of the political development of man we do not find even a *single case or instance* in which the 'social contract' might have been used in the origin or the making of the state. Hence it is the incontrovertible judgment of history that the Social Contract theory as an explanation of the origin of state is false because it has no validity in human experience and that it is a pure figment of man's imagination, and, therefore, it is nothing but an intellectual treat of the various thinkers who have found delight in its exposition. In the words of Kant, this theory as it has no basis in history, is a *mere idea of reason* and hence is more useful as a *philosophical* explanation of political obligation than as an explanation of the actual origin of the state.

Contract in Islam has been a reality

But if the study of history means the study of all countries except *Arabia*, this judgment of history may be correct, for in the history of that country we do find a fully applied case of Social Contract in all its essentials—the State of Nature, the Laws or the Light of Nature, the Social Contract and the Civil Society. By this I mean, that a study of the *origins* of the Islamic State will at once make it clear that the Islamic State was founded on Contract, and that contract (in varying respects) always remained the basis of the Islamic political structure. Even when the democracy of

Islam had become a monarchy, the institution of "baiat" (contract) remained and now, even though there may not be an Islamic State as in India, the institution of 'baiat' or contract continues in the religious life of the Islamic peoples. This can be seen throughout India wherever a religious saint (Pir) has his disciples or followers (Mureed) who contract with the 'Pir' for obedience to his directions regarding the living of his life in the true Islamic way. Besides this, the marriage ceremony in Islam is still a contract and will always remain a contract. In brief, the idea and practice of contract has been the corner-stone of Islamic political edifice in the beginning and to this day it remains a feature of Islamic social and religious life. The Contract, therefore, has been a reality with Islam and not a mere theory as it has been in the general history of mankind.

II

History of Social Contract Theory

But before I take up the origin of the Islamic state, it is desirable that a brief development of the theory of Social Contract be traced upto Hobbes, Locke and Rousseau for it was in their hands that the theory received its most exhaustive and classical statement. In this account, we will also try to see if these writers in any way considered their theories as historical.

In Greece

Political thinking in a systematic way begins with Greece, and in Ancient Greece we find the theory of Contract used in a rudimentary form. The state and its institutions were regarded as conventional and there was an antithesis between 'nature' and 'convention.'

(a) Socrates

Even Socrates is said to have said that he could not have come out of the prison because he had made an *agreement* with the 'laws.' Hence he was bound to *obey* them rather than *break* them. Thus in *Crito*¹ we find him using the following arguments on the idea of escaping from prison:

Socrates:—

'Suppose the laws and the commonwealth were to come and appear to me as I was preparing to run away and

¹ The Trial and Death of Socrates by F. G. Church. (Macmillan, London, 1923.)

were to ask 'Tell us, Socrates, what, have you in your mind to do? What do you mean by trying to escape but to destroy us, the Laws, and the whole city, so far as in you lies? Do you think that a state can exist and not be overthrown, in which the decisions of Law are of no force, and are disregarded and set at naught by private individuals?'

'Was that our agreement or was it that you would submit to whatever judgments the state should pronounce?'

'And, we say, he who disobeys us, does a threefold wrong: he disobeys us who are his parents, and he disobeys us who fostered him, and he disobeys *us after he has agreed to obey us*, without persuading us that we are wrong. You do not respect the Laws, for you are trying to destroy us: and you are acting just as a miserable slave would act, trying to run away, and *breaking the convent and agreement* which you made to submit to our government.' 'Consider: what good will you do yourself or your friends by thus transgressing and *breaking your agreement*.'

(b) Plato and Aristotle

Plato and Aristotle also refer to this conventional basis of society only to criticise it for the latter especially holds that the state is the result of natural evolution rather than of mechanical construction. In the words of Willoughby: "Aristotle in his Politics speaks of the Sophist Lycophron as having placed civil law, and therefore political authority, upon a basis of agreement, but it is in the doctrines of Glaucon in the fourth century, as reported in Plato's Republic that we find the compact theory stated and argued, though without distinguishing between a social and a governmental contract. Men, finding a non-political state to be intolerable, and moved by fear of each other, it was argued, make a contract to do justice to each other, and agree upon laws, which they mutually accept as binding upon themselves, and as defining what actions shall be regarded as right or wrong. It was to refute such an arbitrary or conventional basis of social and political obligation as this, as well as the other individualistic doctrines of Sophists, as, for example, the force theory of Thrasymachus . . . that Plato wrote his Republic; and the same

purpose, though perhaps not so predominant, is found in Aristotle's Politics and Ethics."²

(c) The Stoics and Epicureans

After Aristotle, the Stoics and the Epicureans again returned to the anti-thesis of 'convention' and 'nature' and they began to treat Law as a contract and the State as conventional. To them, man came to be guided by Laws of Nature which were universal laws of reason and hence the world itself was a natural association governed by the Laws of Nature.

In Rome

In Roman times also, men like Cicero kept up the Greek tradition of opposition of 'convention' and 'nature' and he speaks of natural Law, natural equality and natural society. Then the Roman lawyers take up Natural Laws as the source of right reason and men like Ulpian speak of natural liberty and natural equality by the Laws of Nature. The result of the application of Natural Law came to be that not only was the civil Law to be based on these laws of right reason but also the Laws of Nations were refined and made applicable to all citizens—Roman, Italians and foreigners alike—and hence they came to be universal Laws.

In the Old Testament

Besides these Greek and Roman ideas we find the idea of 'covenant' even in the religious books of early peoples. Thus in the old Testament there is a frequent reference to the 'Covenant of God' with the Jews or of Kings with the people and Vaughan maintains that it is an 'undoubted fact that the origins of the Jewish State is there (in the old testament) traced to a covenant or contract, between the chosen people and God.'³ For example we have:

'So all the elders of Israel came to the King in Hebron: and King David made a *Covenant* with them in Hebron before the Lord; and they annointed David King over Israel.'⁴ Even Hobbes mentions God speaking to

² The Ethical Basis of Political Authority by W. W. Willoughby (Macmillan, 1930.)

³ Studies in the History of Political Philosophy by C. Vaughan (1939), p. 12.

⁴ Samuel II, v, 3.

Abraham and (Gen. 17. 7, 8) to make a Covenant with him in these words, "I will establish my covenant between Me and thee, and thy seed after thee in their generations, for an everlasting Covenant, to be a God to thee, and to thy seed after thee; And I will give unto thee and to thy seed after thee the land wherein thou art a stranger, all the land of Canaan for an everlasting possession."⁵ Even the Holy Quran, in its own way bears testimony to such contracts between God and people in Hebrew times. Thus we find, 'and when we made a Covenant with the children of Israel: you shall not serve any but Allah and (you shall do) good to (Your) parents, and the near of kin, and to the orphans and the needy, and you shall speak to men good words and keep up prayer and pay the poor rate. Then you turned back except a few of you and (now too) you turn aside."⁶

In the Middle Ages

With the coming of Christianity also the idea of the Covenant did not die out for the New Testament⁷ itself was a covenant with God (and even Hobbes speaks of the New Covenant by Baptisme.)⁸

The Holy Quran also affirms such a covenant between God and Christians in these words: 'And with those who say we are Christians, We made a Covenant, but they neglected a portion of what they were reminded of, therefore, We excited among them enmity and hatred to the day of resurrection, and Allah will inform them of what they did."⁹

Feudalism

However in the Middle Ages the idea of Contract remained alive and associated with the institutions of Feudalism. Thus says Sir Henry Maine:

⁵ Hobbes: *Leviathan* (Everyman's Library), p. 219.

⁶ The Holy Quran by M. Muhammad Ali, p. 44.

⁷ In fact, according to Christian belief the Old Testament is Old Covenant and the New Testament is New Covenant. When sprinkling the people with the blood of animals, Moses is reported to have said "This is the blood of the covenant which the Lord hath made with you concerning all these words". Thus the Old Covenant or Testament was consecrated by the sprinkling of the blood of animals, so the New Testament was ratified and sealed by the blood of the Son of God, who said 'This is my blood, of the New Testament.'

⁸ *Leviathan* (E.L.), p. 220.

⁹ The Holy Quran by M. Mohammad Ali, p. 256.

"The earliest feudal communities were neither bound together by mere sentiment nor recruited by a fiction. The tie which united them was a Contract, and they obtained new associates by contracting with them. The relation of the Lord to the Vassals had originally been settled by express engagements and a person wishing to engraft himself in the brotherhood by *commendation or infeudation* came to a distinct understanding as to the conditions on which he was to be admitted. It is therefore the sphere occupied in them by Contract which principally distinguishes the feudal institutions from the unadulterated usages of primitive races. The Lord had many of the characteristics of a patriarchal chieftain, but his prerogative was limited by a variety of settled customs traceable to the express conditions which had been agreed upon when the infeudation took place."¹⁰

In fact it is the general opinion of modern writers that the *Social Contract theory* as we find it is the legacy of the Middle Ages" "for, no doubt, the mutual obligations of feudal overlords and their vassals, freely undertaken by both parties, freely renewed by generation after generation, and (at any rate legally speaking) as freely open to renunciation, prepared the way for the idea that the relation between rulers and their subjects was in its essentials a contract of Societies."¹¹

The Theory of the Limited Monarchy of the Church Father

Already, the distinction between the King and the tyrant had been stated by men like Plato and Aristotle and even the Church Fathers had been speaking of the powers that be and the powers that ought to be. St. Isidore had distinguished the King from the tyrant by one feature—the limitation of Law, for the latter

¹⁰ Sir Henry Maine: *Ancient Law*, p. 324 (London, John Murray, 1905.)

¹¹ See Lord: *Principles of Politics*, p. 47—"As it was, they (the modern writers) were but employing a conception which was mainly the product of the Middle Ages". Also *Social Contract* by Cole (Everyman's Library), p. VIII, where in his introduction he calls it 'a traditional theory rooted in the Middle Ages'.

¹² Lord: *Principles of Politics*, p. 48.

had no limitations. Even St. Augustine in the 9th century spoke of the King as bound by the Law and John of Salisbury had even justified tyrannicide if the king violated the law. Thus in the 13th century a *theory of Monarchy as limited by the Law* was already prevalent and this is typified by the 'Song of Lewes'¹³ the writer of which, a Franciscan Friar, maintained the following points in support of Simon De Montfort against Henry III:—

- (i) "He has never heard that *rex* is *lex*; but he holds that it must be common and true that *lex* is *rex*."
- (ii) If the king be thus under the Law, he must rule for the common weal.
- (iii) In limitation by law there is true liberty; and 'to force a King to be free,' a people may have to resist him when he becomes a slave to passion and tyranny.
- (iv) But lawful resistance may be adopted in extremes; in normal times parliamentary institutions will result in the good of the people.

Pactum in Manegold and St. Thomas Aquinas

This theory of limited monarchy was at once taken up by the protagonists;¹⁴ of the claims of the Pope as against the Emperor and hence Manegold 'made great play with this weapon'—the rights of the people and said;—

"The people exalts one man that he may govern, and rule men justly. If he *breaks the contract (Pactum)* under which he was chosen, the people are free from the duty of submission, since he has first failed to keep faith." Then St. Thomas Aquinas also takes up the same idea in his *De Regimine Principum* and the monarch is both instituted and limited by the commonalty. "If it pertains to the right of a commonalty to institute a king, the king whom it has instituted may without injustice be destroyed or his power may be limited, by the community, if he uses his royal power tyrannically," and a king turned tyrant "does not deserve that the *pact* should be kept by his subjects."

¹³ The whole of this paragraph is based upon 'The Political Thought of Plato and Aristotle' by E. Barker (1906), pp. 501—03.

¹⁴ The Political Thought of Plato and Aristotle by Barker, pp. 506—07.

The Anti-Monarchists

At the beginning of the modern period, therefore, when the tussle between the king and the people became acute, this same doctrine of the peoples' right as issuing in a *pactum* was continued and the so-called Anti-Monarchists (or Monarchomachs) only followed this very tradition of the Middle Ages. If the kings justified their authority on the basis of the Divine Right of Kings, the subjects began to claim ultimate power on the basis of the Divine Right of Peoples.¹⁵

Three Stages of the Contract Theory

But as yet a *full fledged* doctrine of Social Contract with the State of Nature and its corollaries the Natural Rights and the Laws of Nature, the Contract itself and the resulting Civil Society was not yet set forth by any writer in the whole history of political speculation. In the ancient period of Greece and Rome (and even of Judaism) which may be said to be the *first stage* of the Social Contract theory the only purpose of writers was to emphasize the *anti-thesis between the 'natural' and the 'conventional'* and the natural was interpreted to include ideal principles of human conduct and guidance. *In the second stage* which may be said to include the Middle Ages and the early Modern Age, the Contract is used to indicate the *antithesis of authority and liberty*—of Kings and subjects. But *in the third stage* which ushers in with Hobbes, Locke and Rousseau it becomes *both a fact and an idea of reason* for a systematic study both of the *origin of the state and of the first principles of political philosophy*. It is true that as an 'idea' the theory as used by these three writers has been called, a fiction, or to be more explicit, a *plastic fiction*, but it is equally true that the writers themselves, *in some sense*, believed in the *reality* of the State of Nature as they were describing it.

Hobbes

Thus says Hobbes "It may peradventure be thought, there was never such a time, nor, condition of war as this; and I believe

¹⁵ See Figgis: Divine Right of Kings. To all these writers such as Milton, Mariana, Buchanan and Althusius the people meant the '*governed part* of the state' *minus* the ruler. Thus liberty and authority could not be reconciled and there was continuous antagonism between the *Governor and the Governed*. See Merriam: History of the Theory of Sovereignty, pp. 20—21. See also Vaughan: Divine Contract Social. Longman's (Modern Language Texts), 1918, p. Lv.

it was never generally so, all over the world; but there are many places, where they live so now. For the savage people in many places of *America*, except the government of Small Families, the concord whereof dependeth on natural lust, *have no government at all; and live at this day in that brutish manner, as I said before.* Howsoever, it may be perceived what manner of life there would be, where there were no common Power to fear; by the manner of life, which men that have formerly lived under a peaceful government, use to degenerate into, in a Civil War."¹⁰

Locke

Similarly, Locke also believes in the reality of his State of Nature and tries to meet the objection that his account of the state of nature is 'unhistorical' under the following points which I summarize from his long argument.¹¹

1. Government and Society every where are antecedent to records and letters come to a people after a long continuation of Civil Society. It is only then that Common-wealths, like particular persons, begin to look into the history of their founders and then catch hold of accidental records that others might have kept of it. This shows that if the early history of peoples is not recorded, they had no life before the beginning of such records. Similarly, *the State of Nature is true* even though recorded history might be silent about the earliest life of man.

2. Even the beginning of Rome and Venice was made by 'the uniting together of several men, free and independent of one another, amongst whom there was no natural superiority or subjection.'

3. If Josephus Acosta's words may be taken, he tells us that "in many parts of *America* there was no government at all," and then Locke cites the instances of *Peru* and *Brazil* and concludes 'that their political societies all began from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors and forms of government.' He further cites the case of *Sparta* and then remarks that thus I have given several examples out of history of people, free and in the State of Nature that, being met together, incorporated and began a Commonwealth.'

Rousseau

Similarly, Rousseau also gives an account of the State of Nature in such a way as if the gradual development of man from

¹⁰ Hobbes: *Leviathan* (Everyman's Library), Ch. 13, p. 65.

¹¹ Locke: *Of Civil Government* (Everyman's Library), Paragraphs 100, 101, 102 and 103, pp. 166—168.

the simple to the complex life was one of gradual *historical* evolution—beginning of course with pure savagery, and then passing through the stages of the increase of population, the coming of agriculture, the enclosing of land and finally the advent of all inequalities and privileges resulting in enslavement of the natural man.¹⁸

Vaughan's Criticism

'Besides this idea of the writers themselves who believed in the *reality* of their accounts, the critics also have taken pains to consider if these accounts were really real and historical. Thus Vaughan says 'The idea of a State of Nature has even a source of much merriment to historical rigorists. But much of their ridicule has been strangely beside the mark. The assumption that a State of Nature—that is, a state without either settled society or government ever existed has, of course, *no historical foundation. It cannot be disproved but neither can it be proved* and the burden of proof is evidently thrown upon those who go bail for its reality. That, however, is not enough to bear out its use *for the mere purposes of the argument.* And in so far as the idea of a State of Nature has been employed to indicate not a historical reality, but *the logical opposite to any recorded or conceivable form of the civil state*, in so far as it stands not for a historical fact but purely *for a speculative hypothesis*, it is obvious that all criticism based upon historical grounds is entirely off the point. Even if it were far more certain than it is that a State of Nature never existed in fact, the philosopher would still be entitled to use the idea for the sake of defining more exactly, *by means of contraries*, what is the true nature of Civil Society.'¹⁹

Vaughan on the State of Nature in Spinoza & Rousseau

He further goes on and says, "No doubt, most, if not all, of those who professed to speak of the State of Nature *as a pure hypothesis* were at least half inclined to believe that it was *also a historical reality.* . . . We may indeed have other grounds for supposing that a given writer did, in fact, *believe in the historical reality* of a State of Nature. But, if this belief has no effect upon the subsequent march of his argument; if, on a fair

¹⁸ Rousseau: *A Dissertation on the Origin and Foundation of the inequality of mankind* (both parts).

¹⁹ C. E. Vaughan: *Studies in the History of Political Philosophy*. Vol. I, pp. 27—28.

examination, it can be shown that he does in truth employ the idea for *purely speculative purposes*; then the error is of no practical importance. It is by his argument that he must be judged, and by that alone—(thus) Spinoza and Rousseau, for instance, both believed, it is probable, in the reality of the State of Nature. But it would be hard to show that the general tenor of their argument is, in the smallest degree, affected by the fact. Strike off in each case, the first link of the theory, and the rest of the chain remains unshaken and untouched. . . . In neither case is the State of Nature more than a picturesque frontispiece.²⁰

Vaughan on the State of Nature in Locke

Then Vaughan further goes on to say that in the case of Locke, however, the whole of his theory *depends absolutely upon* the assumption that the State of Nature is *taken from life*—that it must *'have been a historical reality.'* This is because his conception of Natural Law 'as a code accepted by the conscience of all men in the State of Nature and providing a sanction for the contract by which that state was eventually swept away to make room for the civil State.' In fact it serves a triple purpose:—

1. It accounts for the continuance of the State of Nature.
2. It furnishes the sanction for the Contract.
3. It provides a standard by which the positive laws of the Civil Society may be judged or on the mode of which they may be reformed.

Vaughan on the State of Nature in Hobbes

More than Locke, Vaughan then emphatically asserts, is the State of Nature a reality to Hobbes? Thus he says, 'If there is one writer above all others who pins his faith to the reality of the State of Nature, to the authenticity of the facts which he records about it, it is the author of the Leviathan. . . . There is no other writer who is so deeply committed to the *historical reality* of that assumption; no other writer, according to whom the obvious impossibility of proving it is so fatal.'²¹

²⁰ Vaughan, Vol. I, pp. 28—29.

²¹ Vaughan, Vol. I, pp. 29—30.

Besides Vaughan, Nevinson also in his 'The Growth of Freedom' asserts 'I have taken Hobbes because among the philosophers he seems *the most nearly historic* in his theory.'

Several Instances of Contract in History

Thus from this account of the brief history and criticism of the Social Contract theory it is clear that the writers themselves have tried to justify the State of Nature and the Contract as a historical reality and have tried to cite instances from Greece, Rome and even America (Peru and Brazil), but the critics maintain that it was a mere imaginary hypothesis and that neither the State of Nature nor the Contract have been confirmed by history. The only solitary instance usually cited in history is that of the boat *'May Flower'* when in 1620 the persecuted English emigrants on their way to America agreed among themselves as follows: "We do solemnly and mutually in the presence of God and one another, *covenant and combine ourselves together into a Civil body politic* for our better ordering and preservation." But even if this be taken as a real Contract for the creation of the state (for the element of territory is lacking) we have no State of Nature and the men too were not primitive human beings but rather were those who had already been civilised members of civil societies. Similarly, sometimes cases of such contracts are cited from instances of the making of constitutions in the states of Hampshire, California and Massachusetts in America but there too the objection remains that the individuals that took part had already been members of civilized society and governments.

III

Contract in the Origin of the Islamic State

We will now take up the origin of the Islamic State and will try to show how the period before Islam was the age of ignorance (a State of Nature), how the Laws of Islam were the (Divine) Laws of Nature; how the whole period of the life of the Prophet of Islam was a *period or age of Contracts*, and how the Islamic State itself was founded on 'contract' and how the real civil society was instituted in that land of darkness and barbarism.

The State of Nature in Arabia or the Age of Ignorance

What political philosophers have termed the State of Nature, Arab historians have called the Age of Ignorance or Ahd-i-Jahaliyat in Arabia. In the words of Vaughan 'to talk of

p. 16 (Footnote). *On the whole*, he is also inclined to hold, that the conception of the Contract 'was mainly an *imaginary hypothesis*'.

the Origin of Civil Society' is, strictly speaking, to imply that it sprang from a state of things which was not 'civil,' and that is the very definition of the 'State of Nature.'¹

1. The Political Condition

Before the advent of Prophet Muhammad (Peace be on him) Arabia was in no sense a nation as we understand it. It never had one government that might have united the different tribes into one people and *tribal individuality* was the core of their political existence. Beyond the tribe everything was foreign to the Arab mind and every tribe was the enemy of the other and blood vengeance was sought for in every case. Gibbon, in his *Decline and Fall of the Roman Empire*, thus draws the picture of the political and social life of the Arabs:— "The temper of a people, thus armed against mankind, was doubly inflamed by the domestic licence of rapine, murder, and revenge . . . each Arab with impunity and renown, might point his javelin against the life of his countrymen. Of the time of ignorance which preceded Mahomet, seventeen hundred battles are recorded by tradition; hostility was embittered with the rancour of Civil factions; and the recital, in prose or verse, of an obsolete feud was sufficient to rekindle the same passion among the descendants of the hostile tribes. In private life, every man, at least, every family was the judge and avenger of its own cause."² Thus there was no sense of any unity whatever among the Arabs and Arabia itself was only a mere geographical expression. "Since times immemorial" writes Dr. Hell, "the struggle for existence in Arabia had centered round water and pasturage. These struggles destroyed the sense of national unity and developed an incurable particularism, each tribe deeming itself self-sufficient and regarding the rest as its legitimate victims for *murder, robbery and plunder*."³ He further adds "What the Arab lacked was the consciousness of national unity. For him there existed only the tribe and the family, but no Arab Nation. What he further lacked was a sense of subordination. The idea that subordination was necessary, even a virtue, was an idea absolutely foreign to him. True enough, the Arabs had tribal chiefs, and to those chiefs they even showed regard and respect, but no chief had the right to

¹ Vaughan, Vol. I, p. 28.

² Gibbon: *Decline and Fall of Roman Empire* (Bury's Edition), Vol. VI, p. 323 (The Italics are mine.)

³ Dr. Hell: *Arabian Civilization* Tr. by S. Khuda Buksh, p. 10.

command, and no one the duty to obey."⁴ Gibbon also testifies to this aspect of their life when he says "in each community, the jurisdiction of the magistrate was mute and impotent."⁵ Similarly Wellhausen calls the Arabs 'a Community devoid of supreme authority and executive power,'⁶ and calls the Shaikh or Sayyid a 'mediator and peacemaker,'⁷ but having no supreme power. Thus politically, Arabia was in a state of complete anarchy of tribe *vs.* tribe, of clan *vs.* clan, and even of individual *vs.* individual for in the words of Noldeke, 'a murder or even a grievous injury may provoke long years of feuds between families closely akin and the passion of revenge for an Arab's slaughtered kin can lash him to furious blood thirstiness.'⁸ If blood were shed, it cried aloud for blood. Hence there could be no question of a real government authority.

The Arabs because of such temperament of insubordination naturally loved not only the independence of the tribe but also personal freedom, for when they did not recognize any authority they were *all free and equal*. Sir William Muir states that "the distinctive feature has ever been the independence of the tribe, the family and *individuals* . . . but no bond of permanent union holds them together, and dissentient may secede at pleasure. With a code of honour bordering on jealousy, *personal hostilities, and tribal wars incessantly occur* and thus tribes often rise or fall, coalesce or become disintegrated, remain in their ancestral homes or migrate to distant lands."⁹ Thus, as Ibni Khuldun points out, they would fight on trivial matters, *which fight would continue almost endlessly*. Massacres, loot, and destruction had thus become a normal feature of their life and this was because of the absence of any central authority in Arabia.¹⁰ It is to this abnormal state of affairs that the Holy Quran also bears testimony when it says, 'And remember the favour of Allah on you *when you were enemies*, then he united your hearts so by His favour you became brethren; and you were on the brink of a pit of fire, then

⁴ *Ibid.*, p. 13.

⁵ Gibbon: *Decline & Fall of Roman Empire* (Bury's Edition), p. 323.

⁶ The *Historians' History of the World* by Henry Smith Williams, Vol. VIII, Article by Wellhausen, p. 293.

⁷ *Ibid.*, p. 288.

⁸ *Historians' History of the World*, Vol. VIII, Article by Noldeke, pp. 6—7.

⁹ Muir: *Life of Mahomet*: Introduction, Ch. I, p. IV.

¹⁰ Ibni Khuldun: *History*, translated by H. Ahmad Husain in Urdu, Vol. III, Part III, p. 2. (1911), Anwar Ahmadi Press, Allahabad.

He saved you from it, thus does Allah make clear to you His communications that you may follow the right way.' (3:102) There was thus no magisterial authority, no sovereign power and the functions of the tribal life were *exercised by all its members equally.*" The tribe too, therefore, was not a community as we understand it: it was *an aggregate of human beings* and nothing more for, in the words of Wellhausen, *'of the amenities of family life we find no trace nor any trace of patriarchal guardianship. Each man has to give his help, if any thing is to be done.'*¹²

2. The Religious Condition

Besides this degeneration in political existence, we find similar anarchy and disruption in other walks of life. "The prospects of Arabia before the rise of Mahomet," writes Muir, "were as unfavourable to religious reform as to political union or national regeneration." In the words of Dr. Weil "in matters religious and political Arabia in the 6th Century was the theatre of the wildest confusion."¹³ The Arabs followed the religious customs of their ancestors out of mere respect for tradition and the Holy Quran bears testimony in these words:—

"And when it is said to them, come to what Allah has revealed and to the Apostle, they say: That on which we found our fathers is sufficient for us." 5:104.

Noldeke also states about their conservatism thus: "The heathen Arabs possessed many holy places and many ceremonial rites, but very little earnest religious conviction. Excessively conservative by nature, the people observed the customs of their forefathers without troubling *their minds about their original significance*, offered sacrifices to the gods (rude stone fetiches for the most part), and marched in procession round their sanctuaries, without counting much upon their aid or standing in any great awe of them; they cried to the dead, "Be not far from us," without associating with the cry the idea of a future life which alone gave it meaning."¹⁴ Thus the whole of Arabia clung fast to its idolatry, there being three hundred and sixty deities, one for

¹¹ The Historians' History of the World, Vol. VIII, pp. 286—87.

¹² The Historians' History of the World, p. 293.

¹³ Dr. Weil: History of Islamic Peoples Tr. by S. Khuda Buksh, p. 1. Margoliouth also in his Mohammedanism summarizes the evils of Ancient Arabia under three heads: (1) Theological, (2) Social, (3) Offences against morality, pp. 47—55.

¹⁴ The Historians' History of the World, Vol. VIII, p. 9.

each day of the year. Wellhausen calls them a 'rubbish heap of divine names.' They not only worshipped the idols, the sun, the moon, and the stars,¹⁵ but also the trees and animals and even such inanimate objects as Time and Fortune were the objects of their adoration and thanksgiving. In the words of Von Kremer 'All this was sham, counterfeit. Of real genuine religious feeling there was none.'¹⁶ It was, therefore, not only in political condition that we find a sort of political pluralism or particularism, in religion also, there was a state of pluralism. Polytheism was rampant every where and the (Divine) Laws of Nature which had been revealed with Abraham and successive prophets had been entirely relegated to oblivion. The custom and convention in the early Greek fashion was pitted against the natural or the divine. Even the influence of Judaism and Christianity could not bring any change in their religious outlook. In the words of Sir William Muir "After five centuries of Christian evangelisation, we can point to but a sprinkling here and there of Christian converts. . . . Judaism, vastly more powerful, had exhibited a spasmodic effort of proselytism, but as an active converting agent, the Jewish faith was no longer operative. In fine, viewed thus in a religious aspect, the surface of Arabia had been now and then gently rippled by the feeble efforts of Christianity; the sterner influences of Judaism had been occasionally visible in a deeper and more troubled current, but the tide of the indigenous idolatry and of Ismaelite superstitions, setting strongly from every quarter towards the Kaaba, gave ample evidence that the faith and worship of Macca held the Arab mind in a thralldom rigorous and undisputed."¹⁷ The faith of the so-called three daughters of Got-Lat, Manat and Uzza—was supreme throughout Central Arabia and in the words of Muir again "the fabric of Islam *no more necessarily grew out of the state of Arabia, than a gorgeous texture grows from the slender meshes of silken filament.*"¹⁸

¹⁵ Ibni-Khuldun: p. 2. Also, Dictionary of Islam, Article: Arabia for worship of heavenly bodies.

¹⁶ Von Kremer: Contributions to the History of Islamic Civilization, translated by S. Khuda Buksh, p. 166.

¹⁷ Muir: Introduction, p. IX; also Von Kremer: Contributions to the History of Islamic Civilization (Tr. by S. Khuda Buksh). Von Kremer quotes Dozy to support the same view.

¹⁸ Also Noldeke confirms this view: The Historians' History of the World, Vol. VIII, p. 10; Arnold also in Preaching of Islam, p. 42.

The Hanifs

But while the whole of Arabia was thus sunk in abject idolatry and darkness, a few individual souls, dissatisfied with the religion of the idol, were trying to find out *the light of Allah*—the Divine laws of nature as typified by the religion of Abraham. They were the Hanifs¹⁹ and their view-point, as distinguished from the religion of the idolatrous Arabs has been called Hanifism. One of them, Zaid²⁰ thus composed and sang his poems:—

1. Should I worship One God or thousands when even the duties of religion have been divided by the people.
2. I have forsaken Lat and Uzza and such is always done by a keen and patient man.
3. And I do not worship 'Ghanam' though I regarded him my 'Rab' when I had little wisdom.
4. With thee O God I am contented and I do not see, save Thee, any one whose religion I should adopt.

3. The Social and Moral Condition

Besides this religious darkness and political anarchy, the social and moral life of the Arabs was also corrupt beyond imagination and Von Kremer summarizes this aspect of their life admirably when he says: "*Wine, women and war* were the only three objects which claimed the love and the devotion of the Arab."²¹ They had not even the decency and clean habits in eating and drinking and "ate snakes, scorpions and dead animals. In draught and famine they would inflict deadly wounds on the bodies of camels and would suck their blood. . . . Gambling was common, vice was virtue. Drink of every kind was highly cherished."²² Their sexual morality too was exceedingly low. "In old Arabia" says Robertson Smith, "the husband was so indifferent to his wife's fidelity, that he might send her to cohabit

¹⁹ Ibn-i-Khuldun cites the names of four of them, (Vol. II, Part III, p. 4) Khuda Buksh gives a bigger list in his Essays, Indian and Islamic. Out of the four noted by Ibn-i-Khuldun, three became Christians, only Zaid remained and she did not accept any religion.

²⁰ Ibn-i-Hisham quotes Zaid's poems, pp. 71—75 (Urdu Translation.)

²¹ Von Kremer-Translated by S. K. Buksh: Contributions to the History of Islamic Civilisation, p. 156.

²² Ibn-i-Khuldun, Vol. II, Part III, p. 2. To these bad habits there are frequent references in the Holy Quran, for example, in 5:3, 5:90, 2:219.

with another man to get himself a goodly seed or might lend her to a guest."²³ "We read, indeed, with surprise," says Von Kremer, "of the Fizarite Mandhur ibn the Zaban as having kept in tact the marriage with his deceased father's wife, which he had contracted at the time of heathenism."²⁴ Even this was not all. Not only was slavery universal and worst cruelties perpetrated on those captured in the ever continuous wars, but infanticide was common and girls were buried alive and the Holy Quran at several places testifies to this inhuman practice. Thus it says:

"And when a daughter is announced to one of them his face becomes black and he is full of wrath." 16:58.

"He hides himself from the people because of the evil of that which is announced to him, shall he keep it with disgrace or bury it (alive) in the dust? Now surely, evil is what they judge." 16:59.

To sum up, we may now say that not only was Arabia politically in a state of war, her religious, moral and social life was corrupt beyond imagination. We will now see how this account of the Age of Ignorance in Ancient Arabia compares with Hobbes' account of the State of Nature.

Two reasons of Hobbes' account of the State of Nature

As regards Hobbes' account of the State of Nature two remarks have often been made—firstly, that he pictured that state in darker colours because he had seen the horrors of the civil war in England from 1641-1649, and secondly, that the justification of absolutism demanded such a picture so that the people might think hundred times before they decided to revolt against the monarch, as their act would again land them in a state of war from which they had escaped by making the Contract. The first argument tries to make the State of Nature '*Historical*'; though rather in an exaggerated form, the second maintains it as only a *speculative hypothesis*, but Hobbes himself, as we have already seen, refers to America for the correctness of his picture *and it is really strange that his imagination should have travelled beyond the seas and he should not have caught a glimpse of Ancient Arabian history before the rise of Prophet Muhammad* (Peace be on him!)

²³ Robertson Smith: Kingship and Marriage, pp. 39—40.

²⁴ Von Kremer: Contributions, p. 162. Also Al-Quran, 4:22. For other cases, see Usdul Ghabah under 'Ayas bin Rabab' and Haaris bin Amru.

Comparison of Hobbes' account and of Ancient Arabian Condition

Now that we have seen the political chaos and moral confusion as it prevailed in Ancient Arabia, it is desirable that we should compare it with Hobbes' account of the State of Nature.

In the first place, Hobbes' men in the State of Nature were *equal* and we have already seen how *an Arab was by nature an equal of every other Arab* and how he knew no subordination.

Secondly, according to Hobbes, "The Right of Nature, which writers call *Jus Naturale*, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature, that is to say, of his own life; and consequently, of doing anything, which in his own Judgment, and Reason, he shall conceive to be the aptest means there unto."²⁵ *This right, as we have seen, was claimed by every Arab and he exercised it to the best of his power, judgment, and reason.*

Thirdly, according to Hobbes "By Liberty, is understood, the absence of external impediments"²⁶ and to the Ancient Arab also *Liberty meant unlimited freedom or licence.*

Fourthly, in the State of Nature of Hobbes "Every man is Enemy to every man . . . and in such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth, no Navigation, nor use of the Commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continual fear and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short."²⁷ Similar conditions, we have already read, existed in the Age of Ignorance in Ancient Arabia also and it is to this state of things that Gibbon refers in these words;—

*"In this primitive and abject state which ill deserves the name of society, the human brute, without arts and laws, almost without sense and language, is poorly distinguished from the rest of the animal creation."*²⁸

²⁵ Hobbes: *Leviathan* (Everyman's Library), p. 66.

²⁶ *Ibid.*, p. 66.

²⁷ Hobbes: *Leviathan* (E.L.), pp. 64—65.

²⁸ Gibbon: *Bury's Edition*, Vol. V, p. 314.

Fifthly, in this war of every one against every one in Hobbes account the only law actually followed was *the law of the sword* and in Ancient Arabia also we have seen that *the law of the sword was the rule rather than the exception* and blood for blood was the battle cry.

Sixthly, according to Hobbes, "To this war of every man against every man, this also is consequent—that nothing can be unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no Common Power, there is no Law; where no Law, no Injustice. Force and fraud are in war the two cardinal virtues. Justice and Injustice are none of the Faculties neither of the body, nor Mind. . . . They are Qualities, that relate to men in society, *not in Solitude*. It is consequent also to the same condition, that there is to be no Propriety, no Dominion, no Mine and Thine distinct, but only that to be every man's that he can get; and for so long as he can keep it."²⁹ In Ancient Arabia also we have seen that there was *no Common Power* and therefore, *no, Common Law; There was not only the individualism of the tribe and the clan run mad: the individualism of the individual himself had no bounds* and the individual of the Age of Ignorance could not be easily 'tamed' or made a social animal (for whom, that is, for the social animal, dependence or subordination is not only a necessity but is also a 'virtue'.) The tribe itself *was in no sense a community, it was a mere aggregate of independent individuals.* In the words of Oppenheimer, the life of the tribe was the life of Anarchy.³⁰

Hobbes' Account is Historical

Thus it is clear that *the whole account of Hobbes' State of Nature is wholly and in fact literally warranted by the early history of Ancient Arabia.* Will we then be far wrong if we say that this account is *fully historical*, and not merely 'most nearly historic' as Nevinson seems to suggest? Can we further assume that, even though Hobbes does not mention it, *he might have read Arabian History also (along with the History of Judaism and Christianity)* and, consciously or unconsciously *he might have been influenced by conditions of the Age of Ignorance which is a*

²⁹ Hobbes: *Leviathan*, (E.L.), p. 66.

³⁰ Oppenheimer: *The State*—He cites several instances of the anarchic existence of tribes but this use of the word, 'Anarchy' is not in the sense of turmoil and disorder, but in the sense of perfect individualism, *i.e.*, in the absence of control.

literal equivalent of his State of Nature? This suggestion may, on the face of it, seem to be farfetched, but it is not beyond the realm of probabilities, for Hobbes was the last of the Renaissance thinkers, and during Renaissance Arab learning—their philosophy, science and Mathematics was already the common heritage of Europe through the Universities of Spain (and Hobbes was so much enamoured of Geometry that he regarded it as the only Great Science). *It, therefore, passes commonsense to accept that Europe read every aspect of Arab learning save its history.* It seems to me, therefore, not only that Hobbes might have studied Arabian History; even Locke and Rousseau might have been affected in the formulation of their political thought by the course of events in Arabia. This last statement we hope to see corroborated in the coming pages.

Laws of Nature in Hobbes

We have now seen the State of Nature with its elements—the Right of Nature and the Liberty of Nature in Hobbes. But he also speaks of the Laws of Nature (*Lex Naturalis*). A Law of Nature to him is a Precept or General Rule found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit; that, by which he thinketh it may be best preserved.³¹ As man was living in continued warfare of every one against every one, and there was impending fear of death every minute, there must come 'Passions' in their minds that might 'incline them to Peace' and these passions must necessarily be 'Fear of death,' Desire of such things as are necessary to commodious living; and a Hope by their industry to obtain them. And Reason suggesteth convenient Articles of Peace; upon which men may be drawn to agreement.³² These articles are the Laws of Nature. From this thesis of Hobbes, it is clear, that after a continuous state of war, the greatest necessity felt by men was for the Laws of Peace. "This Law" says Vaughan,³³ "Hobbes, more generous by half than Moses, lays out into fifteen Commandments" but he could have 'well stopped short with the first three.'—

1. To seek peace and follow it (or ensue it).
- 2 That men are obliged to transfer to another such rights as, being retained, hinder the peace of mankind.

³¹ Hobbes: *Leviathan* (E.L.), p. 66.

³² *Ibid*, p. 66.

³³ Vaughan, Vol. I, p. 24.

3. That men perform their covenants made.

This law, of which the above are the commandments, is, 'external and immutable law'—the Law of Nature but Hobbes is not consistent in his statements. He has used the term Law of Nature in three senses.³⁴

- (i) the law of the sword,
- (ii) the law of expediency—"Convenient Articles"—not a duty, but a rule of prudence; and lastly
- (iii) also in the sense of a moral law as in the third commandment above where people adhere to it as a matter of faith—of moral duty or obligation.

Islamic Laws as Divine Laws of Nature

Similarly, in Ancient Arabia, the state of war, rapine and murder demanded laws of peace for the law of the jungle and these Laws of Peace were given by *Islam which literally means 'submission or peace.'* But the Islamic Laws (the Divine laws of Nature) could not be used in these variety of senses. They were and are really 'eternal and immutable Laws.' They were and remain Moral Laws, and are based not on interest or expediency, but, on duty and are the Articles of faith. They are the commands of God and are recognized by Conscience as absolutely binding.³⁵ In this sense the Divine Laws of Nature in Islam are more akin in meaning to those of Locke for in him they were unalterable moral laws.³⁶ But Locke had left their interpretation to individual conscience for he assumed that each individual had a knowledge of them. Islam however, as we shall see, codifies them like Hobbes and definitely enumerates them both in theory and practice, and reduces their number to five only.

The Meanings of Law

'There are two main senses,' says Vaughan, 'in which the term Law may legitimately be used. It may either mean a law of nature; that is, a generalisation of what is observed actually to happen, under certain circumstances, to inanimate objects, or to be done, again under certain circumstances, by inanimate agents. Or

³⁴ *Ibid*, pp. 24 & 43—47.

³⁵ Vaughan: Vol. I, p. 43.

³⁶ Rousseau does not speak of the Laws of Nature in any detailed form. Hence I have not referred to him in this connection.

it may mean a moral law, that is, a command issued by God or Conscience . . . and recognized as bindings . . . by a human agents.³⁷ *...The word 'Islam' cannotes both these senses.* That word, as has already been indicated, means, submission and obedience;³⁸ as derived from 'aslama,' it means, 'entering into peace.'³⁹ This submission to the will of God is a life of peace and obedience. Everything in nature is working, automatically it seems, according to some plan or Law of Nature from which it cannot go astray. Whether it is earth, the heavenly bodies, the plant or the animal life, their course has been marked out by an Almighty Creator Whose Laws of Nature are keeping them intact and in harmony.⁴⁰ Similarly the nature of man, his very being, his heart, head and hands, and feet and other organs are all working automatically according to a certain plan or Law of Nature. They are therefore, obedient to the Laws of God which are the Laws of Nature.⁴¹

³⁷ Vaughan, Vol. 1, p. 43.

³⁸ Says Hobbes. "Obedience to His Laws, (that is, in this case to the Laws of Nature) is the greatest worship of all." For as obedience is more acceptable to God than Sacrifice; so also to set light by his Commandments, is the greatest of all contumacies. And these are the Laws of that Divine Worship which Natural Reason dictateth to private men.

³⁹ For the meaning of Islam, see also Margoliouth: Moham-madenism, p. 7 and Bosworth Smith: Mohammed & Moham-madenism, p. 137.

⁴⁰ 'The religion of Law and obedience thus seems to obtain all around us, and to be strictly observed by every atom in Nature.'

Thus 'the whole creation', in the words of Amir Ali, 'is full of the signs of God. The structure of your body, how wonderfully complex, how beautifully regulated; the alternations of night and day, of life and death; your sleeping and awaking, your desire to accumulate from the abundance of God; the winds driving abroad the pregnant clouds as the forerunners of the Creator's Mercy; the harmony and order in the midst of diversity; the variety of the human race, and yet their close affinity,—are not these signs enough of the presence of a Master-Mind. 'Nay, the very complementary relations which various objects in Nature reciprocally hold and the mutual service they render are only the outcome of the submission yielded by these manifestations of Nature to Divine Laws i.e., the Laws of Nature. —Amir Ali, *The Spirit of Islam*, p. 31 (Calcutta, S. K. Lahiri Co, 1902).

⁴¹ 'Is not man a part of the same Nature,' 'a mighty atom the best product of nature, the finest handiwork of God? And if so, is it possible for him to be without a religion? Every atom in Nature has found its place in the human body. Man is the universe in miniature—a microcosm in the scientific term. Every organ in him

Man has an autonomy of Will

Man, however, as different from the whole of the creation⁴² has been given an autonomy of the will and is, therefore, to be guided by the light of his reason, not in the automatic movement of the various parts of his organism, but in the conscious life with his fellow creatures. Hence his reason has to understand Laws of Nature not in the sense of *physical laws* only but in the sense of *moral laws of human nature also*.

Law in Islam

Thus Islam stands for Law in both the senses of physical and moral, and both of them are the *commands of God* and both these aspects can be seen in the following verses:—

1. Is it then other than Allah's religion that they seek to follow and to Him submits whoever is in the heaven and the earth, willingly or unwillingly and to Him shall they be returned. 3:82.
2. Then set your face upright for religion in the right state—the nature made by Allah in which He has made men; there is no altering of Allah's creation; that is the right religion but most people do not know. 30:30.

The Prophet of Islam is the Prophet of Nature

Thus Islam is the religion of Nature—of submission and obedience—and its laws are the (Divine) Laws of Nature. Besides Islam as the religion of Nature, the Prophet of Islam himself has been called the *Prophet of Nature*. "To the Prophet of

follows the religion of Law and obedience for its very existence. In other words, every organ performs its respective functions in complete submission to certain fixed Law. The very minute they fail to do so, it brings serious illness or death. Therefore, man cannot as a whole have any other religion but that which is strictly observed by the very components of his body and nature.' Towards Islam by K. Kamaluddin (1923), p. 16.

⁴² Says Hobbes: "Seeing there are no signs, nor fruit of Religion, but in man only; there is no cause no doubt, but that the seed of Religion is also only in Man; and consisteth in some peculiar quality, or at least in some eminent degree thereof, not to be found in other living creatures." *Leviathan*, Ch. XII, p. 54 (Everyman's Library).

Also see his three points (i) Man as inquisitive, (ii) effect of sight on his thinking, and (iii) memory and foresight.

Islam," says Amir Ali, "Nature itself is a revelation and a miracle.

"There is a tongue in every leaf,
A voice in every rill
A voice that speaketh everywhere,
In flood and fair, through earth and air,
A voice that is never still."

"The Prophet of Montheism is pre-eminently the Prophet of Nature. His ethical appeal and his earnest assertion of divine unity are founded upon the rational and intellectual recognition of all-pervading order, of the visible presence of One Mind, One Will, regulating, guiding and governing the Universe. His grandest miracle is the Book in which he has poured forth with an inspired tongue all the revelations of *nature, conscience and prophecy*."⁴³

The Holy Quran

And the Book, that is, the Holy Quran itself is, therefore, a *Code of Nature* for it itself asserts "And there is no animal that walks upon the earth nor a bird that flies with its two wings, but they are genera like yourselves. *We have not neglected anything* in the Book, then to their Lord they shall be gathered." 6:38.

It is this truth which Hurgronje has been forced to recognise in these words: "No Religion," says Reland, "has been more caluminated than Islam," although the Abbe Maracci himself could give no better explanation of the turning of many Jews and Christians to this religion than the fact that it contains *many elements of natural truth*, evidently borrowed from the Christian religion, *which seem to be in accordance with the law and the light of Nature*."⁴⁴

Thus to summarize, not only Islam is the religion of Nature: its prophet himself was a prophet of Nature and the Holy Quran itself is a complete Code of Nature.

Corruption of Moral Laws

However, to continue our argument on the two senses of law, from times immemorial, not only these physical laws have been working in Nature, the moral laws too have been working in the

⁴³ Amir Ali: *The Spirit of Islam*. (1902) (Italics are mine).

⁴⁴ Hurgronje: *Mohammedanism*, p. 8.

social life of man. But, according to Islam, the physical laws have always been beyond the reach of man and hence they have been working *harmoniously and unerringly*, but the moral laws as given to all men through Prophets and Books of God in all ages and times, *have been corrupted by human hands*. The Holy Quran thus asserts the corruption of God's Books by human hands.

"Woe to them, to those *who write the book with their hands and then say, this is from Allah*, so that they may take it for a small price; therefore woe to them for *whatever their hands have written*, and woe to them for what they earn." 2:79.

Hence the necessity of revelation again and again has been to correct the corrupted life of man who began to follow laws of his own making, his own customs and traditions or the customs and traditions of his forefathers. The Holy Quran emphatically asserts this aspect also thus:—⁴⁵ "And when it is said to them, Follow what Allah has revealed, they say; Nay, we follow *what we found our fathers upon* what! and though their fathers had no sense at all nor did they follow the right way." (2:170). Thus custom was always pitted against the natural or the divine and this was so in Arabia as well as in other parts of the world even though warners had always been sent to all nations and peoples:

"And certainly we raised in every nation an Apostle saying: Serve Allah and shun the devil." 16:36.

"And certainly we sent Apostles before you, there are some of them we have mentioned to you and there are others whom we have not mentioned to you." 40:78.

The Necessity of A New Book

After stating the Corruption of all the Books of God by human hands, the necessity of a new revelation has been justified by the Holy Quran in these emphatic words:

"Corruption has appeared in the land and sea on account of what the hands of men have wrought, that He may make them taste a part of that which they have done, so that they may return." 30:41.

Hence the Holy Quran has been revealed as *the summary of all the revealed books of God* (which had already been corrupted)

⁴⁵ In this Verse the Quranic emphasis is on the side of Bentham rather than on the side of Burke for the former wanted to profit by the folly of ancestors and the latter worshipped the wisdom of the forefathers.

The Historians' History: Article By Goldziher—summarises the Quranic indictments of these customs, p. 295.

...as 'pure pages wherein are all the right books' (XCVIII' 2:3). It, therefore, *does not bring a new religion* for the human race. It only *rightly* continues the religion of Abraham,⁴⁰ and of other prophets of God including Moses and Jesus. Thus says the Holy Quran:

"Say, we believe in Allah and (in) that which has been revealed to us and (in) that which was revealed to Abraham and Ishmael and Isaac and Jacob and the tribes, and (in) that which was given to Moses and Jesus, and (in) that which was given to the prophets from their Lord: We do not make any distinction between any of them and to Him do we submit." 2:136.

Abraham has been spoken of in the Holy Book as one who was a Muslim:

'Abraham was not a Jew nor a Christian, but he was (an) upright man, a Muslim, and he was not one of the polytheists.' 3:66.

And Prophet Muhammad (Peace be on him!) has also been commanded *to be the first* to submit:

'Says,' "I am commanded that I should serve Allah, being sincere to him in obedience. And I am commanded that I shall be the first of those who submit." 39:11;12.

The Holy Quran is the Light

The utter darkness of his age was to be dispelled by the Light of Allah through the agency of the Prophet and the Holy Quran, for "This is a Book which we have revealed to you and you may bring forth men, by their Lord's permission, from utter darkness into light to the way of the Mighty, the Praised One." 14:1.

And it is a Book 'in which is your eminence'—21:10.

From what we have seen above, it is clear that in Islam there is no difference between the Divine Laws and the Laws of Nature and hence there is no antithesis between 'Nature' and 'Revelation.' The Islamic conception wholly differs from the conception of Law as put down by St. Thomas Aquinas in the Middle Ages. To him,

1. Eternal Law: is the controlling plan of the universe existing in the mind of God. It is the design of

⁴⁰ The Historians' History of the World, Article by Dr. I. Goldziher, p. 294. Also says Hobbes 'And it is of Abraham (not of Moses) St. Paul saith (Rom. 4.11) that *he is the father of the Faithful*.'

the universe, conceived as the supreme reason of God, the Creator.⁴⁷

2. Natural Law: is that participation of man, as rational creature, in the eternal law, through which he distinguishes between good and evil and seeks his true end.
3. Human Law: is the application by human reason of the precepts of Natural law to particular earthly conditions.
4. Divine Law: in the special sense was that through which the limitations and interpretations of human reason were supplemented and man was infallibly directed to his end—eternal blessedness; it was the Law of Revelation. 'With its two sub-divisions of old and new,' it 'is the will of God as revealed in the Old and New Testaments.'

Thus in Islam, as we find in *Cicero* more than in any other writer, Eternal Law, Divine Law and Natural Law are only interchangeable terms and human law is nothing separate from or antagonistic to Divine Law,⁴⁸ for 'right reason' cannot go against the divine Law. Says Cicero 'There is in fact a true law—namely right reason—which is in accordance with nature, applies to all men and is unchangeable and eternal. By its commands this law summons men to the performance of their duties, by its prohibitions it restrains them from doing wrong . . . there will be one law, eternal and unchangeable binding at all times upon all peoples; there will be as it were one common master and ruler of men namely God, who is the author of this law, its interpreter, and its sponsor. The man who will not obey it will abandon his better self, and in denying the true nature of a man, will thereby suffer the severest of penalties.'⁴⁹ Dunning also summarises his

⁴⁷ Dunning: A History of Political Theories, Vol. I, p. 194.

⁴⁸ Hobbes also says, 'God declareth his laws in three ways; by the dictates of *Natural Reason*, by *Revelation* and by the voice of some man, to whom by the operation of Miracles, he procureth credit with the rest. From hence then ariseth a triple Word of God, Rational, Sensible and Prophetique to which correspondeth a triple Hearing: Right Reason, Sense Supernatural and Faith.' *Leviathan* (E.L.), p. 190. This differentiation by Hobbes, though interesting, does not square with the Islamic conception as stated above.

⁴⁹ Sabine: A History of Political Theory, p. 164.

view point in these words. "All nature is ruled by God. Man is the highest of created things,"⁵⁰ through the possession of reason he is distinct from other creatures and like the Creator. By virtue of the divine element in human nature man participates in the ultimate principles of right and justice, which are merely elements of the law by which God rules the universe. Further all men possess by nature the consciousness of those principles for men are alike rational. The Oneness of human nature is absolute; 'no one is so like to himself as all are like to all,' though evil habits may bring apparent diversity. But to whomsoever reason is given by nature, so also is right reason, hence also law, which is right reason in commanding and forbidding. Thus the law of nature (*lex naturalis*), or law pure and simple, is the source and limit of all rights, even the natural rights (*ius naturale*) Law in the true and ultimate sense is eternal wisdom, ruling the world. Among men it is the rational dictate of the sage (*sapientis*) as to what is to be commanded and what forbidden."⁵¹

Thus the Prophet of Islam when promulgating the Divine Laws of Nature or of right reason never even once refers or resorts to the 'miraculous' to assert the truth of his mission. He again and again appeals to the familiar phenomena of nature as signs of the divine presence. He unswervingly addresses himself to the inner consciousness of man, to his reason, and not to his weakness or his credulity.⁵² *Verses after verses can be quoted from the Holy Quran* in which this appeal to reason is time and again addressed so that man may try to understand his true nature. Thus says the Holy Quran.

"He grants wisdom to whom He pleases and whoever is granted wisdom, he indeed is given a great good, and none but men of understanding mind." 2: 269.

"And they swear by Allah with the most energetic of their oaths that if you command them they would certainly go forth. Say! Swear not, *reasonable obedience is desired*:" 24:53.

⁵⁰ The Holy Quran: 'Certainly we created man in the best make.' (XCVI—4)

⁵¹ Dunning, Vol. II, pp. 123—124.

Thus, as Dunning has also pointed out, Cicero uses Nature in various senses. 1. Universe as created. 2. The forces of the physical world. 3. The creator of man etc.

⁵² Amir Ali: Spirit of Islam, p. 30.

Principles of Islam or the Divine Laws of Nature

From the above discussion it is clear that the Holy Quran laid down certain principles or *the Laws of Nature* which were to be followed by men in their social life if they wanted to do away with all the immoralities and absurdities that had been prevailing in the State of Ignorance, and if they really desired to be successful in life and establish in Hobbes' words, '*the Kingdom of God by nature*.' These principles have been set forth in the following verse:

"This book, there is no doubt in it, is a guide to those who guard (against evil), those who believe in the unseen and keep up prayer and spend out what We have given them and who believe in that which has been revealed to you and that which was revealed before you, and they are sure of the hereafter." 2:2—4.

An analysis of this verse thus gives us the following principles of Islam⁵³ or of the Divine Laws of Nature:

1. Belief in the unseen, that is, in the One God and in Angels.⁵⁴
2. Belief in all Revelations.
3. Belief in the Hereafter.
4. Keeping up of Prayers and
5. Spending of what God has given us.

Of these the first three are *matters of theoretical belief* and the last two concern *the practical and day to day life*, thus theory and practice, belief and action⁵⁵ go side by side.

⁵³ See also Usdul Ghabah under Sawaid bin Haarith Azdi, for principles of Islam under 15 points—3 groups of 'five points' each:

- (i) Matters of faith: God, Angels, Revelations, Prophets, and Hereafter.
- (ii) Matters of action: the Kalima, Prayer, Zakat, Hajj and Fasts.
- (iii) Corollaries of both: To thank God in peace and prosperity, to be patient in distress, to be steadfast in battle, to remain contented in what is passing and to bear silently the tortures of the enemy.

⁵⁴ On Angels—See Hobbes: Leviathan, (Everyman's Library), p. 214.

⁵⁵ 'There be some signs of Honour, (both in *attributes and actions*) that be Naturally so; as amongst attributes, Good, Just, Liberal and the like; amongst Actions, *Prayers, Thanks and obedience*.' Hobbes: Leviathan (E.L.), p. 192.

The First Law of Nature in Islam

The first principle, that is, belief in the reality and unity of God is in every sense *the First Principle of all Nature*. It is the 'eternal principle' and therefore the be-all and the end-all of all things. As Hobbes has put it, "he that from any effect he seeth come to pass, should reason to the next and immediate cause thereof, and from thence to the cause of that cause, and prolong himself profoundly in the pursuit of causes; shall at last come to this that there must be (as even the Heathen Philosophers composed) *one First Mover*; that is, a First, and an Eternal Cause of all things; which is that which men mean by the name of God"—Eternal, Infinite and Omnipotent.⁵⁶ The whole of nature, in spite of its diversity, exhibits the unity of its creator. Similarly, the world of man in spite of its diversities of colour, creed and clime exhibits the unity of its maker. The unity of the human race, therefore, is nothing but a manifestation of its Creator. Hence God is a Living Force, the Sustainer and Disposer of all things and 'to Him is the final return.' This shows that, 'by denying the Existence or Providence of God, men may shake off their ease but not their yoke.'⁵⁷ He is the 'Lord of the Worlds'—the only Majestic Sovereign of the Universe. Besides, Allah is also the only real *Light of Nature* and the Holy Quran in a characteristically illuminating verse puts this aspect thus: "Allah is the light of the heavens and the earth, a likeness of His Light, is as a pillar on which is a lamp, the lamp is in a glass, (and) the glass is as it were a brightly shining star, lit from a blessed olive tree, neither eastern nor western, the oil whereof almost gives light though fire touch it not—light upon light—Allah guides to His Light whom He pleases, and Allah sets forth parables for men, and Allah is cognizant of all things." 24:35.

Thus God is the Eternal Living Law and Light of Nature in Islam and it was this Light⁵⁸ which was lost sight of not only in

⁵⁶ Hobbes: *Leviathan*. (E.L.), p. 55.

⁵⁷ *Ibid.*, p. 190.

⁵⁸ In political philosophy 'the appeal to Nature succeeds the appeal to divine institution and is expressed by *'The Light of Nature*, that is, the light of nature is contrasted with divine revelation as a means of knowledge.' 'To some writers it means, or comes to mean a process of reason; but to some it is essentially intuition and may consist of innate ideas' as in India Gandhiji often declares that he has not yet seen the 'light'. 'Others again find the guiding light of nature in instinct, emotion and feelings'. 'But however interpreted', says Lord, 'it is taken to be within its proper limits, a true and direct illumination of facts.'

Ancient Arabia—an Arabia of darkness and error—but in fact everywhere in the world. The Prophet of Islam was *the solitary figure* to have caught this Light and the Holy Quran itself says: 'O Prophet, surely we have sent you as a witness and a bearer of good news and as a warner, and as one inviting to Allah by His permission *and as a light giving torch*'—33:45. Thus the Prophet of Islam began to preach the unity of God in a country in which there were 360 gods, but no God, and in the words of Bosworth Smith it was 'in his assertion of this that there lay the religious genius of Mohammed. This gave the Arabs unity as a nation, discipline and enthusiasm as an army. This sent them forth in their wild crusade against the world; and armed with this, they swept before them every creed or memory of a creed which did not then contain any principle so inspiring.'⁵⁹ Even Von Kremer also writes in the same strain when he says: "Islam gave the Arabs the purest monotheism unalloyed with baser metal, impressed upon them the seriousness of life, struck at the very root of social corruption, destroyed their insularity and made them the heralds, and pioneers of civilization."⁶⁰ In the words of Gibbon: "The Koran is a glorious testimony to the unity of God. The Prophet of Mecca rejected the worship of idols and men, of stars and planets, on the *rational* principle that whatever rises must set, that whatever is born must die, that whatever is corruptible must decay and perish. In the Author of the Universe,

The appeal is once more to an objective, real order even in the subjective processes of the mind.' Herein thus lay 'an effort to find or lay an objective, real, solid foundation upon which the structure of political truth might rest. This at least the appeals to God and to Nature have in common. Both are appeals to reason—whether an ordinance of God or an institution of man whether rooted in nature or created by art, the State is the fundamental fact for politics and it must be regarded as a reality, the truth which is more than a mere opinion' (In Hobbes there is no such contradiction: 'That we may know what worship of God is taught us by the light of Nature' p. 193, *Leviathan* (E.L.).

In Islam, then, there is no contradiction between the Light of Nature and the Divine revelation, and as will be seen later on in these pages, the Islamic conception of state is at once an ordinance of God, an institution of man and a result of his nature as well as of his art. It is God's creation as well as of Man's making. This is the so-called democratic conception of divine government. Hence in Islam if God is the Eternal Law, He is also the only real Light of Nature.

⁵⁹ Bosworth Smith: *Muhammad and Mohammadanism*, p. 112

⁶⁰ Von Kremer: Translated By K. Buksh, p. 169.

his *rational enthusiasm* confessed and adored an infinite and eternal being, without form or place, without issue or similitude, present to our most secret thoughts, existing by the necessity of his own nature, and deriving from Himself all moral and intellectual perfection."⁶¹

The Second Law of Nature in Islam

The Second Law of Nature in Islam is the belief in all Revelations. Hence a Muslim cannot make distinctions between the various prophets of God. A true Muslim, therefore, is one who accepts all prophets as prophets of God and Muhammad (Peace be on him!) is the last Prophet of God. The Holy Quran as has already been said is a summary of all the 'right books' and this Book will no longer be corrupted by human hands. Thus says Bosworth Smith: In the Quran, "We have a book absolutely unique in its origin, in its preservation, but on the authenticity of which no one has ever been able to cast a serious doubt."⁶²

On this principle, the belief in All Revelations, was thus to be based the unity of *all* religions and therefore the unity of human race (along with the unity of its Creator), but this was not to be for the Jews and Christians rejected the Prophet of Islam and hence the unity of Muslims (those who had submitted) formed the basis of a universal brotherhood. Says the Holy Quran:—

"All people are a single nation; so Allah raised prophets as bearers of good news and as warners, and He revealed with them the book with truth that it might judge between people in that in which they differed, and none but the very people who were given it differed about it after clear arguments had come to them revolting amongst themselves, so Allah has guided by His will those who believe to the truth about which they differed and Allah guides whom He pleases to the right path." 2:213.

The Third Law of Nature in Islam

The third law of nature in Islam is a belief in the hereafter—the future life—for in the words of the Holy Quran 'And Allah invites to the abode of peace and guides whom He pleases into the Right path' 10:25. And 'Their Salutation on the day they shall meet Him shall be, Peace, and He has prepared for them an honourable reward' 33:4. Thus in Islam this world is

⁶¹ Historians' History of the World, p. 136 (quoted and reproduced in full)

⁶² Bosworth Smith: Muhammad and Mohammedanism, p. 17.

only a temporary abode, for 'all things must taste of death' and 'to His is the final return.' Hence the life of this world is not for mere eating, drinking and being merry. This life is to be lived seriously as preparatory to the future life of unlimited progress. The Holy Quran again says, 'And this life of the world is nothing but a sport and a play; and as for the next abode, that most surely is the life; did they but know.' (29:14), for 'With it Allah guides him who will follow His pleasure into the ways of peace and brings them out of utter darkness into light by His will and guides them to the right path.' 5:16.

Man will have to account for his deeds that he has done in this world and 'And it would be a day when the evil doers would have to repent for what they did in this life' for the Holy Quran observes 'And we have made everyman's actions to cling to his neck and we will bring forth to him on the resurrection day a book which he will find wide open. Read your book; your ownself is sufficient as a reckoner against you this day. Whoever goes aright, for his own soul does he go aright, and whoever goes astray to its detriment only does he go astray; nor can the bearer of a burden bear the burden of another nor do we chastize until we raise an apostle.' 17: 13—15.

Thus man is to remain a thoroughly conscious moral agent, for after his death what will be asked of him will not be what he *has left behind in this world* but what he *had sent forward*, that is, not wealth which is left for the survivors, but actions which would save him from the fire of hell. Hence 'hell' is a *permanent* abode for evil doers—the rebels or transgressors against the Laws of Nature and 'heaven' is a permanent abode of those *who have submitted* (i.e., who are Muslims). This world, therefore, is the place for doing right and good actions, for the development of personality, for the perfection of character and for self-realisation and *this cannot be achieved without piety and virtue*. Thus the idea of the *permanent life of the hereafter* has not only created God-fearing saints: it has made possible the noblest and highest sacrifices on the part of man. Even death has been spurned, for if one dies in the way of the Lord his life has not been cut short, it has reached *its real end*—the permanent abode which is 'heaven.'⁶³ *This is the teleological view of life* that Islam has presented and it was, therefore, the acceptance of

⁶³ In modern times, the significance of an 'ideal' is being emphasised in various ways. Thus Sorel emphasised the 'Myth' and even the Fascists, after the idea of Sorel, are now emphasizing the myth of a 'Nation.' The Socialists and Communists have been emphasizing the realisation of Final Communism.

this teaching by the Ancient Arabs that changed them from wild animals or brutes into human beings and made them capable of such sacrifices that neither home, nor wife, nor children, nor the riches of the world could prevent them from the way of Allah which they had once chosen for their life.

The Fourth Law of Nature

The fourth Law of Nature in Islam is not a matter of belief merely; it is a matter of action, of practical life. Thus Prayers—as the fourth Law—include Salat or Namaz, Fasting and the Haj, and in the words of the Holy Quran 'Surely prayer keeps men away from indecency and evil and the remembrance of Allah that is the greatest' 29:45, and 'they are not too proud to serve Him and they declare his Glory and throw themselves down in humility before Him.' 7:206. Thus prayers to God are meant to create divine attributes in men, for God 'is nearer even the blood vein.' He is ever present, seeing and hearing. Thus says the Holy Quran:

'And when My servants ask you concerning Me, then surely I am very near; I answer the prayer of the supplicant when he calls on Me, so they should answer My Call and believe in Me that they may walk in the right way.' 2:186.

Prayers thus are meant for the purification and elevation of one's own Soul, and this involves three relations—duty to God, duty to One's own self and to the Community in general. The last is best exhibited in Public Prayers⁶⁴ where high and low, rich and poor, King and slave have to stand shoulder to shoulder before the All-Seeing God. This means that prayers in practical life maintain *equality, liberty and fraternity* for even the slave can have *no limitation of man's imposition*, when he is in the house of God or when he is standing before his Creator.

In the Friday Prayers, people of the suburbs also join and in the Haj, peoples from all quarters of the globe come together and kneel in unison before their common Creator. *Could there be a better practical exhibition of the unity of the human race in a common fraternity?* It is to this spectacle and feeling of unity that Bosworth Smith refers in the following words:

'I shall be slow indeed to assert that the feelings which still draw year after year, Mussalmans by myriads from the burning sands of Africa, from the snows of Siberia and the Coral Reefs

⁶⁴ Says Hobbes—'Reason directeth not only to worship God in secret but also, and especially, in Publique, and in the sight of men.' *Leviathan* (E.L.), p. 195.

of the Malayas, towards a barren valley in Arabia, do not, on the whole, elevate rather than depress them in the scale of humanity. In their own rough and imperfect way, they raise the mind of the nomad and the shepherd from the animal life of the present to the memories of the distant past and the hopes of the far future. They are a living testimony to the unity of God, and a homage paid by the unprogressive nations of the world to that Prophet who softened the savage breast and elevated the savage mind and taught them what but for him they had never learned at all.'⁶⁵

Besides these prayers,⁶⁶ fasting too is an important part of this Law of Nature, and is a necessary complement of prayers, for it restrains the appetite or desire, restrains the different organs of the body from all sin, and finally it turns man's mind from worldly care to God's service.⁶⁷ It thus kills the animal in man making him patient, enduring, steadfast and careful in his duty to his own soul, to others and to his God.

The Fifth Law of Nature

The fifth Law of Nature in Islam—which is also a practical proposition—is spending of what God has given to man. This is the Zakat or the Poor Rate which is compulsory on all Muslims according to a fixed standard of their income. Hence hoarding has definitely been made impossible and it is advised that man should 'sell himself' to seek the pleasure of Allah which lies in the relief of the poor, the needy, the orphan and the wayfarer. Thus says the Holy Quran "By no means shall you attain to righteousness until you spend (benevolently) out of what you love and whatever thing you spend Allah surely knows it.' 3:9.

Thus Zakat not only keeps up *the economic equality* within the community, it also fulfils the duty of man to man.

⁶⁵ Bosworth Smith: *Mohammad and Mohammanism*, pp. 116—117.

⁶⁶ Margoliouth in his *Mohammadism* (p. 76) gives a military character to the Prayers and Fasting in Islam and expresses himself thus 'The five daily 'Prayers' constituted a drill; the fasting month a test of endurance and an education therein; enthusiasm was provoked by the magnificence of the claim to form the leading caste on earth with a right to the possessions of all who did not belong to it and alternative between Spoil and Paradise. Probably however even more enthusiasm was inspired by the belief that fighting was in the cause of God.' For this Military character also see Khuda Buksh: *Orient under the Caliphs*, p. 12.

⁶⁷ See J.J. Poole, *Studies in Mohammadanism*, p. 133.

Summary of the Five Laws

Thus the Five laws of Nature in Islam are meant for the "eminence" of man, and this lies in the recognition of God Himself who is the Central Moving Force of the Whole Creation. The dignity of man can only be realised by fulfilment of duty to self, to community and to the Creator. Thus,

The first Law is the Eternal Principle of the whole universe and of the world of man and God's angels are the agencies of good between God and man.

The second Law emphasises the unity of all religions as based on the unity of revelations, but man brings in differences by his darkness and error.

The third Law makes man a responsible moral agent placing before him a teleological view of life.

The fourth Law not only elevates the soul of every man for self realisation, it also keeps up equality, fraternity and liberty in practical life, and fasting specially acts as a great check on lowly desires, and trains man for the hardships of life in the way of piety and virtue;

The fifth Law kills the 'Shylock' in man keeping up economic equality in society and making possible the fulfilment of duty that man owes to man.

To sum up, the Five Laws of Nature in Islam are meant to keep up the remembrance of the Creator and thus saving him from rebellion and error. As such, they are for the eminence and dignity of man as man, for they check him from falling low and take to the life of perdition. They thus man from (moral) turpitude or death; and put him on the way to perpetual peace and progress.

These then, in brief, were the Articles of Peace, which were first enunciated in the Arabia of war, idolatry and corruption, and these were the Articles which brought peace, unity and a moral and happy life in that land of complete darkness and ignorance. As Zaidan puts it, 'Before Islam Yemenite would contend with Hijazite, Mudarite with Himayarite etc. Similar rivalry was to be found between the various clans, tribes and families; but when Islam came, they were all united under one banner, with one title, 'Islam.'⁶⁸ Similarly Hurgronje observes, "However, great a weight may be given to political and economic

⁶⁸ Zaidan—(Tr. by Margoliouth), p. 28.

factors, it was religion, Islam, which in a certain sense united the hitherto hopelessly divided Arabs, Islam which enabled them to found an enormous international community; it was Islam which bound the speedily converted nations together even after the shattering of its political power and which still binds them today when only a miserable remnant of that power remains."⁶⁹

The Holy Quran a Complete Code of Life

The Code which embodies these Laws of Nature is the Holy Quran—a book which, therefore, does not deal only with matters of mere belief, but also of action—in one word, of theory and practical alike. It is, therefore, a complete code of life. The Holy Book itself asserts:

'And certainly we have made distinct for men in this Quran every kind of description, but most men do not consent to aught but denying.' 17:89.

And the truth of this verse has been recognised not only by believing Muslims, but also by those who have tried to read and write on Islam. Thus says Davenport:

"The Quran is the general code of the Muslim world, a social, civil, commercial, military, judicial, criminal, penal and yet religious code. By it every thing is regulated—from the ceremonies of religion to those of daily life, from the salvation of the soul to the health of the body, from the rights of general community to those of each individual, from the interests of man to those of society, from morality to crime, from punishment here to that of the life to come."

Similarly, Bosworth Smith observes:

"By a fortune absolutely unique in history, Mohammed is a threefold founder of a nation, of an empire and of a religion. Illiterate himself, scarcely able to read and write, he was yet the author of a book which is a poem, a code of law, a book of Common Prayer and a Bible in one, and is revered to this day by a sixth of the whole of the human race as a miracle of purity of style, of wisdom and of truth. It was the one miracle claimed by Mohammed, 'his standing miracle' he called it, and a miracle indeed, it is."⁷⁰

(To be continued)

⁶⁹ Hurgronje: Mohammedanism, p. 2—3.

⁷⁰ Bosworth Smith: Mohammad and Mohammadanism, p. 290.

CONSTITUTIONAL RELATION BETWEEN THE COURT
OF DIRECTORS AND THE BOARD OF CONTROL
WITH SPECIAL REFERENCE TO THE DIS-
PUTE OVER FORT WILLIAM COLLEGE*

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Introduction

The system of government established by Pitt's India Act of 1784 (24 Geo. III, s.2.c.25) has been popularly known as "Double or Dual Government," as it vested the supreme executive government of the territorial possessions of the Company in India conjointly in the Court of Directors, which so long enjoyed undivided authority over all affairs of the Company and the newly created 'Board of Six Commissioners for the Affairs of India,' more commonly known as the Board of Control. As is natural with such systems of dual control there arose sometimes disputes about the proper limits of constitutional competence between the two rival authorities. The object of this paper is to illustrate this with particular reference to one such instance that arose in connection with the action of Marquis Wellesley in founding the Fort William College at Calcutta for the education and training of the recruits to the Company's civil service in India.

What led to the establishment of the Board of Control?

Before we come to that episode, it is necessary to review the circumstances that led to the enactment of the Act and to study its provisions bearing on the relations between those two bodies. As the Company came by vast territorial possessions by an accident of history, as it were, a body of opinion was gaining ground in England that a commercial company should not be permitted to exercise such vast powers uncontrolled by the nation through its Parliament to which the Company was ultimately subordinate, being British subjects. This was largely caused and certainly stimulated by the story of misgovernment and oppres-

sion perpetrated by the Company's servants in India. So Parliament first intervened in its affairs in 1773 by regulating the constitution with a view to introducing an element of check in its Government in India. The supreme executive authority of the Court of Directors at home, however, was left untouched. That experiment proved a failure and almost went to the point of creating a deadlock. Parliament had to pass an amending Act in 1781 with a view to removing the conspicuous anomalies of the previous legislation. The findings of the Parliamentary enquiry held at this time were highly damaging to the conduct of administration in India by the Company's servants there. Parliament decided to alter its device of control and place it in the seat of supreme executive authority.

A step in that direction had already been taken by the Act of 1781 which vested in one of the Secretaries of State some powers of control over the Company's affairs. This limited control exercised by a member of the Government who had his hands full with other duties was found to be an inadequate solution of the problem. What was wanted was control of a continuous character exercised by some authority, being itself under the control of Parliament. This in substance was the purpose of the bill introduced in 1783 by Fox, which was passed by a large majority by the House of Commons but was turned down by the Lords through the king's personal intervention. That bill proposed to revolutionise the constitution of the Company, by practically reducing the Directors to a body of merchant's clerks and vesting supreme authority in a Board of seven Commissioners named in the Act, being the nominees of the ministry. Naturally it roused vehement opposition not only of the Directors and Proprietors, but of their friends and patrons as well in and outside Parliament. We need not recount the events that followed and resulted in installing younger Pitt at the head of the Government. The very next year Pitt introduced his bill which although characterised by moderation was based on the same principle of vesting ultimate control over the affairs and concerns of the Company, except those of a commercial character, in the ministry at home. It did not touch the constitution of the Company, nor their commercial privileges and territorial rights. In particular it left the patronage of the Directors in tact, about which they were extremely touchy. The body created by the Act to exercise supreme powers of control over the Company was the Board of Control which was to serve as a *liaison* between the Home Government and the Company. The Board was to consist of six Privy Councillors of whom two were to be ministers of state, *viz.*,

* A Paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December, 1941—January 1942.

the Chancellor of the Exchequer and one of the Secretaries of State. Its composition was slightly modified by the Charter Act of 1793 (33 Geo. III. cap. 52), otherwise it continued as before. The first named in the Letters Patent constituting the body was to be its Chairman, who practically carried on the duties of the whole Board.

The relation between the Court and the Board under the Act of 1784

To understand the relation between the Court and the Board it is necessary to read carefully certain provisions of the Act. On the powers of the Board in general, section 3 of the Act lays down: 'The said Commissioners shall have, and they are hereby invested with, the superintendence and control over all the British territorial possessions in the East Indies, and over the affairs of the United Company of Merchants trading thereto, in manner hereinafter directed.' Section 6 lays down: 'The said Board shall be fully authorised and empowered, from time to time, to superintend, direct, and control, all acts, operations, and concerns, which in any wise relate to the civil or military government or revenues of the British territorial possessions in the East Indies, in the manner hereinafter directed.'

Under section 11, the members of the Board were given access to all papers of the Company and were entitled to have extracts or copies thereof, as they might require. Further the Court was required to deliver to the Board 'copies of all minutes, orders, resolutions, and other proceedings, of all general and special Courts of Proprietors of the said Company, and of the Court of Directors, so far as relate to the civil or military government or revenues of the British territorial possessions in the East Indies' and also 'copies of all dispatches which the said Directors, or any Committee of the said Directors, shall receive from any of their servants in the East Indies, immediately after the arrival thereof; and also copies of all letters, orders and instructions whatsoever, relating to the civil or military government or revenues of the British territorial possessions in the East Indies, proposed to be sent or dispatched by the said Court of Directors' to their servants in India. In short all transactions of the Court relating to Indian affairs and all correspondence to and from India were subject to the oversight of the Board, and what is more important and requires special notice, is that it was made obligatory on the Court to obey all orders or directions they might receive from the Board. The language of the Act is

mandatory. It runs: 'The said Court of Directors are hereby required to, pay due obedience to, and shall be governed and bound by, such orders and directions as they shall from time to time receive from the said Board, touching the civil or military government and revenues of the British territorial possessions in the East Indies.'

Under section 12, all orders or communications of the Directors to India are subjected to the veto of the Board. It is provided: 'Within fourteen days after the receipt of such copies last mentioned, the said Board shall return the same to the said Court of Directors, with their approbation thereof, subscribed by three of the members of the said Board, or their reasons at large for disapproving the same, together with instructions from the said Board to the said Court of Directors, in respect thereto; and that *the said Court of Directors shall thereupon dispatch and send the letters, orders, and instructions so approved or amended, to their servants in India,*¹ without further delay and no letters, orders, or instructions, until after such previous communication thereof to the said Board, shall at any time be sent or dispatched by the said Court of Directors to the East Indies, on any account or pretence whatsoever.'

Under section 13 it was provided that when on requisition being made by the Board for sending a proposed despatch on any subject of civil or military concern, the Court fails to transmit the same to the Board within a fortnight it would be open to the latter to prepare and send to the Directors any orders or instructions to any of the Governments in India, which the Directors would be bound to forward in the form of Despatches.

The above sections have the effect of making the authority of the Board supreme as regards matters relating to the civil or military government and revenues of the territorial possessions in India. By section 17 of the Act, patronage is specially placed beyond the purview of the Board, being vested absolutely in the Court of Directors. The section runs as follows: "Nothing in this Act contained shall extend to give unto the said Board the power of nominating or appointing any of the servants of the said United Company; anything herein contained to the contrary notwithstanding." It is difficult to reconcile the extensive powers of control vested in the Board of Control with the exclusive authority of the Directors in the matter of all appointments. Naturally it left a loophole for friction and

¹ Italics ours.

effect whatsoever on the hostile attitude of the Directors, which was on the contrary hardened by Wellesley's decision to postpone the execution of their orders.

It Becomes a Constitutional Issue

The conflict at this stage changed its venue; instead of being carried on between Calcutta and Leadenhall Street, it was now between the latter and Whitehall.⁷ Wellesley's Despatch of 5 August, 1802, had altogether different reactions on the two bodies, leading to a constitutional controversy between them. Wellesley's arguments convinced the Board of the necessity of the institution and they suggested to the Court a draft Despatch accepting the Governor-General's proposals.⁸ The Court, however, refused to send it and substituted a draft of their own, vehemently criticising the Governor-General, which was forwarded to the Board for their sanction on 1 July, 1803.⁹ The Board, in its turn, stood its ground and required the Court¹⁰ to frame a despatch on the lines already indicated by them. At this point, the controversy assumed the character of a constitutional issue. In their letter to the Board of 19th July, 1803,¹¹ the Court questioned the competence of the Board in the matter as one relating to appointment of servants and creation of new establishments in respect of which, they argued, Parliament had vested the sole initiative in the Court, limiting the Board's authority only to an absolute or partial negative. Apparently they took shelter under section 17 of the Act of 1784 in disputing the right of initiative of the Board in matters of appointments and creation of new establishments which was involved in their direction to accept Wellesley's proposal. The Court was not prepared to accept the claim, affirmed their constitutional competence in the matter and directed that a Despatch according to the tenor of that transmitted therewith be

⁷ A full account of the controversy will be found in the correspondence between the Court and the Board in *Home Miscellaneous*, No. 487, pp. 379—563.

⁸ Letter from the Board to the Court, dated 22 June, 1803. *Ibid.*, pp. 379—386.

⁹ Letter from the Court to the Board, 1 July, 1803, *Ibid.*, pp. 391—429.

¹⁰ Letter from the Board to the Court, dated 5 July, 1803 *Ibid.*, pp. 431—437.

¹¹ Letter from the Court to the Board, dated 19 July, 1803. *Ibid.*, pp. 443—453.

sent out to India at the first opportunity. They wrote:¹² "The Board cannot hesitate for a moment in laying it down as within their undoubted authority, as well under the Letter as the Spirit of the Act of Parliament, to direct any new Establishment to be created, which in their Judgment shall appear conducive to the better Government of India, to prescribe the number of offices of which it shall consist, and even the quantum of salary, if they should think fit to do so . . . but having determined upon the part of the question which is strictly political, their functions cease, and it belongs in no degree to them to decide by whom those duties shall be executed or by whom those emoluments shall be enjoyed. . . . To argue otherwise the principle must be assumed, that the Board can give no orders which incidentally give occasion to the creation of any new office with salary. Were that admitted, unless the orders which should at any time be given were in their nature capable of execution by the precise number of officers then actually in existence the functions of the Board are at an end." The Court in their letter to the Board, dated 28th July, 1803,¹³ informed them of their intention to take legal opinion on the question of respective powers of the Court and the Board under the Act of 1793. The matter was referred to three eminent jurists, Lord Mansfield, W. Adams, and S. Romilly whose opinion was given in their favour. The idea was perhaps to make the Board yield on the point by the weight of legal opinion from such eminent personalities. But the move completely miscarried in its desired object. On the contrary it perhaps made the Board more obdurate. The Board consulted the Law Officers of the Crown who opined that they had not exceeded their legal powers in the case and that in the event of the Court's refusing to comply with their orders the remedy was by an application to the Court of King's Bench for a *Mandamus*, or some other legal process. This remedy did not appeal to the Board who, it was heard, was contemplating approaching the Legislature for necessary clarification of the law, as is hinted in their letter of 1st September, 1803, to the Court. This broke the resistance of the Directors, who suddenly changed their mind. In their letter to the Board, dated 19 August, 1803,¹⁴ while forwarding the legal opinion in their favour on the question of respective constitutional competence, sent a draft letter prepared on the lines advised by the Board in their letter of 27th

¹² Letter from the Court to the Board, dated 27 July, 1803. *Ibid.*, pp. 533—556.

¹³ *Home Miscellaneous Series*, No. 487, pp. 557—561.

¹⁴ *Ibid.*, pp. 562—563.

July, 1803. The Board in their letter, dated 1st September, 1803, approved of the revised draft, which was sent by the Court to Bengal on 2 September, 1803, directing the continuance of the College until further orders.¹⁵ That put an end to the controversy, so far as the main issue about the continuance of the College was concerned, but the constitutional issue remained undecided. Because even in this letter the Board stuck to their previous position. They wrote: "With all due deference to the learned gentlemen whose names are subjoined to that opinion, the Board are anxious to be understood distinctly to adhere to, and to consider it their duty at all times to act upon the construction of the Law as expressed in their letter of 27th July." The Board at the same time intimated that they also desired to receive the opinion of the Law Officers of the Crown and that would be sent to the Court in due course.¹⁶ They further continued: "*The power of deciding what new offices or new establishments shall be from time to time created for the better government of India, as distinguished from that of adding to the salary of an office actually existing on the Establishment or of granting extraordinary allowances or gratuities, is a power to which the Board feel themselves not only bound to lay claim but to exercise as inseparably interwoven with and indispensable to the permanent authority of the Board in matters of Government which power must be understood to reside in the Board equally, whether the question arises upon an arrangement provisionally adopted by the Governments abroad, or upon arrangements originating at home.*"¹⁷

Discussion of the Constitutional Issue

On a reading of the Act and its preamble between the lines and in the context of the circumstances in which it was passed, as reviewed above, it seems to us that the position taken by the Board in their letters of 27 July and 1 September, 1803, quoted above is perfectly justified. If the Court's contention that the Board can give no orders involving appointments or creation of new posts, which may be directly or remotely construed to imply

¹⁵ Vide Public Letter to Bengal, dated 2 September, 1803, in *Home Miscellaneous Series*, No. 488, pp. 513—517. (I.O.R.)

¹⁶ It appears that the opinion of some jurists were in favour of the Board. Vide Opinion of George Holford, and of Messrs S. Percival and T. M. Sutton in *Home Miscellaneous Series*, No. 488, pp. 443—458, 459—489.

¹⁷ Italics ours.

taking an initiative, be upheld, that would frustrate the very purpose behind the Act. It proposed no doubt to vest executive authority and powers of initiative in regard to all matters of civil and military government in the Court in a general way and the powers of superintendence, direction and control in the Board. But on a too narrow Construction of the Board's authority, limiting it only to an absolute or partial negative, it would be rendered altogether nugatory. In the instance in question, for example, the Board was convinced of the propriety of Wellesley's scheme of education of the Writers in the interest of the better government of India and of the opposition of the Directors being inspired by personal hostility against Wellesley.¹⁸ But if the Board was prevented from directing the Court to revise their previous orders for the abolition, passed of course with their approbation but without sufficient knowledge of all facts as revealed in Wellesley's letter of 5 August, 1802, on the casuistical plea that it involved the creation of new establishments, that would be simply stultifying the Board in the discharge of its functions imposed by the Act under section 6. It was the spectacle of misgovernment in India attributed to the uncontrolled executive authority vested in the Court that led Parliament to institute the Board of Control,—a body ultimately amenable to the control of Parliament,—to supervise, and if necessary in the interest of better government of India, to overrule the decision of the Court of Directors. The provisions of the Act should be read as a whole—and not piecemeal as the Court and their lawyers proposed to do—against the background of this intention of Parliament. If we do that, we are not in a position to accept the view of the question as set forth by the Company's legal advisers. They wrote:¹⁹ "We think that to leave the Directors with the mere patronage of appointing to offices and to seize all the great and superior powers of Government (which is the construction now contended for in the opinion of the Attorney and Solicitor General) would be to do that which the authors of the Act of 1784 reprobated and professed to avoid."

But as a matter of fact the Act did 'seize all the great and superior powers of Government' minus, of course, the power of

¹⁸ Lord Castlereagh, the then President of the Board, in writing about the controversy to his friend Dundas (then Lord Melville) remarked: "I soon perceived the question of the College was forgot in their indisposition towards Lord Wellesley". See *India under Wellesley*, 1929, by P. E. Roberts, Ch. XIV, p. 162.

¹⁹ Vide *Home Miscellaneous Series*, No. 488, pp. 430—442.
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initiative, leaving the Directors with mere patronage, and we may add, control over commercial operations²⁰ otherwise the Board of Control would have lost its *raison d'être*. They continue: "But without having recourse to the profession of those who promoted the Act in 1784 and even admitting that they meant to transfer all the powers of Government to the Board of Control, we think that the terms made use of do not warrant such construction but that the powers of Government still remain in the Company and that the Board is only to superintend, direct and control the acts of the Company, a function perfectly distinct and different from that of governing. For it might happen always and does happen often, that the Board do not vary or alter the Despatches or orders of the Court; in all such cases the orders of Government originate with and proceed directly from the Court and it is especially provided that the Board shall not originate in any case unless the Court of Directors neglect to frame Despatches. . . . If a system of economy and retrenchment is anxiously provided for, if the increase of salaries and bestowing gratuities is left expressly with Company it must follow, that the Board cannot originate new Establishments with salaries annexed, but that the power given to the Board to superintend, direct and control etc. must refer to the exercising those functions by means of the Establishments, which existed."

Their attempt to draw a line between 'the function of governing,' that is, taking the initiative in all matters and that of 'superintending, directing and controlling' is theoretically all right, but in actual practice, as we have already shown with re-

²⁰ It is interesting to note some comments Castlereagh made in his letter to Dundas quoted above upon the intention of the authors of the Act of 1793 (and necessarily of the previous Act also) in leaving the patronage to the Court. We quote only relevant passages below, "... The Directors are aiming at the extension of their authority to a degree which appears to me wholly inconsistent with your original views which I conceive went distinctly to this principle that the ultimate authority in matters of Indian government (leaving the commerce and patronage in the Company) should be in the state, under the control of Parliament. Relying upon their forbearance, it was your object as I conceive, to strengthen their hands by every appearance of authority. It is important, as far as possible, to preserve the integrity of the principle, which you always avowed, that the Board of Control had nothing to do with the patronage, but we must not suffer the subtleties and refinements of this principle to extinguish the substance of what your measure aimed at, namely, the establishment of a government for India in hands responsible to Parliament."

ference to the case under discussion, it would frustrate the intention of the authors of the Act. Nobody would dispute that the Act vested the right of initiative ordinarily in the Court, without the necessity of deducing it from the fact that 'cases may happen and often do happen, that the Board do not vary or alter the Despatches or orders of the Court;' but the act certainly does not tie down the Board always to agreeing with the decision of the Directors in such matters, as the opposite course would indirectly involve a right of initiative which, it is contended, does not belong to the Board. In our view, Kaye's analysis of the position is nearer truth. Speaking of the fourth Secretary of State, that is, the Chairman of the Board, who actually acted as the Board, Kaye writes:²¹ "His power to control the proceedings of the Court of Directors is absolute and complete. He has constitutionally, in respect of all matters of internal administration, only a controlling power; that is, he is empowered to correct the despatches of the Court on all subjects that come under their consideration. *But this unlimited power of correction is in effect coextensive with the power of initiation, and it would be easy to name cases in which despatches, relating to matters of internal administration, have lost under the hands of the Minister all traces of their original significance, and have been made to convey sentiments the very opposite to those entertained by the members of the Court.*"

Then as regards their contention that the 'power given to the Board to superintend, direct and control etc.' must be exercised 'by means of the Establishments, which existed,'—we quite agree with what the Board has remarked in their letter to the Court of 27 July, 1803: "Were it admitted, unless the orders which should at any time be given were in their nature capable of execution by the precise number of officers then actually in existence, the functions of the Board are at an end." Certainly it does not stand to reason that the Legislature intended to place such limitations on the authority of the Board as would cripple it in the exercise of the functions assigned to it by itself. Looking from this angle alone we think that the Board was perfectly within its constitutional authority to ask the Court to revise the Despatch it intended to send to Bengal, ordering the immediate abolition of the Fort William College. Further, it was unconstitutional on the part of the Court of Directors to consistently refuse to send the Despatch as amended by the Board. Under Section 12 of the Act of 1784, when the

²¹ J. W. Kaye, *The Administration of the East India Company* (1853), Ch. IV, pp. 131—132.

Board returned to the Court 'copies of any Despatches with their reasons for disapproving the same, together with instructions in respect thereto,' the Court is bound to send such letters and orders, etc. to their servants in India without delay, unless on any representation made by them to the Board, the latter directed any alterations in such letters or orders. It will appear, however, from the narrative given above that the Court persisted in their refusal to send the revised Despatch, even after the Board had declined to make any alterations. The fact of the matter is, long accustomed to exercise of uncontrolled authority in regard to all affairs of the Company in India, the Directors showed an impatience of control, which is perfectly natural and human,—particularly in a matter where their feelings were strong, because rightly or wrongly they thought that the Governor-General had wilfully defied their lawful authority.

MAKING DEMOCRACY SAFE FOR INDIA *

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The title of the paper is clearly reminiscent of a slogan that had gained currency at the time of the last world war. It naturally provokes a reference to its counterpart, 'making India safe for democracy.' As the latter object falls within the scope of the politician and the reformer, no reference is sought to be made to it in this place. That there is considerable need to take stock of the situation with respect to the democratic process and its prospects for India is undoubted. Eminent leaders of several minority communities have declared not only that India has witnessed the failure of an experiment in democracy, but also that democracy is inherently unsuited to India. An attempt is being made in some quarters to belittle the importance of such criticism by explaining it away as the result of an acute sense of personal and group frustration. This view seems to hope that merely with the passage of time the sense of what they feel to be unreasonable scepticism will vanish, and the inherent beneficence of the principles of free vote and parliamentary rule will assert itself.

Would that it were so simple! As a matter of fact almost all sections of the public and of instructed opinion in India are dissatisfied with one aspect or another of the constitutional changes introduced along the lines indicated by the British model. As our governmental machinery must evolve so as to suit not only our needs but also our aptitudes, a mere reference to the innate beneficence of a principle forgetting its reception, may be inherently unreasonable, by large classes of people cannot be held to be convincing. Constitution-making has to be approached from the objective and empirical standpoints more than from the doctrinaire or imitative. The experience of other peoples will certainly help us in details of constitution-making, but the main moral of the working of all constitutions is that no constitution works which has not the willing support of the people. In essence and purpose this is true of all constitutions; but it is

* A Paper submitted to the Indian Political Science Conference, Fourth Session, Bombay, December, 1941—January 1942.

especially true of the democratic form which is fitly described as the government of the people, by the people and for the people.

As this paper is written from the standpoint of a student of constitutional structure, no attempt is made to pass judgments on the positions taken up by political parties with regard to the alleged actions and policies of one another. It is assumed for the purposes of this paper that on account of the existence of communal electorates parties in Indian politics tend to have a communally distinguishable membership. As the relative strength of communities is not susceptible to appreciable changes the relative party strength as between one community and another tends to be perpetuated. This position is expected to hold in any alteration of the territorial limits of the provinces that can be reasonably thought of. If we add to this situation the strong communal consciousness from which all communities, majority and minority, advanced and backward, suffer it follows that the interchange of parties as governing groups based on an electoral majority is not easy of realisation in India. This situation may have been accentuated by several acts of the British government, but it must now be assumed as a condition of our political being to which our constitution must adjust itself.

The normal manner in which the party system works is clearly unsuited to a country where parties are based on communal considerations. A minority community, as a community, will always nurse a sense of group frustration. This feeling has to be avoided in so far as the processes of a democratic constitution would permit. If for the undoubted difficulties of the communal situation alterations are suggested which would render government itself ineffective or make the government an essentially undemocratic one the remedy will be worse than the disease. A desperate situation in which such extreme and unsound measures are thought of can only have a political, and not a constitutional remedy. Given the desire to have an efficient and at the same time a democratic constitution for India, it appears to the present writer that difficulties created by the communal situation can be substantially met by introducing into the future constitution of India the following features. Some of these suggested features are also suitable to certain traits of the Indian mind which have little to do with the communal question.

The chief complaint of the communal minorities is to the effect that on a democratic model they can never hope to share in the government except as allies of one of the parties belonging to the majority community. Now in a country where loyalties other than communal loyalties have grown in political import-

ance such a complaint would be pointless. Common interests and common programmes would be enough to provoke political cohesion which would render communal consciousness of no political significance. Presuming that such a state of things does not now obtain, or is not likely to obtain in the near future, is it inevitable that we should conclude that a democratic constitution is unsuitable to India? Even for individual communities, including the minority communities, the democratic process is seen to have a superior moral and material appeal. The organisations of all communities claim to be democratic organisations. It is possible that despairing of the success of the democratic process in a country where for years to come the communal consciousness is expected to persist, and still desiring to have a democratic life, some people with the best of intentions would desire to have geographical units for political existence where the constitutional questions may be thought of without reference to the communal implications.

In a sense this is not a solution of the problem at all. It is an attempt to run away from the problem, and an unsuccessful attempt at that. Equally unsuccessful, at any rate from the standpoint of a hope of early success, is the attempt to ignore or, worse still, to suppress the minority question in all constitutional discussion. While working for a reform of the social consciousness of the people in non-communal directions, as an immediate administrative necessity, the maximum of unity and freedom must be realised within the framework of the constitution. How to associate the minorities, especially the communal minorities, with the process of government without impairing either its efficiency or its democratic character is then one of the most vital questions challenging the resourcefulness and goodwill of the people of this country. This problem is by no means unique as recent constitutional history of many countries is replete with the attempts made to overcome the obstacles created by racial and other minorities in the way of a successful running of the democratic constitution. While the present writer does not presume that his suggestions will lead to a final solution of our difficulties, he hopes that many a difficult problem with which a democratic constitution is likely to be confronted in India would be easier met in this than in any other fashion.

The association with government that the minorities claim is with regard to the three branches of government, executive, legislative and services. The problem is how to bring about this association without weakening either the democratic character or the administrative efficiency of the organ concerned. Thus,

taking the executive first, if it is suggested that the minority parties should necessarily be included in the composition of the cabinet, it might lead to a divided house and to a weak and purposeless government. Conceivably, such a requirement might actually lead to a deadlock. A coalition cabinet based on a common parliamentary platform is conceivable and may even be desirable if the dominant party is thereby enabled to overcome the sense of unjustifiable neglect nursed by a section of the house. So long as the minority cannot stage a constitutional hold-up for inclusion in the cabinet it is possible that a reasonable compromise on the parliamentary programme of the parties joining the coalition may be reached. Where the number of parties in opposition is very small such a tradition of coalition may, however, obviate a necessary part of the machinery of parliamentary government, namely, the opposition. Whether a strong coalition without effective opposition can be said to be a desirable government is another matter to which further thought must be given, if we are to advocate the normal establishment of coalition cabinets in our country. In view of these difficulties it appears to the present writer that the case for coalition cabinets depends for its validity on considerations that may vary with the situation. While the principle need not be ruled out, especially where no single party has a dominant majority, it cannot be trusted to meet the case of the minorities in all situations, consistently with the needs of efficient democratic administration.

The presidential form of the executive has sometimes been suggested as a likely alternative to the system of cabinet government. It must be agreed that the proposal requires much more careful consideration than has been forthcoming from those who have thought too exclusively along the familiar lines of British parliamentary government. It is possible that the comparatively personal genius of public administration in India, as contrasted with the obvious institutionalism of British government, would render this form more acceptable to the average Indian mind. But, it would necessitate a thorough overhauling of the entire machinery of Indian administration. Whether such a violent break with administrative tradition built up for at least a generation is worth while is doubtful. In any case except in an atmosphere of unity and creative national enthusiasm such a far-reaching alteration would appear to be unpromising. The same may be said of many other extreme suggestions of a presidential system being carried to the very villages where the elected mayors may in some way approximate to the president. Not only would the introduction of a presidential scheme be a contravention of

recent trends in the constitutional evolution of India, but it would necessitate a dangerous dissociation between the executive and the legislature. The minorities in a presidential system, granting that it is democratic, would have to be delegated to subordinate posts in the president's cabinet. The dependent position of the members of a presidential cabinet would reduce the danger of its internal disunity, but for that very reason it would have less appeal for the minorities. In a democratic constitution the president has to be the real head of government, and the majority parties can hardly be bound by any convention in his choice.

It is possible to think of at least one other method by which the association of the more significant sections of the population with the executive government of the province or the country can be secured without sacrificing any principle either of democratic or of efficient administration. It is well-known that a unanimous demand made by the British Indian Delegation at the Round Table Conference related to the appointment of provincial governors from among the ranks of Indian public men. Provincial autonomy is materially weakened by having a non-Indian at the helm of affairs. The Governor under the present constitution is no cipher, nor is it contemplated that in any constitution for India the head of the executive can be either without function or influence. Checks and balances are by the very nature of the situation an unavoidable feature of the Indian constitution and the heads of the executive, even though they are all of them to be merely constitutional governors, will wield considerable influence. This influence is likely to be greater in preventing a wrong rather than in securing a right, though the latter is by no means improbable. Whether the provincial heads are appointed or elected, it can be secured by a convention that important communities are in turn preferred for the choice. The individual chosen will be the nominee either of the appointing authority or the appropriate electorate as the case may be. But he will normally belong to the community whose turn it is during the given electoral period, say of three years, to supply the head of the government.

Such a practice is consistent with democracy as well as efficiency. In a striking but by no means hollow fashion the equal claims of all important communities are honoured in so far as it is possible to honour them in a democracy. The head of the state will normally be a senior statesman and to whatever community he may belong he will represent the unity and authority of the government. He will, however, have to conform to the policy backed by the majority of the legislature. In the formation of cabinets, in the adoption of policies where special interests

are involved and generally in upholding the conventions of the constitution, he will have a positive and unique function to discharge. For a community to be called upon to fill such an important post without reference to the numerical count of its members is a significant avowal of the principles of goodwill and equity. How such a practice renders the civic life of an administration free from constant communal bickerings is illustrated in Bombay itself, the corporation of which place has by a long and almost unbroken tradition adopted the convention of choosing its mayor in turn from among the four communities which contribute to the life of the city, namely, Hindu, Mahomedan, Parsi and Christian. The undoubted civic patriotism of the people of Bombay and the comparative smoothness which has attended the civic administration of this great and cosmopolitan city are in no small measure due to the wisdom and statesmanship illustrated in this convention. There is no reason why this wise principle, which has its justification in the conditions of Indian life, should not succeed on the very much wider scales of provincial and federal governments.

Rotation of the constitutional headship among the several communities and the formation of parliamentary coalitions where conditions are favourable are methods by which the minorities may be associated with the executive administration. In the normal working of the legislature all shades of opinion can be freely expressed, and though the majority has the means to carry its proposals unscathed through the legislature all possible concessions will ordinarily be made by a government that knows that while party government is a necessary feature of parliamentary rule factious government is essentially undemocratic. It is, however, probable that a party in power which has little of past tradition of office to sober its ardour for its own proposals may be impatient of parliamentary opposition and it may refuse to accommodate the opposition to the maximum possible extent. Even a considerate government is, however, likely to be unwilling to accept any major amendment of its proposals on the floor of the house. What is even more to the point in the present context, the minority groups which have no prospect of ever forming the government will not be content with this precarious method of influencing legislation.

It is suggested for this purpose, namely, of offering to the minority groups more regular and fruitful channels of influencing legislation, finance and administration, that the system of having standing committees associated with all important departments should be extensively used. The number of members on

each committee should be such as to make it possible for almost all members to be at least on one committee. Important members of each group can be on more than one committee, the system of election being that of proportional representation. It might be argued that under this scheme the minorities will still remain minorities and that they can hope for no better influence in committee than what they can get in the chamber. This is, however, a short-sighted view of the matter. Matters go before the legislature in a finally formed draft of the conclusions of the government, which later on is unwilling to alter its position so as to accommodate the minority. In committee the issues are presented, even by the government, in a comparatively fluid state, and criticism, information and suggestion from all quarters are well in time. It is not suggested by this argument that matters which the ruling party considers to be essential planks in its party programme can be influenced by minority criticism to any appreciable extent, though even here the receptivity will be appreciably greater in committee than in the chamber.

The committees with which we in India are for the most part familiar are of the English type. These hold a comparatively casual and less important position than their counterparts in the U.S.A. and the continent. It is this latter type of committee, well-organised and well-endowed with specific functions, that we have in view. The committees will in a way be a necessary mechanism for the action of the legislature. All official information as also experience of officials will be available to these committees. They will also be empowered by special commission to call for evidence from non-official sources. The process is indeed more dilatory than the one known to us under the British party system. But conditions in India are markedly different in respect of the balance of parties than what they are in Great Britain. By no conceivable system can a democracy be made to operate if the minorities can wield effective power, except by transforming itself into a parliamentary majority. But the committee process offers to the minorities very extensive opportunities of influencing state action both in the legislative and administrative spheres. This is a subject which can bear considerable discussion as to detail once the benefit of the principle is recognised.

Committees, as has been pointed out, will be organised so as to provide for all departments and for almost all members. There are, however, two special types of committees to which a pointed reference must be made. Within the whole territory over which a government holds jurisdiction there may be well-

marked regions with special problems of their own. All matters specially concerning such regions may be referred to a committee consisting of representatives in the house hailing from that part; or if the subject matter ordinarily falls in the perview of some other committee all the members coming from a given territory can be added to the standing committee for the given purpose. The same procedure would apply to cases where the special problems of a community are concerned. Either as a separate *ad hoc* committee or as members of a standing committee co-opted for the occasion representatives of each community will have full scope to influence the regulation of their own special interests.

The history of inter-communal relations in India has on the whole been one of toleration and assimilation, much as we may be tempted to deny this fact under the stress of the political emotions roused at any given moment. Disorders caused by disagreement are indeed not rare, but fortunately all these conform to a set pattern. The causes leading to disorder as also the course of each bout of lawlessness are now almost standardised. It would be strange indeed if administrative science in its present advanced stage could not supply adequate remedies for such a familiar disease of the body politic, granting all the while that the leadership in all communities is on the side of law. All matters which normally cause a disagreement can well be listed and a standard procedure to settle these by reference to competent tribunals may be approved by leaders of all communities. These provisions may go into the constitution and along with other fundamental rights and judicial safeguards be available to all those who feel aggrieved. Almost all cases where emotions and prejudices are likely to be touched may thus be taken out of the scope of action of the political ministry of the day. The government in all such cases is expected to conform to the procedure sanctioned by the constitution and upheld by the highest courts.

There is one more aspect of governmental organisation to which a reference is necessary. The services play an important rôle in government. The allegations that servants of government themselves discriminate in favour of their co-religionists while discharging their duties have fortunately been rare, and in most cases where such allegations have been made these are found to be baseless. But it is a justifiable desire on the part of all sections of the community that they should get a legitimate number of places in all services for which they can produce suitable candidates. Already a schedule of priorities in appointments has been prepared for almost all services. Matters in this respect, it

may be argued, have gone too far rather than being in need of further safeguarding in the interests of minorities. Be that as it may, the main point is that with a suitable system of training and a recognised policy of appointments to services through non-political service commissions the whole subject of appointments can be taken out of party politics, and it will thus cease to trouble members of the legislature.

The problem of providing a common, efficient and popular government for such a vast country as India, with an almost endless number of regional and communal differences, is at the best of times a very difficult one. Just now on account of various internal and international troubles the difficulties of the problem have been immensely multiplied. But without the solution of this problem of securing a common will for a national government no progress in our constitution-making is possible. The best co-operation of politicians and constitutional scholars will be needed to find out even a workable solution. Leaving the politicians to their own task of making India 'safe for democracy' the present writer has tried to suggest in this paper a few constitutional adaptations of the democratic machinery of government which in his opinion will to some extent help in allaying justifiable obstacles in the path of an early establishment of a national democracy in India.

THE PLACE OF TREATIES AND AGREEMENTS IN INTERNATIONAL LAW

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No war—not even a World War—can kill law outright. At worst it may silence law and let it lie dormant in the clash of arms. Never has man been without law and never shall he be. As long as he must have social relations with fellow-men and as long as men in groups must form contacts with groups outside their own immediate sphere of life, understandings in the form of *binding* relations must get evolved. The product is that strong social nexus to which the Roman genius gave the most appropriate word *leges* (law) that which binds,—binds more solidly in the hearts and intelligence of men than by the mere recording of the same on tablets of stone and brass displayed in the market-place. Law has its root in the opinion of man, no matter how the imprimatur came to be given. International Law need not look for its parentage in any other direction. The same urge that determined man's local, municipal or national life in terms of social bindings as summed up in municipal (national) law, was responsible for developing from day to day a scheme of international law as his points of contact with the outside world multiplied. Usages, customs, customary law, statutory law and judge—made law with which man's civilised life had made him familiar within the national orbit, came to find their counterpart in man's international life, the force of which came home to him with ever-expanding interdependence of nations. International Law is the outcome of man's need to go out into the world and form binding contacts with the nationals of other states. So far it stands on the same basis as the municipal (national) law: but in one important matter vitally concerning the life of man it lagged far behind the municipal law. The latter made one's 'taking the law in one's own hand' a crime punishable by the law of the land; while international law, till very recently, allowed the sword to be the final arbiter in disputes between nation and actually elaborated a regular code of the laws of War! In absence of an international referee and the adequate means to enforce the award of that referee, perhaps it was considered in-

evitable—but deplorable, of course,—to leave States "in a state of nature" when the resources of diplomacy were exhausted. A new law came into being when the Covenant (1919) and the Pact of Paris (1928) for the Pacific settlement of International Disputes carried the nations a long way towards eliminating war and making *man's* life safe and conformable to law no less in the international sphere than in his national home: but there were lamentable gaps in these two famous Instruments of Peace, Law and Order for the filling up of which the world opinion was not yet quite ready with the result that once again we are witnessing the catastrophe of a dreadful World War. The student of Political Science and International Law will keep steadily before him two points:—(1) that all law and order—national and international—is for *man's* welfare in the making of which, directly or indirectly, man has given his *consent*—nay, has vehemently asked for it and even made sacrifices to get it; (2) that the Instruments of that Law and Order which make the constitutional framework under which man lives are not a mere make-believe but do really and truly fulfil the object for which the Instruments of Peace are sought. Departures from these two essentials will take away from Treaties their status as *expression* of International Law.

In this article an attempt will be made to investigate a few points in some of the leading Instruments known as Treaties and Agreements that have contributed to the making of International Law and to see what possibilities there are for man's welfare in this process of Rule of Law in his International Relations.

Law-making Treaties and Agreements prior to the World War of 1914—18.

From the dawn of history treaty-making has been in vogue. It has been a very important source and evidence of International Law. "The noun 'treaty' seems to have been formed on the basis of the verb 'to treat'.¹ On almost every conceivable subject-matter states have continued to 'treat' with one another. According to Oppenheim "the number of treaties in force between the several States at the outbreak of the World War exceeded eight thousand."² Potter says (*International Organization*, p. 160), "it appears that modern states have concluded over ten thousand treaties with one another since the dawn of international relations." Another writer Myres makes out that there are in existence some 25000 treaties of which about two-fifths are in

¹ Potter, *International Organization* (1922), p. 142.

² Oppenheim, *International Law*, Vol. I.

force. Wright—a famous American contributor on International Law—calculates that U.S.A. since its foundation to August 1914 had concluded 595 treaties, thus averaging more than four a year and for the twentieth century fifteen a year or a treaty ratified every three weeks.³

Recent discoveries of nearly 300 tablets at Tell-el-Amarna (Egypt) have revealed to what vast extent the Egyptian Pharaohs had international relations with Assyria and Babylonia so far back as the fourteenth century B.C. "These famous empires of antiquity were in fairly close and constant commercial and intellectual intercourse, and their governments cultivated peaceful and friendly relations with one another The oldest treaty of which the text has come down to us is that between the Pharaoh Ramses II and Khatesar the king of the Hittites (about 1272 B.C.). It provides not only an alliance with a recognition of perfect equality and reciprocity between the two sovereigns, but for the mutual extradition of political refugees and immigrants, a codicil even providing for humane treatment of the latter."⁴ Ancient Judea, Greece, Persia, India and China have plentiful references to the recurring phenomena of international relations cemented by means of treaty-making. In the monarchical age, the monarch stood for the state: and though many treaties of that time were apparently concerned with the personal or dynastic considerations of the sovereign, they were not without interest in matters relating to the Commonwealth; and only such treaties survived as made a contribution to the international "give and take" from the peoples' point of view, and insensibly formed a valuable code of international conduct in commerce, currency, learning and humanitarianism in general. In the early period when the Roman Empire or the Papacy gave the law to peoples coming within their orbits, obviously little room was left for treaties between one people and another, as one and all looked towards a common centre as the law-giver as well as the judge. The life of that type of Universal Headship, constantly continuing in a state of vigour, has never been long; that is, what Europe, for instance, experienced in the Middle Ages; and because some kind of international 'give and take' regulated by some system of law has always been the need felt by mankind, even before the formation of modern states people in groups and associations of middle ages managed to get something done to put their international

³ Hershey, *The Essentials of International Public Law and Organization*, p. 433.

⁴ *Ibid.* p. 36.

relations on a workable basis of law and order,—at least in matters most vitally concerning their economic interests. "As has been the case time and again in the history of international relations, the economic need led to the development of legal rules to overcome the difficulties resulting from an anarchic situation."⁵ The most notable instance of this achievement in the middle ages was the *Consolato del mare* of 1495—"a compendium of commercial practices and maritime law as they existed at the end of the 15th century, first published in Barcelona in 1494, then translated in many languages. Its author is unknown It does not seem that the Consolato was a promulgated code or collection of promulgated laws In all probability it was compiled for the use of those entrusted with the settlement of commercial litigations."⁶ Its only object was to safeguard the interests of the neutrals as against the rights of the belligerents to capture the enemy's property wherever found. The Consolato provided that "(1) If a belligerent's ship carrying neutral goods was captured by the enemy, the latter could take the ship but must free the goods of the neutral. (2) If the neutral ship carrying a belligerent's goods came in the clutches of the belligerent's enemy, the goods would be captured by the enemy and not the neutral ship. The rules of the Consolato so liberal towards the property of the neutrals seem to have been generally followed in Europe in the middle ages."⁷ In the course of the following three centuries many instances of departure from the rules of the Consolato were recorded. England met the Consolato half-way: France not at all. The maritime warfare of the 18th century and of the Napoleonic period supplied many instances of the violation of this "Law" which gave rise to heart-burning among nations whose 'neutral' rights seemed to be affected; and finally in 1856 by the Declaration of Paris it was proclaimed as a part of the International Law that (1) "free ships make free goods" (i.e., neutral ships could lawfully carry enemy property provided the goods were not contrabands of war). (2) In the enemy ships if captured, the neutral goods were free, (provided not contrabands of war)." The *Consolato del mare* did not bear the form of a treaty or an agreement regularly signed by the accredited heads of governments; and yet as a workable common measure based on implied consent of people interested in international commerce,

⁵ Jessup and Deak, *Neutrality The Origin*, p. 11.

⁶ *Ibid.* p. 124.

⁷ Sanborn, *Origin of the Early English Maritime and Commercial Law* (1931), p. 321.

it had all that force and sanctity which drove the violator to all sorts of explanation in defence of his conduct: and when after nearly four centuries' struggle for the neutrals' commercial rights during the state of war, the leading Powers of Europe accepted the neutrals' claim and incorporated it in a regular treaty,—called the Declaration of Paris (1856),—they did nothing more than affix to this part of international law the solemn seal of the pledged word of sovereign states confirming the prevalent view of the people interested in international commerce. When again in the course of the last world war, condition of warfare changed and the German submarine warfare in addition to the destruction of neutral commerce took leave of all humanitarianism the world was not content simply with the restoration of neutrals' rights, but applied itself to discovering ways and means which should eliminate war from International Relations. Of this a little later.

Law-Making Treaties.

The 'person' known to International Law for purposes of rights and duties is the Sovereign State: and this law creates, as it were, a legal nexus *between States* without making any attempt to bring out the import of the law. As explained in the last paragraph with reference to *Consolato del mare*, human needs formed a satisfactory adjustment of relations without particularly waiting for a king or an emperor to give his imprimatur to the rules which were generally observed and which at best received the dignity of a compendium at the hands of an unknown author. Here the import was the sheer necessity that made belligerents agree to grant the concessions demanded by the neutrals. All honour goes to the scholar who gave a literary form and shape to the floating mass of customary ideas relating to this subject! It is not without some justification that scholars have been given a place of honour in the making of International Law. "International Law as now practised by the states of the world is largely the product of private scholarship."⁸ With the emergence of modern states, the inter-state relationship took the form of treaties—bi-lateral or multi-lateral, alliances or guarantees,⁹ territorial or commercial treaties relating to the immediate interest of two or more states. There was thus quite a vast array of this class of treaties in the period of the history of 'power politics'; but along-side these, there were also those treaties that established a general law of international conduct tending towards common

⁸ Potter, *International Organization* (4th edition), p. 156.

⁹ Jessup and Deak.

welfare and practice. The latter have a place of their own in international legislation. Some of these international law-making treaties may now be briefly touched upon:—

(1) The Final Act of the Congress of Vienna (1815) did two notable things:—(a) After dealing with France and providing for security against a repetition of the convulsion of Europe at the hands of France, it took a big step forward in the humanitarian field by abolishing Slavery. (b) It established a Concert of Europe (with Great Power dominating!) to give law and order to Europe. Though this device was clumsy and reactionary in its results, it helped to evolve the "Congress" system chiefly through the statesmanship of Castlereagh. Conferences of European Powers, thereafter, came to be frequently called for purpose of consultation and even determination of a course of conduct, whenever there arose some cause for danger to the Peace of Europe. From these Conferences ensued joint agreements guaranteeing security to weak states, e.g., the Neutralisation of Belgium and Switzerland. By bringing Islamic Turkey within the fold, the "Congress system" ceased to be only a Christian concern: and later on, Japan also was welcomed. At the end of the Crimean War in 1856 the Declaration of Paris gave law to the world on (1) the vexed question of the rights of the neutrals in maritime warfare, (2) the blockade, and (3) the rooting out of the privateers. In 1871 Russia had to accept the European Congress's modest award of the Treaty of Berlin in place of the big gains she had secured by imposing unilaterally on vanquished Turkey the hard terms of the Treaty of San Stefano. If Russia was allowed the use of the Black Sea for her war-vessels, a reminder was added that no change in international order was to be thought of without the consent of the signatory powers. In 1885 the Congress of Berlin amicably settled among the European powers their claims on the apportionment of Central and South Africa! In 1914 the Austro-Serbian controversy might have been settled at a European Conference as Sir Edward Grey persistently pressed: but Germany refused "to let other powers sit in arbitration on Austria."

(2) The Geneva Conference of 1864:—In the midst of this age of the sword which still being the final arbiter of international disputes, humanitarianism as illustrated in the abolition of slavery (Vienna Act of 1815) was not without its influence to mitigate the horrors of war. In 1859 Italy and France were at war with Austria, apparently in the interest of the liberation of Italy from the domination of foreign Austria. The allies had won the battle of Salferino. Pathetic accounts of the sufferings of the wounded

soldiers left uncared-for on the battle-field roused the conscience of Europe and the Geneva Conference of 1864 instituted the Red Cross organisation to look after the wounded soldiers and help them to speedy recovery. International laws relating to the Red Cross gradually supplemented by those pertaining to the prisoners of war have been generally well observed. No belligerent nation can lightly face the charge of having been guilty of the violation of this branch of International code.

(3) The Anglo-American Arbitration Treaties:—In the midst of a fairly repeated clash of arms in the course of the 19th century, the Anglo-Saxon nations pointed the way to the settlement of disputes by arbitration. The Jay Treaty of 1794 led the way. The Canadian boundary-line disputes had been amicably settled and the Mixed Committees set up by that treaty had been a great success; and they even looked after the entire administration of the boundary between U.S.A. and Canada, neither country having to employ a single soldier for safeguarding the frontier. To the credit of these two nations goes also their famous adoption of arbitral method by which was settled the Alabama incident which elsewhere might have easily led to a war. Britain and U.S.A. by their agreement to have recourse to arbitration for the settlement of all points of dispute between them prepared the ground for the notable work of the greatest Conferences of this age—which assembled at Hague in 1897 and 1907.

(4) The Hague Conference:—Though the Conferences were two, the achievement is marked as that of the Hague Conference since the resolutions passed by the Second were mostly in the nature of a maturer form of the measures adopted by the First Hague Conference. This great landmark in the development of International Law had a curious origin. The Czar Nicholas II's war minister wanted money to carry out improvements in the equipment of the Russian Army. The finance minister of the Czar unable to face the approbrium of having to impose fresh taxation on the hard-pressed subjects of the Czar recommended a general measure of reduction of armaments in Europe. With this object and sponsored by the Czar, the Conference met at Hague. In its immediate object of disarmament it failed. But side by side with this, the Conference gave attention to the peaceful settlement of international disputes. Anglo-American Treaties had prepared the ground for a very wide application of the arbitral method. The Hague Conference accepted this method as generally applicable to all nations and made provision for the institution of a Permanent Court of

Arbitration; in other words, the Conference provided a permanent framework within which *ad hoc* tribunals could be appointed to arbitrate upon the dispute referred to the Hague; and this arbitration, i.e., settlement of disputes was to be had on the basis of "*respect for law*"¹⁰ which would include treaties, customary international law and general rules of law from which International Law as applicable to the civilised world could not possibly get away. It must be remembered that the parties that entered into this agreement (treaty) for resorting to arbitration were Sovereign, independent States. International Law still continued to be weighed down by this terrible encumbrance. The Sovereign was not under a compulsion or even compunction, to obey anybody's behest. The practice of Arbitration was therefore to be adopted by the Sovereign States on their own initiative. Indeed, it was left to their *option* to come to this international tribunal: and while one party sought arbitration, it was still within the right of the other party to the dispute to refuse to let its case come under the scrutiny and award of the international arbitral tribunal. But in one respect the Hague Conference took a courageous step forward. It was resolved that other powers may not be indifferent to that dispute and may take an initiative of their own to end the conflict either by their "Good Offices" or by "Mediation" which was already known to International Law. What might have been sometimes resented by a recalcitrant State as an "impertinent interference" was now legally recognised as a matter of legitimate concern for all others.

"The signatory powers deem it expedient (the 1907 text adds 'and desirable') that one or more powers, stranger to the disputes, should on their own initiative and, as far as circumstances may allow, offer their good offices or mediation to the States at variance.

"Powers, stranger to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

"The exercise of this can never be regarded by either of the parties at variance as an unfriendly act.

"The duties of the mediator are at an end when once it is declared that the means of reconciliation proposed by him are not accepted. Good offices and mediation, have exclusively the character of advice and never have binding force."¹¹

¹⁰ Zimmern, *The League of Nations and the Rule of Law*, p. 110.

¹¹ Alfred Zimmern, *The League of Nations and the Rule of Law*, p. 113.

In 1902 the State of Venezuela had been subjected to a blockade by the combined fleets of Britain, Germany and Italy because of her refusal to pay the debts contracted by her from these blockading powers. The matter was, in due course, settled by arbitration in which U.S.A. took the leading part. The Hague Conference of 1907 ruled out armed intervention until after the debtor country had refused arbitration or failed to carry out arbitral award.

(5) President Taft and Secretary Bryan:—Anglo-American practice of resorting to arbitration had been a great success. This bi-lateral arrangement had, in the hands of the Hague Conference, become multi-lateral: but the freedom to exercise the option of resorting to the arbitral method provided for by the Hague Conference might render the scheme practically inoperative. President Taft, therefore, made an attempt to fill the framework by discovering some classes of disputes which the States would *promise in advance* to submit to the procedure provided for in the treaty accepted by them. The American word 'justiciable' became, thereafter, a current coin; for the President's proposals included all such cases to come under the arbitral method as related to the application and interpretation of *International conventions and all treaties*. President Taft had a trained legal mind. If the dispute in question had any connection with the International Law (made up of conventions, treaties etc.), why would it not be a fit subject for a legal settlement? In other words, why not justiciable? The foreign offices were alarmed and a proviso had to be inserted, *viz.*, "provided the difference for which arbitration was to be sought did not affect the vital interests, independence and the honour of the Contracting parties." The Chancellories of the leading countries of the world were only prepared to submit to the method of arbitration matters of secondary importance: and arbitration, in their opinion, was only a secondary convenience. Great issues which might involve States in the calamity of war were still not to be contemplated as fit subjects for a third-party judgment, whereas the President was trying to bring the inter-State relations on the same footing as individuals within a State have with law and the law-court as their referees in *all* disputes. The U.S.A. Senate subjected the Draft Treaties of President Taft to many reservations and he withdrew his proposals.

In 1914 Secretary Bryan's treaties went through the Senate successfully as they were only a modest measure for setting up International Commissions of Inquiry—just the fact-finding bodies set up when a dispute arose anywhere—no party to the

dispute being considered as bound to act upon the findings.¹²

Matters stood there when the World War broke out.

Post-War Treaties and Agreements.

War has some analogy to Revolution within the State. Both are instances of extra-legal means adopted to enforce an object. Their illegality comes to be accepted—perhaps even applauded—when success is obtained. The successful war results in two developments: (1) The settlement bringing about a new disposition in the order and arrangement of States involved in the war,—territorial, financial, economic etc. (2) The ushering in of a new law which is to govern the relations of the States concerned or even the whole civilised world. The last Great War (1914—18) ended with the Treaty of Versailles including the Covenant of the League of Nations. On the one hand, a new State system came into being which perhaps righted the political wrongs of centuries old; and, on the other hand, there came in the dawning of a new world-order based on collective security,—making common councils, law and justice—the real means for settling international disputes, if any, and leaving little chance for the sword to make a successful bid for mastery over the mind of man. The Washington Treaties of 1922 aiming to do justice to China and give peace to the Pacific World was another monumental achievement of this period of History. There was a determination that war and preparation for war must get eliminated from the life of the civilized world. But this defeated Germany might rise again! Insurance and reinsurance were sought by France and other States which would not be satisfied with either the Covenant or the Locarno Treaty or other mutual Assistance Treaties. The Pact of Paris (1928) for the Pacific Settlement of all Disputes, better known as the Kellogg-Briand Treaty finally secured a solemn engagement of all the nations of the world to *outlaw war once for all*—and leave scarcely any room for neutrality in the event of any country being so fool-hardy as to come out as an aggressor. Altogether, something like a new International Law seemed to have been the gift bestowed on man. In a previous number of this Journal¹³ the present writer has dealt with the subject of Neutrality at some

¹² In this paragraph the present writer is entirely indebted to Prof. Zimmern's account of Taft and Bryan Treaties in his book called *The League of Nations and the Rule of Law*.

¹³ T. K. Shahani, *Neutrality and the Law of Neutrality in Recent Times*, 1941, Indian Journal of Political Sciences, pp. 277-312, 1941.

length. To what extent International Law has been really enriched by the Post-War Treaties may now be briefly examined.

The Denunciation of Treaty Violators.¹⁴

The Post-War phase of international relations had apparently strengthened International Law in a number of directions: (i) In the Assembly of the League of Nations it had found a body approximating to an International Legislature; (ii) in the Council of the League was seen a directing agency combining in itself the Executive and the Investigating body; and (iii) with the institution of the Permanent Court of International Justice in company with International Court of Arbitration and Conciliation Commission, the civilised world had at last been armed with all the necessary machinery for the pacific settlement of International disputes. Above all, there were the sacred Treaties *Pacta sunt servanda* the veritable foundation on which this imposing fabric of International Law stood. Was there a possibility of violating these treaties light-heartedly? In other words, if a state chose not to abide by these Law-making Treaties and preferred to determine its point of dispute with another state by any means away from the International Law, could it go scot-free and not face the intervention of other states? The 17th and the 18th century practice had suggested to Vattel to make the following statement:—"It belongs to every free and Sovereign State to decide in its own conscience what its duties require of it, and what it may or may not do with justice. If others undertake to judge of its conduct, they encroach upon its liberty and infringe upon its most valuable rights." Here was the system of "the Paramount power which refuses to account for its deeds," though Grotius' system arraigned State Crimes." In this connection Van Vollenhoven criticized the statement of Vattel:—"According to Grotius the criminal state may be punished by the others. According to Vattel, even the country invaded, foaming at the mouth with anger, may not judge of the assaulter of its territory, Vattel adding that 'if the enemy observes all the rules of formal warfare, we are not to be heard in complaint of him as a violator of the law of nations.'" Vollenhoven complains that Vattel professing support to Grotius really 'levels him with the ground.'¹⁵ In spite of Vattel the consensus of opinion of the leading jurists of the pre-

¹⁴ Quincy Wright, *American Journal of International Law* (1938).

¹⁵ Vattel *Le Droit des Gens*, Vol. III, c. 12, sec. 188, translation Carnegie edition, p. 304.

¹⁶ "The Three Stages in the Evolution of the Law of Nations." The League, 1919, quoted from *A.J. I.L.*, 1939, p. 529.

Hague period was in favour of Intervention when International Law was violated. The Hague Resolutions gave to third parties the undoubted right of Intervention by means of "Good Offices" "mediation" and a demand for resort to arbitral method, as quoted above. This right of Intervention was extended even to affairs pertaining to the domestic policy of the offending State when that policy involved it (a) in the violation of humanitarianism or (b) abuse of rights allowed by International Law. In regard to the offending states' foreign policy, the right of interference was extended by International Law even to cases where the intervening state suffered no direct injury by the conduct of the aggressor. Living under the law of the community of Nations was the most valuable asset of every member of that community. To forfeit it by any negligence on its part was to prepare the way for its own possible extinction. This was most aptly put by Elihu Root:—"Whereas in the world the laws which should protect the independence of nations, the inviolability of their territory, the lives and property of their citizens, are violated, all other nations have a right to protest against the breaking down of the law. Such a protest would not be an interference in the quarrels of others. It would be an assertion of the protesting nation's own right against the injury done to it by the destruction of the law upon which it relies for its peace and security." But while the right of intervention was undoubted upto the Hague era, subsequent treaties involved in the Covenant, Washington Treaties (1922) including the Nine-Power Pact etc., and the Pact of Paris (1928) imposed an obligation (Duty) to intervene in any international dispute arising out of the violation of International Law based on those treaties. Provisions for Consultation, Common Council, references to investigation commissions, demand for judicial or arbitral award and revision of Treaties (as per article 19 of the League Covenant) had been carefully inserted in all the famous law-making treaties of the post-war period. How then could the aggressor—the violator of treaties overriding International Law—go without denunciation? The Manchurian episode (1931), the German re-occupation of the Rhine-Land (1935), the Italy-Ethiopian War (1936), the "China Affair" (1937) were some of the most flagrant instances of Treaty violation which came in for the most unequivocal condemnation by the parties to the treaties that were violated. U.S.A. had denounced the Manchurian Episode of 1931 as a most serious violation of the Nine-Power Pact in the Washington Treaties of 1922 by which the signatories including Japan, Britain and U.S.A. had solemnly pledged the sovereignty, independence and integrity of China. When no

collective action against Japan's aggressive policy was possible, in spite of the Lytton Commission's report having condemned Japan as the aggressor, the U.S.A.'s Secretary of State Mr. Stimson announced what in International Law has come to be called the Stimson Doctrine of *non-recognition*, according to which any territorial acquisition which is the result of a violation of International Law will not be accorded recognition in interstate relations. The Stimson Doctrine was, in due course, accepted by the League of Nations: hence its proper place in International Law. The "China Affair" of 1937 and the wanton cruelty and barbarism of Japan in conducting this "undeclared war" against China in defiance of every fundamental principle of international law roused the moral indignation of U.S.A.: and in spite of the apathy of the other signatories of the Washington Treaties and the Pact of Paris, U.S.A. started applying economic pressure on Japan with a view to wean the Japanese from the policy of aggression and bring them back within the fold of the International Law and Order. As a reply to that economic pressure Japan "under the crafty cloak of negotiation," made first a treacherous attack on the Hawaii Islands and then declared the present war against U.S.A.

Munich Settlement—a Negation of International Law.

While the Pacific and the Orient were with the high-handedness of Japan, the aggression of Germany in Central Europe reached culmination in what is known as the Munich Settlement of September, 1939, which was supposed "to give us peace in our own times," as Mr. Chamberlain—one of the principal negotiators—announced. From the point of view of International Law this Munich Settlement ought to come in for a careful analysis. (1) At the outset it must be stated that Peace is not simply the absence of war: Peace implies Justice: if Peace is obtained at the cost of Justice, it brings in no tranquility, but ceaseless heart-burning which must burst out again in war. As Q. Wright says, "instead of a merely negative condition peace is considered a positive condition, that in which justice prevails."¹⁷ Robert Regout is quoted as saying "Peace is tranquility in order: it is not tranquility under the yoke of the evil-doer, but tranquility in justice, the harmony of order." In the Munich Settlement war was avoided: but "Peace was broken by violence which defeats justice (crime). (2) What were the legal obligations of the parties concerned in this

¹⁷ *American Journal of International Law*, 1939, p. 14.

settlement?" All of them were bound by the Pact of Paris condemning war and agreeing not to seek the settlement of disputes except by pacific means. If that Pact was an old affair (1928), and political memories being proverbially short, Germany in response to Secretary of State Hull's statement of July 16, 1937, advocating "abstention from the use of force in pursuit of policy," adjustment of international problems by "peaceful negotiation and agreement," faithful observance of International agreements &c.&c., had made the following reply:—"The Reich Government has taken note of the statement of Secretary of State Hull with due interest. Its basic principle is, as is generally known, directed towards the regulation of international relations by pacific agreement and hence coincides with the ideas developed by the Secretary of State." In addition to a number of International Treaties and Conventions binding Germany to peaceful method of settling disputes with any power, there was an arbitration treaty signed at Locarno on October 16, 1925, by which Czechoslovakia and Germany bound themselves with the agreement that all disputes involving "Conflict as to their respective rights" shall be submitted to arbitration or to the permanent Court of International Justice or the Permanent Conciliation Commission. This arbitration treaty, in absence of express termination of it, was legally in force when the Munich Settlement took place. President Benes repeatedly referred to this arbitration treaty when he was finally silenced by the announcement that both France and England thought "that there was no hope of a peaceful solution on this basis, and in the interest of Czechoslovakia and of European Peace the Czechoslovak Government was urged to accept the Anglo-French proposals immediately" which they did on September 21. As a matter of law, Czechoslovakia had a right to demand resort to arbitration: but President Benes' reply in accepting the Anglo-French proposal showed that the French aid promised by special treaty with Czechoslovakia would not be forthcoming if he refused these terms.

(3) What was the position of England and France in this affair? Their intervention at first was that of mediators offering their "good offices," the acceptance of which by Czechoslovakia was voluntary. It implied no coercion and was consistent with the principles of International Law. This was in the earlier stage of negotiations, e.g., the British offer of sending Lord Runciman to Czechoslovakia: but later on, as Britain and France found Hitler's attitude unbendable and the Sudeten problem difficult to solve without the surrender of the territory demanded by Germany, their attitude ceased to be that of mere mediators. It amounted

to a threat that their legal obligations to Czechoslovakia would not be fulfilled if she did not accept the terms offered to her. The last stage was the very worst as they presented Czechoslovakia with almost an ultimatum that she must carry out the decision arrived at in the Munich Conference between France, Italy, Britain and Germany *without the presence of Czechoslovakia at the Conference*. This was nothing short of dictatorial settlement. It is said that even in municipal law there is a provision by which an individual's rights in property or otherwise may suffer in the interest of higher justice which pertains to the urgent needs of the State: but it is also a well-established principle in law that the procedure adopted for the emergency violation of an individual's rights partakes of a judicial enquiry and judicious settlement. In the Munich affair, the procedure adopted was anything but judicial. The Covenant was not invoked: Hitler set his foot on arbitration or Conference method to which President Roosevelt almost entreatingly invited him for the settlement of all the grievances of Germany: even Mr. Chamberlain could not help saying that "if article 19 of the Covenant providing for the revision of the treaties by agreement had been put into operation . . . we might have avoided the crisis. For that omission all members of the League must bear the responsibility." What happened at Munich, could not, by any stretch of the meaning of words, be called a "Peaceful Change." It was an intervention by means of "a high and summary procedure" not known to law. It might have suited the age of the Concert of Europe in the 19th century. It did not in any way conform to the procedure required by the Hague Conference or the Post-War Treaties and Conventions. Quincy Wright sums up the position "it placed the substance of the settlement ahead of the procedure by which it was achieved". . . . "Constitutional Government consists in a determination of the citizens of the state that adherence to the procedures set forth in the constitution shall be treated as more important than any specific grievance, demand, or reform. Until the people of the world are similarly determined to place procedures ahead of substance we may expect the world to alternate between dictates of Versailles and dictates of Munich, with little respite from wars and rumours of wars."¹⁸

Is there any possibility for "Peaceful Change?"

Treaties that were supposed to give law to the world have, in more recent times, been torn to shreds; and the sword has once

¹⁸ *American Journal of International Law*, 1939, p. 32.

again been made the arbiter of the destinies of nations. Does this mean that International Law is in the grave and shall never know Resurrection? Let us recall what the function of law is,—whether in the municipal or in the International sphere. Law gives stability to man's relations with fellow-men. It imparts security to human life and all human undertakings. It also provides man with a wide field of *liberty* which he can use even for demanding a change in law. If a state is without the constitutional machinery for a free and frank expression of opinion for obtaining a change in law, the result is either stagnancy or revolution, *i.e.*, a change by violent means. "A State without the means of renovation is without the means of preservation."¹⁹ "Constitution is the prophylactic of Revolution."²⁰ Law performs a two-fold function: (1) it puts an end to strife, *i.e.*, it gives peace, but (2) that Peace is based on Justice. Without Justice there is no Peace: therefore no law. All this is mere truism, so familiar to every individual member of a State so far as municipal law goes. In the field of the law of contract, there is the well-known safety-valve in *rebus sic stantibus*, "the radical change of circumstances" which makes the fulfilment of the terms of the contract impossible and no tribunal completely ignores that plea of *rebus sic stantibus* when fitted against *Pacta sunt Servanda*. Further, there is also the limited field for the judge-made law or judicial legislation when in the process of interpreting law applicable to a particular case before him, the judge's decision gives a slightly different turn to law almost amounting to a new enunciation of Law. But after all it is the State Legislature that does all the *real* modification in law or addition to law in accordance with the changed conditions of the society. If the legislature for any reason of vested interest or inertia or the ruling class conservatism is unable to make an adequate response to the popular demand for a substantial change in national law, the State stands in danger of facing a Revolution which, if successful, puts the changed social fabric on the new basis of changed law.

What is the position corresponding to this Peaceful or Violent Change in International Law? Treaties form the best part of the positive law in the international field. The Post-World War developments since 1919 have given an international *legal* status to (1) Arbitration Tribunal, (2) Conciliation Commission, (3) Permanent Court of International Justice, (4) the Council and finally, (5) the Assembly of the League of Nations working under

¹⁹ Burke, *Reflections on the French Revolution*.

²⁰ President Masaryk.

the Covenant. Further, to all interests and purposes, war was supposed to have been eliminated from the national policy of every state by the terms of Covenant strengthened by the bindings of the Pact of Paris (1928) for the Pacific Settlement of International Disputes. War in the International field was formerly known as the violent means for effecting a radical change in the treaty relations between states, serving the same object as a Revolution within the State. The Post World War International Law declared war mostly illegal and refused a legal recognition to any acquisition obtained by violent means,—war or a threat of war. Whether it made sufficient provision for a “Peaceful Change” through the machinery of Law aiming at justice has become a debatable point. The machinery in the shape of the two most important bodies—the Permanent Court of International Justice and the Council of the League—was there. But the *optional* clause in regard to the first left it entirely to the choice of the State, whether or not it should enter into a previous agreement with another State specifically named, for compulsory resort to the Court,—still possessing the right to discriminate between the justiciable and non-justiciable cases (*i.e.*, cases involving vital interests, national honour and independence, as reservations). Utmost deference still continued to be paid to the principle of national Sovereignty in the matter of judicial or arbitral or conciliatory settlement. Within the field of municipal law no national of any state has any means of obtaining justice in regard to any ‘vital’ matter except through the law-court of his state. What was in the mind of President Taft, was now (since 1920) being institutionalised through the agency of the Permanent Court of International Justice: but the doctrine of National Sovereignty nullified the good results expected of the new institution of justice.

The International Law of to-day is not without the influence of *rebus sic stantibus*, provided it is the recognised International Tribunal that is made the judge or the referee who will go into the case and be satisfied on the score of “change in conditions and circumstances” making the fulfilment of the contract as embodied in the treaty impossible. Dictatorial decision of a single state on the basis of *rebus sic stantibus* should be as much unknown to International Law as it remains unrecognised in municipal law.

But the treaty may be *ab initio* absurd, as was the case with several clauses in the Treaty of Versailles (1919). The conditions imposed may be impossible of fulfilment. Here there is no reference to *rebus sic stantibus*. Here arises the real issue for securing peace, *i.e.*, by doing justice with the outright *revision* of the Treaty. Article 19 of the Covenant makes some provision

for this gap in the present International Law: It may be read again:—

“The Assembly may from time to time advise the reconsideration by members of the League of Treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.”

The terms are wide enough. The article covers treaties coming under the *rebus sic stantibus* (of course by a judicial process!) or “physically impossible” whose continued performance is not feasible. It applies to all executory treaties including claims for territorial change which, if not admitted, “might endanger the peace of the world.” President Wilson was insistent on the inclusion of this article 19 in the Covenant. To him it appeared as the safety-valve against a possible national outburst which may take the dangerous turn of war. *No status quo for ever!* Indeed, says Josef Kuntz “Pacta sunt servanda illustrates stability and security: but it does not mean that valid treaties may not be changed . . . it does not possess the superpositive quality of unchangeability”²¹ Article 19 was the first indication of a common desire to revise treaties and let law in the international field recognise the dynamic character of inter-state relations, as it appropriately responds to social changes within the state by the modification of old laws or by the passing of new ones through the State Legislature. “Article 19 is the first deliberate attempt to create an institution of peaceful change within the framework of a comprehensive system of legal organisation. It is the first instrument to provide for periodic revision of the international *status quo* as the task of the international community.”²² But article 19 only suggests some advisory arrangement. This was another—but a very blasting concession to the national sovereignty—provided for in the Covenant. With the Optional Clause in the operation of the Statute for the Institution of the Permanent Court of International Justice and with the advisory nature of the result of the deliberation on the revision of the Treaties in article 19, International Legislation has none of the obligatory character that national state legislation has. Finally, in the matter of enforcement of law again utmost deference has been paid to the Sovereignty of the State inasmuch as even after the League decided to apply sanctions against the law-breaking aggressive state, it has been left to each sovereign

²¹ *American Journal of International Law*, 1939, p. 43. Josef Kuntz.

²² Manning, *Peaceful Change*, p. 156; Lecture by Lauterpacht on *The Legal Aspect (Peaceful Change)*.

State to decide whether or not to enforce the decision of the League. This option does not enable international law to operate on the basis of municipal law of "Hue and Cry" which obligates every citizen to catch the law-breaker and help bring him to book. All told, International Law with its deference to national Sovereignty is still far off from achieving "Peaceful Change" by having recourse to legal and constitutional methods.

The Way Out.

In the first part of the article it was pointed out that only those treaties of the past survived which had, directly or indirectly, the *consent* of the people behind them,—or rather, which were the outcome of the demand of the People to satisfy some want experienced by them in their international relations. The modern constitutional governments have a provision for the ratification of treaties (e.g., the U.S.A. Senate with the two-thirds majority) indicating the acceptability of the treaty or otherwise by the People. Restoration from the present world chaos to the Rule of Law and Order is dependent, first and foremost on the *common will of the People* all over the world to renounce War and work for the Organization of Peace based on Law and Justice. If it is true that at present the world is ideologically divided between Dictatorship and Democracy, and that the former really means the building-up of a sort of World-Empire on partnership in Force, there is little room for the restoration of International Law based on common consent and common will which Democracy alone can supply. The *Pax Romana* did not last long; nothing but active co-partnership of all the citizens of the world can impart durability and progress to the Law that governs the community of Nations. The 'person' in the International Law is the State, whereas time has come when the 'individual citizen' of the State feels vitally interested in the making as well as in the working of this International Law. His national-municipal law gives him no immunity from war which with its scientific destructiveness and in its totalitarian character now makes life impossible for him. International Law must further make that appeal to the Citizen which makes him realize, in spite of the agitation of vested national interests, that national independent Sovereign State with its corollary of Economic Nationalism obviously does not serve all the purpose of his existence in the face of rapidly growing interdependence in the international world. Indeed, there was a time in the history of the social evolution of man when the Sovereign national State was a necessity and perhaps the goal of state citizenship, even from the point of view of Rule of Law.

But in the present times if social justice within the State itself is to be achieved and social order in inter-state relations is to be a permanent feature of life based on law and not order imposed by Force (which is always transient), the citizen must assert his 'personality' in the making of International Law and all its Paraphernalia—Treaties, International Legislation, Courts of Arbitration, Conciliation and Justice. Some powerful federative principle must take hold of the citizen's reason and imagination which should enable him not to spend *all* his loyalty over the nation-State but to accept the Super-State idea as the only possible way out for achieving a 'fuller' life which his national state can never guarantee him, no matter what tempting offers the Axis "new order" may make. Treaties will then only be a part of International Law when People whom Treaties will affect are International-minded: then the International Legislatures²³ will modify the Treaties with changing times: then the International Courts of Justice and Equity will give their award on them with all possible consideration for *rebus sic stantibus*—but there shall be no optional Clause leaving it to the nation's choice to come to law or to defy it. This view may appear chimerical when the world order is actually on throes precisely because of intense nationalism; but it is pain and suffering alone that suggest a radical remedy. The defeat of the Dictators followed by a Peace based on ideas of perpetual Organisation of Peace will easily reconcile rabid nationalists to the idea of World Federation. Till that is achieved Treaties will always be under the fear of being reduced to mere 'scraps of paper.'

²³ "We are not at liberty to regard international legislation in its true meaning as an infinite ideal. It may not be compatible with the dignity of human life to a ~~act on any other~~ assumption that reason and order are bound to prevail ~~not only~~ ultimately but in our day." (Manning, *Peaceful Change*, pp. 64-65). Lanterpacht *The Legal Aspect*,

THE GROWTH OF ADMINISTRATIVE JUSTICE IN THE PUNJAB UNDER PROVINCIAL AUTONOMY

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It is not the object of this article to defend or to criticise the controversial legislation which has been enacted in the Punjab since the inauguration of provincial autonomy in April 1937. It merely aims at a critical analysis of an aspect which has not been duly emphasised and discussed either in the press or from the platform. That aspect is the growth of administrative justice.

Not entering into lengthy controversies regarding the difference between rule of law, administrative law (*Droit Administratif*) and administrative justice, the term administrative justice has been taken to imply the transfer of judicial functions to authorities other than the ordinary courts of law. It is in this sense that administrative justice has grown in England during the current century and it is in the same sense, with important modifications, that there has been an enormous growth of administrative justice in the Punjab.

Under the Punjab Restitution of Mortgaged Law Act, 1938, a mortgagor to whose land the provision of the Act apply, may at any time, present a petition to the Collector, praying for the restitution of the possession of the land mortgaged.¹ It is the business of the Collector to decide whether the Act applies to the mortgagor or not.² If his finding is in the negative, he dismisses the petition.³ But if the Collector finds that the Act applies to the petitioner and also the value of benefits enjoyed by the mortgagee while in possession, equals or exceeds twice the amount of the principal sum originally advanced, he may order the extinction of the mortgage.⁴ After declaring the rights of the mortgagee extinguished, the Collector may eject the mortgagee and order delivery of possession of the mortgaged land to the mortgagor. In case of resistance, the Collector may exercise all

the powers conferred on a civil court by rules 97 and 98 of Order XXI of the Code of Civil Procedure.⁵ If there is any dispute between persons claiming to be entitled to compensation, the Collector may decide the dispute himself or order the sum deposited by the petitioner not to be paid to any one till the contesting persons had had their rights decided by a competent court of law.⁶ An appeal can be taken from the order of the Collector to the Commissioner and from that of the Commissioner to the Financial Commissioner.⁷ An appeal is to be submitted in the form of a memorandum accompanied by an attested copy of the order appeal.⁸ An appeal is to be heard on a date fixed for the purpose and the procedure in force for the reception, hearing and disposal of appeals by Revenue Officers under the Punjab Tenancy Act is to apply as far as possible.⁹ The period of limitation for an appeal is 60 days for Commissioner and 90 days for Financial Commissioner.¹⁰ Last but not least, it is laid down that "no civil court shall have jurisdiction to entertain any claim to enforce any right under a mortgage declared extinguished under this Act, or to question the validity of any proceedings under the Act."¹¹

Under the Punjab Alienation of Land (Second Amendment) Act, 1938, it is the Deputy Commissioner who decides whether a person is a member of a notified agricultural tribe or not.¹² In passing an order, he is not "bound by any decree of a civil court," and he may review even a previous order passed under Section 4 (2).¹³ If the Deputy Commissioner is satisfied, either of his own motion or on the application of the alienor, that an alienation is void, he shall order in writing, after recording his reasons, the ejectment of any person in occupation of the land under such sale, exchange, gift, will, mortgage, lease or farm, and place the alienor in

⁵ *Ibid*, Sec. 9. The Collector may have to issue a warrant directing the petitioner to be put into possession of land and that warrant shall be returned to him after execution. (Rule 14, *Pb. Restitution of Mortgaged Land Rules, 1939.*)

⁶ *Ibid*, Rule 19.

⁷ *Ibid*, Sec. 10.

⁸ *Ibid*, Rule 20 (1)

⁹ *Ibid*, Rule 21.

¹⁰ *Ibid*, Sec. 11.

¹¹ *Ibid*, Sec. 12.

¹² *Pb. Alienation of Land (Second Amendment) Act, 1938*, Sec. 4 (2).

¹³ *Ibid*, Sec. 4 (3).

¹ *Pb. Restitution of Mortgaged Law Act, 1938*, Sec. 4.

² *Ibid*, Sec. 5.

³ *Ibid*, Sec. 6.

⁴ *Ibid*, Sec. 7.

possession. The Deputy Commissioner may give some compensation for the improvements made in the land. For the purpose of ejectment, the Deputy Commissioner may exercise all the powers of a civil court conferred by Order 21, Rules 97 and 98 of the Code of Civil Procedure. An appeal shall lie from an order passed in original or on review by a Deputy Commissioner, to the Commissioner, and to the Financial Commissioner when the order is passed by the Commissioner. The Financial Commissioner may at any time call for the record of any proceedings pending before or disposed of by the Deputy Commissioner and shall pass such orders as he thinks fit. But he is not to pass any order reversing or modifying any such order without giving the persons concerned an opportunity of being heard.¹⁴

Under the Punjab Motor Spirit (Taxation of Sales) Act, 1939, no person is to deal in motor spirit without a licence which is to be granted by the Petrol Taxation Officer, appointed by the Financial Commissioner.¹⁵ If the licence of a person is suspended or cancelled by the Petrol Taxation Officer, he may appeal to the Commissioner if the order is passed by the Collector, or to the Collector if the officer in question is any other person exercising the powers under this Act. Every order passed in appeal is to be final. No further appeal can be taken against the decision of a Commissioner or Collector to any civil court of law. But the Financial Commissioner may call for the order or the proceedings of a case to satisfy himself as to the legality or propriety of the order and the regularity of proceedings and after that pass such orders as he thinks proper.¹⁶

Under the Punjab Registration of Money-lenders Act, 1939, all money-lenders have to get themselves registered and secure a licence for that purpose. The Collector has the power to cancel the license.¹⁷ But an appeal may be brought against that order to the Commissioner who may accept or dismiss the appeal.¹⁸ When an appeal is filed to the Commissioner against an order of the Collector, the former will invite the latter to make such comments as he may consider necessary in connection with the grounds of appeal.¹⁹ A Commissioner may review his own order at any time within 30 days.²⁰ Against the spirit of the rule of law, the

¹⁴ *Ibid.*, Sec. 5.

¹⁵ *Ibid.*, Sec. 6, 8 and 20.

¹⁶ *Ibid.*, Sec. 22.

¹⁷ Pb. Registration of Money-lenders Act, 1939, Sec. 6.

¹⁸ *Ibid.*, Sec. 7 (1).

¹⁹ *Ibid.*, Rule 20 (2).

²⁰ *Ibid.*, Sec. 7 (5).

Provincial Government is authorised to exempt, by a notification to that effect, any person or class of persons from the operation of this Act or any provision thereof.²¹

Under the Punjab Agricultural Produce Markets Act, 1939, it is the Collector who decides in cases of dispute as to whether a particular person is a "grower" for the purposes of law or not, and his decision is final.²² Thus, no appeal is provided for against an order of the executive which may be arbitrary and prejudiced. No person is to trade in agricultural produce in a notified market area unless he has got a license for that purpose. That license may be cancelled or suspended by an officer entrusted with that work by the government. But it is to be seen that the suspension or cancellation is not to be for more than 5 months or 9 months, according to the seriousness of the matter. It is laid down that no such order is to be passed unless the licensee has been given an opportunity to explain and defend himself.²³

The growth of administrative justice has taken its extreme form in the constitution of the Debt Conciliation Boards. It is true that the Punjab Relief of Indebtedness Act was passed in 1934 but in 1940 important amendments were made. The present position is as follows:—

It is the Local Government which has the power to set up Debt Conciliation Boards for the purposes of amicable settlement between the debtors and creditors and also define the area of their jurisdiction and the powers to be exercised by them. Each Board is to consist of a Chairman and two or more members to be appointed by Local Government. The quorum of a board is to be prescribed by the Local Government. Likewise the Government can cancel the appointment of any member of a board or dissolve any board.²⁴

A debtor or any of his creditors may apply to the Board to effect a settlement between the debtor and his creditors. But no application is to be made if the debtor's debt exceed ten thousand rupees or such larger sum as the Local Government may prescribe from any particular area.²⁵ The Board has the power to dismiss at any time the application if it does not consider it desirable to attempt to effect a settlement.²⁶ The Board is to

²¹ *Ibid.*, Sec. 12.

²² Pb. Agricultural Produce Markets Act, 1939, Sec. 2(c).

²³ *Ibid.*, Sec. 6.

²⁴ Pb. Relief of Indebtedness Act, 1934, Sec. 8.

²⁵ *Ibid.*, Sec. 9.

²⁶ *Ibid.*, Sec. 12.

publish a notice calling upon all the creditors of the debtor to submit a statement of their debts within a specified period. If any creditor fails to submit the required statement, his claim is cancelled for all times. In case, a creditor does not appear in person or through an agent, his debt is also to be deemed to have been fully discharged.²⁷ The Board is to call upon the debtor and each creditor to explain his case regarding each debt and use its best efforts to induce them to arrive at an amicable settlement.²⁸ If a creditor or debtor challenges the genuineness or enforceability of any debt included in an application, the Board is to give its judgment. An appeal may be taken against the judgment of the Board to the Collector or such other officer, not below the rank of an Assistant Collector of the first grade, as the Provincial Government may appoint in this behalf.²⁹ But no appeal shall lie from an order refusing to review a previous order.³⁰ Likewise, no appeal or application for revision shall lie against a decision of the Board unless the aggregate value of the items in regard to which the appeal is preferred, exceeds Rs. 2000/-. Above all, it is clearly laid down that "no order passed under this section shall be open to question in a civil court."³¹ Thus, the jurisdiction of the ordinary courts of law is definitely and categorically ruled out.

An agreement arrived at by the Board "shall take effect as if it were a decree of a civil court having jurisdiction" in that area.³² If in the opinion of the Board, any applicant fails to conduct his application with due diligence, the Board may dismiss the application at any stage.³³ If during the hearing of an application, any creditor refuses to come to an amicable settlement, the Board may, if it is satisfied that the debtor has made the creditor a fair offer, grant the debtor a certificate of the debts owed to the creditor and no court will allow creditor any costs in a suit or any interest on the debt after the date of certification.³⁴

No Civil Court shall entertain any suit, appeal or application for revision to question the validity of any procedure or

²⁷ *Ibid*, Sec. 13.

²⁸ *Ibid*, Sec. 15.

²⁹ *Ibid*, Sec. A.

³⁰ See also Sec. 22, *ibid*.

³¹ *Ibid*, Sec. 15. A.

³² *Ibid*, Sec. 17.

³³ *Ibid*, Sec. 18.

³⁴ *Ibid*, Sec. 20.

the legality of any order or agreement made or certificate issued under this Act; or to recover any debt recorded as wholly or partly payable under an agreement made in accordance with Section 17 from any person who, as a debtor, was party to such agreement; or to recover any debt which has been deemed to have been duly discharged under the provisions of this Act; or entertain any application to execute a decree the execution of which is suspended under Section 20; or any suit for a declaration, or any suit or application for injunction, affecting any proceedings under this Act before a Board.³⁵

The institution of the Debt Conciliation Board has been, with justice, criticised on the ground that its members who are appointed by the Government, are hardly fitted for the task that is entrusted to them. Their appointment is merely the reward of the services rendered by them to the party in power. Their educational qualifications and mental development make the trial nothing short of a farce. Their decisions are coloured by the party-bias. Moreover, the debtors are given greater representation on the Board than the creditors although the interests of both are equally involved. Unlike the practice followed in the judiciary, not only are the members appointed by the Government, they can be removed also by it. That goes against the independence of the Board and leaves room for the operation of the extraneous influence in its decisions.

Under the Punjab Immovable Property Tax Act, 1940, if a person is not satisfied with the order of the assessing authority of the area, he may appeal against that order to the Collector of the district or such other officer as the Provincial Gazette may by notification appoint for this purpose. (Section 10(1)). Moreover, the Commissioner or some other officer appointed by the Provincial Government may of his own motion or on application made, call for the record of any proceeding or order of any authority for the purpose of satisfying himself as to the legality or propriety of such proceeding or order and may pass such order as he thinks fit.³⁶ It is specifically laid down that "no civil court shall have jurisdiction in any matter which the Provincial Government or an assessing authority or any officer or servant is empowered by this Act or the rules made thereunder to dispose of, or take cognizance of the manner in which the Provincial Government or any assessing officer, or servant exercises any powers vested in it on him by or under this Act or the rules made

³⁵ *Ibid*, Sec. 21.

³⁶ Punjab Immovable Property Tax Act, 1940, Sec. 23.

thereunder." Thus, there is no avenue to have redress against the arbitrariness of the executive in case it decides to be so.

Under the Punjab General Sales Tax Act, 1941, if the assessing authority is not satisfied with the statement regarding the turn-over submitted by the dealer and considers it as incomplete and incorrect, it may proceed to determine it of its own accord. But the dealer is to be given reasonable opportunity of proving the correctness and completeness of his statement.³⁷ The assessee can appeal against the assessment not to a civil court but to such authority as may be prescribed by the Government. The appellate authority may pass any orders it pleases. But that is final,³⁸ and no further action can be taken in any court of law. However, the Financial Commissioner has been given the power of revision and he may in his discretion at any time of his own motion or on application call for and examine the record of any order passed by or any proceedings recorded by any officer or person under this Act for the purpose of satisfying himself as to legality or propriety of such order or the regularity of such proceedings and may pass any order he thinks fit.³⁹

Under the City of Lahore Corporation Act, 1941, the Corporation, the Standing Committee or the Chief Executive Officer, as the case may be, is to remedy forthwith defects or irregularities that may be pointed out by the auditor and report to the Provincial Government the action taken. But if there is a difference of opinion between the municipal authority and the auditor, or if the municipal authority does not remedy any defect or irregularity within a time considered by the auditor to be reasonable, the matter shall be referred to the Provincial Government within such time and in such manner as the Provincial Government may prescribe, and the Provincial Government shall be entitled to pass such orders as they think fit. The orders of the Provincial Government shall be final.⁴⁰ In the chapter on Building Control, it is provided that "no civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this chapter required to be settled, decided or dealt with by the Corporation or the Chief Executive Officer."⁴¹ Further, if any person aggrieved by any order passed under this Act or under any rule or bye-law made thereunder, does not receive the redress to which

³⁷ Punjab General Sales Tax Act, 1941, Sec. 8.

³⁸ *Ibid*, Sec. 10.

³⁹ *Ibid*, Sec. 11.

⁴⁰ City of Lahore Corporation Act, 1941, Sec. 10, (1).

⁴¹ *Ibid*, Sec. 275.

he considered himself entitled, he may appeal to any municipal officer who has been appointed by the Chief Executive Officer to hear such appeals, or failing such appointment, to the Chief Executive Officer. Any order passed by any municipal officer shall be subject to revision by the Chief Executive Officer. But if the original order has been passed by the Chief Executive Officer himself the appeal shall lie to the Provincial Government or such person as it may direct.⁴² It is evident how the jurisdiction of the ordinary courts is ruled out.

In order to hold an inquiry regarding elections, the Provincial Government is authorised to appoint a Commission⁴³ which is to enjoy the powers vested in a court under the Code of Civil Procedure, 1908.⁴⁴ When the inquiry is completed, the Commission is to submit a report. The Provincial Government then passes orders either declaring the candidate duly elected or removed. Such orders shall be final.⁴⁵ It is clear that the machinery of the ordinary courts does not figure anywhere in the whole procedure.

From what has been said, it is not to be concluded that the Unionist Government introduced any novelty into the administrative system. Under the Punjab Consolidation of Holdings Act which was passed in 1936, it was laid down that any person aggrieved by an order of the Consolidation Officer may take an appeal to the Collector. A second appeal may be taken to the Commissioner whose authority is final.⁴⁶ The Local Government may, by notification, invest the Registrar with the powers of a Commissioner or Collector under this Act, and an Assistant, Deputy or Circle Registrar with those of a Collector.⁴⁷ It was also laid down that "no civil court shall entertain any suit instituted, or application made, to obtain a decision or order in respect of any matter which the Local Government or any officer is, by this Act, empowered to determine, decide or dispose of."⁴⁸

Similarly, it was provided in the Punjab Debtors' Protection Act, 1936, that whenever a civil court ordered that land be attached and alienated temporarily for the payment of money,

⁴² *Ibid*, Sec. 372.

⁴³ *Ibid*, Sec. 410.

⁴⁴ *Ibid*, Sec. 411.

⁴⁵ *Ibid*, Sec. 418.

⁴⁶ Punjab Consolidation of Holdings Act, Sec. 9.

⁴⁷ *Ibid*, Sec. 21.

⁴⁸ *Ibid*, Sec. 22.

the proceedings were to be transferred to the Collector.⁴⁹ It was up to him to decide the period of alienation.⁵⁰ If a person took exception to the order of the Deputy Commissioner, he had the right of appeal to the Commissioner who while hearing appeals was to be deemed to act judicially and in accordance with the provisions of the law applicable to a civil court of law.⁵¹

Likewise, under the Tobacco Vend Fees Act, 1934, a person dealing in tobacco has to secure a license for that purpose. If a dealer contravenes any of the conditions on which he has been given a license, the Collector may suspend or cancel it.⁵² Every Excise Officer, not below a certain rank, has powers to investigate all offences punishable under this act.⁵³ He is authorised to grant bail to any person arrested without warrant for an offence punishable under the Act.⁵⁴

A distant example is that of the Sikh Gurdwaras Act, 1925. Under this, the Government was empowered to institute one or more Tribunals from time to time. A Tribunal is to consist of a President and two members.⁵⁵ It is to decide cases regarding property in dispute between Gurdwaras and other parties.⁵⁶ It is to settle the issue whether a Gurdwara is a Sikh Gurdwara or not,⁵⁷ and what compensation, if any, is to be granted to those who occupied the *Gaddi* of Gurdwara and who are dislodged from their place.⁵⁸ It is laid down that suits pending in courts at the time of the commencement of the Act, are to be transferred to the Tribunal.⁵⁹ It is provided that "no case shall be instituted and no court shall entertain or continue any suit or proceeding in so far as that concerns a notified Sikh Gurdwara regarding its management or the restoration of any person to an office in the Gurdwara."⁶⁰ But an appeal can be taken to the High Court from the Tribunal within 90 days.⁶¹

⁴⁹ Punjab Debtors' Protection Act, 1936, Sec. 4.

⁵⁰ *Ibid.*, Sec. 4.

⁵¹ *Ibid.*, Sec. 6.

⁵² Tobacco Vend Fees Act, 1934, Sec. 5.

⁵³ *Ibid.*, Sec. 8.

⁵⁴ *Ibid.*, Sec. 9.

⁵⁵ Sikh Gurdwaras Act, 1925, Sec. 12.

⁵⁶ *Ibid.*, Sec. 14.

⁵⁷ *Ibid.*, Sec. 16.

⁵⁸ *Ibid.*, Sec. 14.

⁵⁹ *Ibid.*, Sec. 32.

⁶⁰ *Ibid.*, Sec. 29.

⁶¹ *Ibid.*, Sec. 34.

Thus it is clear that in 1925, a step had been taken in the direction of administrative justice and the ordinary courts had been specifically debarred from trying certain cases. But the sense in which the Unionist action differs from the previous ones is that while before the inauguration of provincial autonomy, legislation which delegated judicial powers to the executive, was rare, it was more in the form of an exception than a rule, the Unionist Government preferred to rely more on the executive authorities rather than the ordinary judicial machinery for the realisation of those objects for which their legislation was enacted. Whatever the cause, the fact remains that while the executive sphere of activity was widened, that of the judiciary was narrowed. Readers may judge for themselves the desirability or otherwise of such a policy.

While it cannot be denied that the modern trend towards the transfer of judicial functions into the hands of the executive is the outcome of certain factors, e.g., the growing complexity and technicality of the laws and inability of the ordinary courts to understand all their implications *vis-à-vis* the administrative departments, the fact remains that the executive should not be entrusted with judicial powers without any check being put on it. There must be some authority if not to review the decisions of the executive, at least to hear those cases in which proceedings have not been conducted according to the prescribed procedure. It might be pointed out that in many cases, the Financial Commissioner has been given the authority to review the decisions of the Commissioners and the Deputy Commissioners, but the people may not believe in the impartiality of the Financial Commissioner who is also a part of the same administrative machinery to which the Commissioner and the Deputy Commissioner belong. It is desirable that as in the case of the Sikh Gurdwaras Act, appeals can be taken to the High Court, similarly the judiciary must be given the authority to intervene at a stage when it becomes out of the question for a person to get justice from the executive.

The necessity of the use of the machinery of the judiciary which is famous for its impartiality is increasing day by day because of the party legislation which is being enacted in every sphere. It is desirable that more use should be made of the judiciary and not less as is evident from the perusal of the legislation in question. To borrow the phraseology of the individualists since the growth of administrative justice may be a necessary evil, it is desirable that we should have less of it and wherever possible, provision should be made for a final appeal to the ordinary courts of law.

A NOTE ON AN ARTICLE BY DR. J. N. KHOSLA ENTITLED
 "HOW FAR ARE THE PROCEEDINGS OF LEGISLATIVE
 BODIES, PUBLISHED WITHOUT THEIR AUTHOR-
 ITY, PRIVILEGED IN INDIA?" PUBLISHED IN
 THE INDIAN JOURNAL OF POLITICAL
 SCIENCE, VOL. IV, NO. 1, JULY-
 SEPT., 1942 NUMBER

Dr. Khosla's valuable survey of the 'privileged' position of the proceedings of the legislature even in India has turned out to be a little premature. Whereas he concluded that 'unauthorised reports of legislative bodies in India . . . are privileged in India,' the Punjab Premier—and following him the Indian press—thought otherwise when the government prohibited the publication of any news, comments or editorial notes on the strike breaking activities of the police at Lahore during the strike of the shopkeepers as a protest against the Sales Tax. The Assembly was in session, the matter was brought up for discussion there and the Premier declared that as long as the prohibition imposed by the government lasted, even 'fair, accurate, and without malice' publication of anything said in the assembly about the strike would be punishable. The hint was taken by the Punjab press and no 'prohibited' matter even when following part of the proceedings of the Assembly was published. Of course the Premier might have been wrong in his interpretation of the law, but as in the absence of positive law, a privilege can only arise by the non-activity of the executive government, it is submitted that it cannot be held that unauthorised publication of proceedings is under the circumstances privileged in India.

SRI RAM SHARMA.

THE INDIAN POLITICAL SCIENCE ASSOCIATION

Report on Research Theses in Political Science, completed or under preparation in Indian Universities.

The Indian Political Science Association adopted the following resolution at its Fourth Annual Conference in Bombay on 2nd January, 1942:

"The Managing Editor of the Journal be requested to print in one issue of the Journal every year the list of theses completed or under preparation for a research degree in Political Science at each Indian University."

Accordingly, the various universities were circularised by the Editor. The reports received may be summarised as follows:

(i) LIST OF DOCTORATE THESES IN POLITICAL SCIENCE,
 COMPLETED OR UNDER PREPARATION IN
 DIFFERENT INDIAN UNIVERSITIES.

1. ALLAHABAD

- | | | |
|--|-------------------|--------------------------------|
| 1. Nepal and its relations with the East India Company (1760—1861) | B. D. Sanwal | Under Preparation for D. Phil. |
| 2. Political Theory in the Dharma Shashtra Literature ... | Ram Kishore Gupta | " |
| 3. The Development of the Provincial Administration in British India ... | Ram Chandra Varma | " |

2. DACCA

- | | | |
|-----------------------------------|------------------------|------------------------|
| 1. Executive Justice in India ... | Amulya Kumar Mukerjee. | Completed for D. Phil. |
|-----------------------------------|------------------------|------------------------|

3. LUCKNOW

- | | | |
|--|-----------------|-----------|
| 1. India, Opium and the League of Nations... | Salig Ram Nigam | Completed |
| 2. Provincial Autonomy in the U. P. | P. N. Masaldan | " |
| 3. Political Philosophy of Mahatma Gandhi... | G. N. Dhawan | " |
| 4. Rural Government in the U.P.... | Zahurul Hasan | " |

5. Dyarchy in the U.P. ...	Amir Ahmad Abidi	To be Completed Shortly
6. Government and Administration of Kashmir ...	Harnam Singh	"
7. Government and Administration of Travancore ...	N. V. Rajkumar	"
8. Chamber of Princes ...	R. P. Bhargava	Under progress.
9. Evolution of Political Parties in the Indian Central Legislature.	R. N. Asthana	"
10. Mandate System with Special Reference to Palestine ...	S. C. Sinha	"
11. Federal Upper Houses with Special Reference to India ...	L. P. Choudhry	"
12. State and Social Legislation in India ...	B. C. Srivastava	"
13. Constituent Assemblies with Special Reference to India. ...	Gyanendra Tiwari	"
14. Indian Emigration to South Africa ...	P. N. Mehrotra	"
15. International law in Ancient India ...	J. C. Sharma.	"

4. MADRAS

1. District Administration in India Under the Crown ...	K. J. Jacob	Under Preparation for D. Litt.
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5. NAGPUR

1. An Anthropological Study of the Gond Tribes in the Central Provinces and Berar ...	M. P. Buradkar	Under Preparation for Ph. D.
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6. THE PUNJAB

1. The Organisation of War and Peace in Ancient India (600 B. C. to 700 A.D.) ...	Indra, M.A.	"
2. Legislative Authority in British India (1833—1892)...	P. N. Malhan	"
3. Local Self-Government in the Punjab (1880—1935) ...	Bodh Raj Sharma	"
4. Franchise and Its Exercise in the Punjab under the British ...	P. L. Sabgal	"
5. The Problem of the N.-W.F. of India ...	Anup Chand Kapur	"

6. The Development and Administration of Municipal Finance in the Punjab (1871—1938) ...	S. Hardyal Singh	Under Preparation for Ph. D.
7. Social Legislation in India excluding Labour Legislation ...	Parakashanand	"
8. Working of the Elected Legislature in the Punjab (1921—1937)	Sham Lal Varma	"
9. Executive Control over Municipalities in the Punjab...	Vidya Dhar Mahajan	"

Information received from Aligarh, Annamalai, Delhi, Mysore, Osmania, Travancore and Patna Universities shows that there are no research degree theses for doctorate in these universities. In regard to Agra and Bombay Universities, no information has yet been received from their affiliated colleges. It will be published as soon as it is received.

(ii) LIST OF M. LITT. THESES

1. MADRAS

1. Financial Administration of Local Bodies in the Madras Presidency	K. Jayaraman	Completed for M. Litt
2. Bureaucracy in India ...	R. Satakopan	Under Preparation for M. Litt.
3. Indians Overseas ...	K. Chenchaiiah	"
4. Jail Administration in the Madras Presidency. ...	Miss N. Singanmal	"
5. Police Administration in the Madras Presidency ...	V. T. Titus	"
6. Panchayat Administration in the Madras Presidency ...	Ramakrishnayya	"
7. The Governor of Fort St. George in the 20th Century ...	M. S. Balasubramanyan.	"
8. The Financial System of Some South Indian States ...	P. K. Panikker	"
9. Social Legislation in India ...	V. Jagarnadan	"
10. The Problem of Minorities with Special Reference to India ...	Miss A. Joseph	"

(iii) LIST OF M.A. THESES IN POLITICAL SCIENCE

1. LUCKNOW UNIVERSITY

Every year there are about half a dozen M.A. theses in Political Science since 1922. So far there have been more than 100 such theses. The list communicated by the Department of Political Science, Lucknow University, and given below gives the theses for 1942 only and for the rest the Registrar, Lucknow University, may be approached:—

1. The Problem of Minorities in India with special reference to the Muslims ... Mohammad Asif Kidwai
2. Problem of Second Chambers with special reference to India ... Shilendra Singh
3. Government and Administration in the Jammu and Kashmir State ... Indra Bhusban
4. The Problem of Minorities with special reference to the Scheduled castes in the U.P. ... Piare Lal
5. Contemporary Political Thought in India ... Shiv Chand
6. The Problem of Second Chambers in India with special reference to the U.P. ... Md. Hashim Kidwai

2. OSMANIA UNIVERSITY, HYDERABAD

1. 1937 Development of Provincial Government in British India ... K. Ishwar Chandra Vidya-sagar
2. 1937 The Constitutional Development of the British Empire from 1918 to 1938 ... Hanumanth Rao Manvikar
3. 1933 Theory of Federalism and its application to Indian conditions ... Gopal Rao
4. 1938 Indian Political atmosphere and its reactions on the Constitution of Modern India ... Khwaja Isa Ahmed
5. 1939 Totalitarian tendencies in the Modern State ... Shahid Husain Razzaqi
6. 1940 Indian States and Federation ... Ahmed Siddiqi
7. 1942 Political and Cultural Principles of Dr. Rabindra Nath Tagore ... R. Aqil Ali Khan

Lists of M.A. research theses in any other Universities will be duly published in the Journal as soon as they are received.

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 Agra 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.*

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.

10th February, 1942.

Yours Sincerely,
J. N. KHOSLA,
Reader in Political Science,
University of the Punjab, University
Hall, Lahore.

N.B.—Members are requested kindly to note the change of venue from Madras to Agra.

The Indian Journal of Political Science

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WORKS ABOUT BENOY SARKAR

- S. C. Dutt: *Conflicting Tendencies in Indian Economic Thought* (Sarkarism in Economics). Pages 234. Rs. 5 (Royal).
- N. N. Chaudhury: *Pragmatism and Pioneering in Benoy Sarkar's Sociology and Economics*. Pages 152. Rs. 3 (Royal).
- S. K. Ghoshal: *Sarkarism* (The Ideas and Ideals of Benoy Sarkar on Man and His Conquests). Pages 60. Re. 1 (Royal).

The Social and Economic Ideas of Benoy Sarkar

Edited by Professor Banerjee Das with fourteen collaborators.

Pages 690. (Royal.) Rs. 12.

Aryan Path (Bombay):—"The book is a fitting tribute to one of the foremost living thinkers of India and builders of Bengal. There is no Indian intellectual who has not read one or another of the countless writings of this savant whose knowledge is indeed colossal. His versatility is indeed as amazing as his grasp of facts is intimate."

Professor F. Hankins, President, American Sociological Society:—"Sarkar represents a fine amalgam of East and West both in his marvellous understanding of the spirit and institutions of European culture and in the all-embracing humanism of his moral and spiritual outlook. He is a fine prototype of what we all hope the world will eventually achieve in the human personality and mutual understanding, the true citizen of the world."

Mysore Economic Journal:—"This is a remarkable book alike in conception and production. It is at once a tribute to the genius of a great thinker and writer and a nation's homage rendered by friends and admirers at the instance of a great firm of publishers of whom India ought to be proud."

Ceylon Observer (Colombo):—"It is possible to trace in all Professor Sarkar's writings and lectures a continuity of thought and a systematic approach to truth."

Insurance and Finance (Calcutta):—"Since 1906 Sarkar has been influencing Bengali life and language and it is in the fitness of things that a work like this should have been published. His theories and ideas are marked with interest not only in the land of his birth but also abroad."

CHUCKERVERTY, CHATTERJEE & Co., Ltd., 15, College Square, Calcutta

AN ESSAY ON CHRISTIAN POLITICAL THOUGHT TODAY

BY

THE REV. R. G. SLATER,

*The S. P. G. Brotherhood, Cawnpore***Introduction.**

This introduction is only concerned with setting out a few of the reasons for an essay on this subject at all. The first reason is that there is a very great deal being written today on the subject. Never since the 16th and 17th centuries has so much been written, and never before have so many Christian intellectuals been concerned with political and social problems. Secondly, we are in the midst of a war in which, as on a previous occasion, leaders on both sides have a tendency to summon God to their aid. This tendency certainly invites, and receives, a good deal of ridicule from satirists, but it deserves more than ridicule. It is the expression of a principle of the very greatest importance for every political philosopher to consider. Thirdly, whatever else is uncertain, we can be quite certain that after this war the peacemakers and everybody else, consciously or unconsciously, will be very much involved in balancing authority and power with freedom and idealism. That is a perennial problem. The conflict between Democracy and Totalitarianism is only one form of it. For within any so-called democratic society and within any so-called totalitarian society the same problem exists. And it has always existed within the Christian Church, and been the subject of innumerable Councils, conferences, and of a vast literature. A fourth reason is that there are those, Christians and non-Christians alike, who think that all that the Christian Church has to say on the political problem is contained in the Sermon on the Mount. Some of them think that the counsels of perfection there given are wholly impracticable, and some of them think that all we have to do is to apply them to our political problems to arrive instantly in the Golden Age. But the relation of ideals to practice is more complex than either of these criticisms suggest.

For example, the alliance between Soviet Russia and Great Britain and America may be explained as an example of sheer military opportunism. But this explanation does not explain the fact that for years before the war, the Soviet Union was seeking such an alliance with Great Britain and France. Why did Soviet

Russia seek this alliance rather than an alliance with Nazi Germany; a neighbour and a totalitarian state? We have all heard how similar the political forms in both countries were, and how opposed to bourgeois, liberal democracy they both were. And yet the two greatest totalitarian countries are now busily trying to destroy each other. Is the explanation then that they are fighting each other for raw materials? Partly, no doubt. But for years there was a very balanced trade between the two countries from which each benefited considerably. Is the explanation that Germany feared the spread of Communism and the Soviet Union feared the reaction of discontented fascists? This also is no doubt partly true, and furthermore it points to very real differences between the two countries. The deep differences are differences in their ideas of the good life to be achieved through their use of power. The one aims at a universal society of classless prosperity; the other at the dominance of a race over the other inferior races of society. There is no need at this point to compare and contrast and evaluate these two conceptions. At this point, the relevance of the illustration is simply that the conflict of power is the form taken by the conflict of conceptions of the good life. With the good life the Sermon on the Mount is concerned. But our political problems become problems just at the points where groups of men begin to use their power to achieve the good life. To say that the Sermon on the Mount is impracticable or that it is the answer to the political problem, is very much like saying that to checkmate your opponent's king in chess is impracticable, or the answer to all the problems of chess.

Nevertheless, it is impossible to examine all the complexities of our political problems in an essay. The problem has to be simplified. There are those who think it is simply a problem of power. Others seem to think it is simply a problem of ideals. It is certainly a problem of both power and ideals; even in its most simplified form. When Plato demanded that the supreme power should be in the hands of a philosopher, he was recognising this double nature of the political problem. He wanted complete identity in his society of power and ideals. But he found that this was apparently impossible even in the small city-state. The conflict of powers in those small states was solved by the effective relegation of the majority of the population to the passive status of slaves. But this effective solution was no solution for it was simply the assertion that might was right.

This assertion is more often demonstrated in practice than admitted in theory, in spite of the example of Machiavelli. Every tyrant and every revolutionary has clothed his actions in a theory

of right based on philosophical, national or racial abstractions and rationalisations. Such verbiage certainly appears hypocritical, but it is also evidence that all men recognise an authority outside themselves to which they feel constrained to appear to conform. This is true today of all those who are seeking grounds for more and more collectivism, and even for totalitarianism. The external authority has had many names; the Natural Law, the General Will, Reason, Good Sense, Conscience, Justice, Liberty, National Self-Determination, Reasons of State, the White Man's Burden, the Reich and the Fuhrer, and the Four Freedoms.

An article on Christian political thought has to concern itself first of all with the Catholic doctrine of the Natural Law. Our modern idea of Law is that it is the will of the State. This is the very opposite of the doctrine of the Natural Law.

"Catholic social doctrine conceives Natural Law as existing before the State, which binds it to a positive legal working out of the organic and patriarchal theories of Christian Natural Law."

Troeltsch, *The Social Teaching of the Christian Churches*, 1931, Vol. I, p. 305.

This doctrine has a very different sanction from the natural law that is to be found in all the theories of society, which were the work of the liberal philosophers of the Enlightenment period. For if we ask what Christian Natural Law is, the answer is definite, that while it is based on pure reason, its meaning and application is only understood by the corporate reason of the Church, as illumined by the Spirit of God. Naturally it follows that the leaders of the Church are the guardians and exponents of the Natural Law. On this doctrine the Roman Church has acted, most notably in the social legislation of the Middle Ages, and again in the last fifty years, in the publication by the Popes of the social Encyclicals, which began with "Rerum Novarum" in 1892.

Of even more consequence than this is the fact that this doctrine of the Natural Law is the basis of the Church's concern with social relationships, in addition to its work in cleansing the motives of individuals. The retort that the Church should confine itself to religion is the retort of people brought up in the combined traditions of "laissez-faire" politics and of Protestant religious insights. But neither of these traditions are in the main tradition of the Christian Church. They are in fact protests against that tradition, and they are the basis of all modern political thought. The basis of the Natural Law is justice because one of the primary attributes of God is justice, and so requiring justice for all his

struggle for power. Such was the doctrine that Venice practised, in the interest of a glorious and beneficent government, and which two illustrious writers, Machiavelli and Guicciardini, made the law of modern societies."

Lectures on Modern History, p. 81.

Here is the beginning of modern politics, and the results are ours today. We have three conceptions of the State that are not new, but are in being. First, the State which recognises no rights and duties except its own will backed by its power. Such are the dictatorships. Secondly, the State which recognises the rights and duties explicit in its own constitutional law, or implicit in its political traditions, but which nevertheless is able to alter its constitutional law and ignore its traditions. Such are the democracies. Thirdly, the State which recognises the rights and duties imposed upon it by some external moral authority. Such is Eire's relationship with the Papacy.

This third conception of the State is the State of the Middle Ages of Europe. Such a State is considered to have no ultimate control over intellectual, ethical, and religious interests. These are the concern of the Church. To some extent this is very similar to the relationship of the Executive to the Party in the dictatorships. But the difference is even more important. For in the dictatorships the Executive and the Party have the same personnel, and so fundamentally the same function. And the moral law that they recognise is their own party ideology. But the medieval State never had the same personnel as the Church, although there was some overlapping at times. And the function of each was clearly defined and considerably different. Further the moral law of the Christian Church can hardly be said to bear the same relation to the Church, as the ideology of a modern totalitarian party to the party itself.

Such an organised moral authority standing over against the State, no totalitarian party can ever allow. The totalitarian parties solve the problem of power and ideals by combining the two, and allowing no considerations to override the demands of expediency and the needs of the State, least of all any consideration of the rights of individuals. Therefore it is logical that the States, ruled by parties with a totalitarian ideology, should work to undermine, and even to exterminate the Christian Church. This too is the reason why the opposition, for example, to the Nazis within the countries ruled by them should centre very largely in the Church, as in Germany, Norway and Holland.

Whatever else there may or may not be in Christian political thought, there is and must always be this persistent opposition to all totalitarian conceptions of the State. And we find that at present Christian social thought is also alarmed at the very definite development of collectivism in society, and is concerning itself a great deal with finding checks on total Government control, which threatens to leave no part of the life of the individual free from interference by the all-powerful State. Collectivism, especially in economic arrangements, is clearly necessary and good, but it is also a step along the road to the totalitarian state. Such collectivism is not only alarming Christian thinkers. For clearly Mr. H. G. Wells' "Declaration of the Rights of Man" is an attempt to put some check in its way. The weakness of the Wellsian declaration is that it gives no reasons at all why a man should have rights. For if a man's relationship and his responsibility is only towards his fellow-men, it is difficult to see any reason why his fellow-men should not treat him in any way they think will be beneficial to him and to themselves. What reasons can Mr. Wells produce for keeping lunatics and incurables alive? None at all of course, except perhaps the disgusting idea that they are useful for scientific and psychological research. Mr. Wells neither cares where man came from nor where he is going to, and therefore he does not bother about the most important facts about man that society is in need of. The Church, with its dogma that the Son of God gave his life for every man, has clearly a lot more power to put behind a declaration of man's rights and duties. And therefore the Church has a power that the totalitarian States recognise and fear.

In what follows, the opposition of Christian political thought to totalitarianism is evident. The opposition to collectivism is not so evident for the good reason that all Christian political thought today recognises, and indeed urges, the necessity of government control in the interests of security, justice and freedom. In this introduction the problem has only been stated. The rest of the article is given to a slightly more detailed examination of some of the Christian answers; some of which are dogmatic and definite, while others are rather more tentative as they approach more nearly to the application of the principles expressed in the dogmas.

Church and State.

If the State, that is the Government and all the organisations of power in society, is not to be entirely autonomous there must be some organisation of the guidance and checks to be given to the State. In Christian political thought the basic organisation for

this purpose is the Church, by which is meant all Christian people, speaking and acting through their religious representatives. Naturally, the relation between Church and State is a constant problem, and even the theories and teachings upon which this relationship is based have had many interpretations. The literature on the subject is immense.

Christians commonly find in the Jewish prophets of the Old Testament of the Bible a very radical attitude to the State. For the prophets did not hesitate to attack the internal and external policies of both the Hebrew kingdoms. What a contrast there seems to be when Christ stands before Pilate, the Roman Governor, and tells him that his power to crucify him and to release him is given to him by God. What a contrast too when he does not defend himself, but submits to the extremest injustice. It is true that we can point to several denunciations by Christ of the religious leaders of the Jews, but all these taken together do not alter the fact of his submission to Pilate, as one having divine authority to release him and to crucify him. There is no doubt at all that in the face of their growing hostility, Christ regards the Jewish people from a totally different angle from the prophets. They spoke of the nation as the people of God. Christ speaks of them as 'the world.' His ministry gradually makes a clear distinction between what he calls 'the world' and 'the Kingdom of God.'

Christian doctrine teaches that the gulf between the world and the Kingdom of God is bridged by Christ alone. His work is therefore theologically described as 'atonement,' and 'reconciliation,' and he himself as 'the corner-stone.' From this dogma it follows that the Church, theologically 'the Body of Christ,' is neither the world nor the Kingdom of God, but a means to that end. So St. Paul, often ignorantly regarded as the perverter of the simple teaching of Christ, teaches that the State is not entirely separate from the Church; that they are both instruments of God for the salvation of all men; and that they need each other. The State has a link with the Church because it shares a common membership, and the Church has a link with the Kingdom of Heaven because they share a common Lord. But the Church is neither the world nor the State nor the Kingdom of God.

Reference has already been made to the central importance of Christ's position in front of the Roman Governor. There is no doubt that all the Gospels are saying that, when Pilate was afraid to release Christ, he was fulfilling the will of God. It is essential to note that Pilate repeatedly declares Christ to be innocent, and thereby he acknowledges the justice that afterwards he is afraid to administer. In effect, this means that he acknowledged that

Christ's work was not contrary to the interests of the State. Therefore it follows in Christian doctrine that the true function of the State should be to further the work of Christ, and so also of his Church. It follows again that all States and all authorities on earth are the servants of God, and so, because of his authority over them, they must be just States and must serve his Will.

This of course is also the function of the Church, and so it follows that Church and State are fellow-servants of God. Just as Christ did not come to destroy the Mosaic Law, so the work of the Church is not to destroy the laws of the State but to fulfil them, as long as they are in accordance with the will of God. This position is not in the least altered when the State is not a Christian State; its work is still the administration of justice as far as is humanly possible. This is certainly the teaching of Christ and of Paul, and doctrinally the true relation of Church and State at all times and in all places.

European history certainly appears to give the lie to all this theory, because it is very largely the history of bitter opposition between the Church and the states. But this opposition derives from the difference between their methods of work. The State's function is security and justice, and the Church's work is the proclamation of the Gospel of forgiveness and love. These are complementary functions, for where there is no justice there is no possibility of love. But where there is a failure of justice, the Church risks the accusation of hypocrisy if it speaks of forgiveness and love. And where there is a failure by the Church to speak of the latter, there is either a dead Church, or a Church that is trespassing on the functions of the State. Men being what they are there is little chance either of perfect justice or of Christian love. In these facts lies the root of the conflict between Church and State, and of the dissatisfaction of society with both. From this distinction of methods and the inevitable injustice that exists in society, the questions raised at the Malvern Conference of the Church of England in 1941 naturally arise. For example; "Will the Church be compelled to acquiesce either in an attempt to preserve the system of financial-industrialism, or in a drift towards collectivism and totalitarianism?"

Mention has already been made of the fact that the Medieval Church readily found support for its Biblical evidence on the relation of Church and State in the works of Plato and in the Law of Nations of Stoic thought. The resultant doctrine of the Natural Law has been one of the most unifying and fruitful factors in the development of European civilisation. The beginning of its use in European political thought can, for example, be seen in this

dictum of Origen, the Egyptian scholar and martyr of the second century;

"One may only obey the laws of the State when they agree with the divine law; when, however, the written law of the State commands something other than the Divine and Natural Law, then we must ignore the commands of the State, and obey the command of God alone."

And this sort of thing, with an appeal to what in effect was the Natural Law, is still being said by Kant in his "Critique of the Practical Reason" in 1788. The doctrine of the Natural Law was the basis for many a protest in the later medieval period against tyranny, and later, interpreted very un-theologically, for the arguments by which Locke and Rousseau refuted Hobbes, and thereby scattered the seeds of individualism, romanticism, liberalism and revolution over the New world as well as over the Old.

The mighty problem of who was to say what the Natural Law was came to be very summarily settled by the medieval Church. The answer in brief was that the Emperor was ordained of God for his own sphere, but that he must in all matters that were spiritual listen to the Church. The ambiguity of 'matters that were spiritual' made it very easy for the ultimate supremacy of the Pope. This development led to much conflict. Whatever we may think of the conflict in its unsavoury detail, we must not ignore the fact that the Church claimed to be speaking in the name of the Lord of all life. That was a claim that no part of the social life was outside the sphere of God's will. At times the claim was most cruelly and unscrupulously asserted, but it is difficult to maintain that the claim was foreign to the teaching of Christ. If such a claim is not made, then we are driven to the assumption so common today, that there are whole departments of social life in which the State can do exactly what it likes.

When Aquinas came to make his massive synthesis of human belief and thought in the 13th century, he used the theories sketched above. He maintained that the function of the State is to secure the welfare of its members and to see justice done; to balance the power that it has from God with the natural rights and claims of individuals; to be as a father of a family to all its subjects. The function of the Church in its relation to the State is to keep the State to its own proper function, and to keep it from interference with the religious and cultural values which are the responsibility of the Church.

History has shown that the Church has always found difficulty

in maintaining its central position between the world on the one hand and the Kingdom of God on the other. This difficulty is the reason for the emergence of a large number of idealistic groups and movements such as the Franciscans, the Waldensians and the Lollards within the Church of the later Middle Ages. As also it is for the sects of the Reformation. Some of these groups were controlled and kept within the Church; most of them were hostile, and either driven out, or divided from the Church. They and the Church represent two different, but equally justifiable, interpretations of the Gospel teaching on social life, and so they are necessary to each other. The Church found that it had to come to some compromise with the world if at all it was to exist in the world. So the idealistic groups were, and still are, the natural outlet for the impatient, for those who were restive under the rigid rule of law, and longed for the fellowship of love, and for those who felt that the world was too burdensome for their sensitive spirits.

The modern world since the Reformation has favoured the growth of these idealistic groups. The most characteristic developments of industrial and finance capitalism have been greatly assisted by the diminishing influence of the Church, and by the influence of the protesting groups with their emphasis in most cases on individual character, hard work, and discipline. The result is that today there are large sections of social life in which religion has no influence at all. It seems that just because these groups have emphasised individualism in religion they have allowed the world to come wholly under the control of the wealthy, the cruel and the avaricious. Whereas the Church of the Middle Ages, for all its compromises and tyrannies, was effective, on the whole, in preventing the world from falling into the hands of dictators and money-makers.

The Oxford Conference volume "The Churches Survey Their Task," 1937, noted yet a further stage; one in which the State passed from relegating the Church to the background, to the stage of setting itself up as a substitute for the Church. The German Reich with its myth of pure blood and sacred soil has done this most effectively. The methods of such a State are to try and spread the new cult within the Churches, and thereby to nationalise Christianity. With this there goes the prevention of religious propaganda by those sections of the Church which resist the new movement. And then, significantly, the interference with the Church leads to interference with family life, science, art, the universities, public morals and philosophy. This says the report is 'the totalitarian state which naturally sees in the Church a

barrier to every attempt to build a common life on a purely secular basis." The Church is allowed its worship but nothing more; no teaching, no schools, no propaganda, and above all no voice whatever about government policy.

In 1938 the philosophical basis of the National Socialist Programme was published. It contained the following:

"If there is a Heaven, the way to this Heaven is only by Germany. Whoever sets any service above the service of the People is guilty of idolatry."

There are of course plenty of influential people in Russia, Italy and Japan who would wholly agree with those dogmas, as long as the name of their own country was put in the place of Germany. But it is more to the point to admit that there are masses of people all over the world who would also agree in the main. This is so because our modern education has at least taught us all that religion is a superstitious relic, and that the welfare of the people should be our highest ideal, as it is our unfailing sanction.

Luther and Calvin certainly helped forward this development by teaching new doctrines of the Church. Luther did much to destroy the unity of the Church's authority, and then taught that the Church existed wherever the Gospel was preached. In effect, this reduced the authority of the Church to the individual's interpretation of the Bible. On the other hand, Luther held as high a conception of the State as the Church of the Middle Ages held. The result was that Luther yoked a tiger and a lamb to the same plough and expected all to be well. The modern State certainly needed no doctrine of Luther's to justify its swelling claims, for apart from the pressure of circumstances, the State had been well taught in the art of absolute government by the mediæval Papacy. But the individual did need all the support that could be given him, whether by the Church, the philosophers, or his fellow-men.

Calvin was much more radical, and came near to providing the individual with the authority he needed. His Church was a society of chosen people predestined for the glory of Heaven. Naturally such a society of elect saints had divine authority. But Calvin was unfortunately optimistic enough to believe that the majority of the people were so predestined and chosen, and the result was enormous support for the growing theory that all political sovereignty resided in the people. This is the doctrine that cost Charles the First his head, found champions in Rousseau and the political writers of the nineteenth century, and gave to capitalist

economics the political environment most favourable to its amazing growth and productivity.

Luther and Calvin would have been amazed at the results. The number of sects increased, and the creation of rebels against the State went on even more abundantly, and with much justification. The religious sects became the homes of ardent reformers and of dogged individualists. They produced both the industrialists of the industrial revolution, and also the men who started the trade unions, and led the agitations of the nineteenth century. But their zeal for freedom and for great ideals on the one hand, and their amazing energy in building great industries on the other, created the society we know today; a society where collectivism is a necessity, individualism a vice, freedom a luxury and totalitarianism an impending threat.

In the face of that threat the Church is compelled to take serious thought. The Church of the Middle Ages tended to reply by making the Church also totalitarian in its claims. For this mistake that Church came to ruins. The problem today is not whether the Church should resist the claims of the totalitarian state and the tendency of all states towards totalitarianism, but how the Church should interfere. The present Archbishop of Canterbury in "Christianity and Social Order," p. 21, gives the following answer:

"In three ways (1) its members must fulfil their moral responsibilities and functions in a Christian spirit; (2) its members must exercise their purely civic rights in a Christian spirit; (3) the Church must supply them with a systematic statement of principles to aid them in doing these two things, and this will carry with it a denunciation of customs or institutions in contemporary life and practice which offend against those principles."

With the principles of Christian civic rights and duties the rest of this article is mainly concerned. Some will say that man is not normally guided by rights and duties however religiously presented, but that he is moved solely by self-interest. To a great extent this is true. The Archbishop himself says (*op. cit.*, p. 42):

"The art of government is the art of so ordering life that self-interest prompts what justice demands."

But this is not the same as saying that man is wholly a creature of self-interest even in his political life. He has capacities and attainments that could not possibly be the product of self-

interest. And all Christian political thought insists that man's destiny is something more than to be a temporary contributor to the creation of freedom, peace and happiness for all in some future state-less society. For the Christian thinker man is made to be the friend and fellow-worker of God, and so his social life should be made as far as possible to accord with that destiny. Man being what he is, law and order remains a necessity of his social life. And man, not as he is but as he is to become, requires that his social life shall have some positive relationship to the divine destiny that is the purpose of the whole creation. From this standpoint Christian political thought logically surveys the economic arrangements of our present social life, and its survey is becoming increasingly detailed. To this then we now turn.

Modern Economic Thought and Arrangement.

In "The Churches Survey their Task" p. 95 there is this sentence, "Christianity becomes socially futile if it does not recognise that love must will justice." And as the whole Christian ethic is rooted in Christ's summary of the Law and the new commandment that we should love one another, I take it that the Churches must be concerned with justice in society. That I am sure is the whole story of the relevance of the Gospel to the economic life of society. And because I am sure this is so, I do not intend to make a catalogue of all the texts of the Old and New Testaments which bear on economics, and present such a catalogue as the proof that the Gospel is relevant to the economic problems of our time. Plenty of people have done that. Personally it seems to me a method that is far from convincing, and is almost wholly irrelevant to our own times. The Law of Jubilee in the Book of Leviticus, chapter 25, is no doubt interesting and contains a good principle. There is however no evidence at all that it was ever enforced, and what is more there is no evidence to show how on earth it could be made practical politics today. But if we have got to strive for justice because love is the law of the Christian life, then it is clear that we have got to struggle with contemporary problems and see what justice we can get into them.

Even in a brief article some illustrations are desirable but brevity involves selection. So the rest of this article is mainly devoted to describing some Christian thought on the following subjects of modern social controversy and concern; the class-war, property, the wage-system, trade-unionism, the inevitability of collectivism, and the threat of totalitarianism.

The Class-War.

In the "Manifesto of the Communist Party" published nearly a hundred years ago, Marx asserted that all written history is the history of class struggles between freemen and serfs, patricians and plebians, lords and serfs, and so on. There were of course many other classes as well, but, in modern society the class-war is much simpler and much more acute.

"Society as a whole is more and more splitting up into two great hostile camps, into two great classes directly facing each other; bourgeoisie and proletariat." (p. 10)

He goes on to explain who these are.

"In proportion as the bourgeoisie, i.e., capital, is developed, in the same proportion is the proletariat, the modern working class, developed; a class of labourers who live only so long as they find work, and who find work only so long as their labour increase capital." (p. 15)

The proletariat he asserted would overthrow the bourgeoisie and all production would be 'concentrated in a vast association of the whole nation.' When this has happened then the conditions for the existence of classes will have been swept away.

"In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association, in which free development of each is the condition for the free development of all." (p. 28)

This all sounds a very far cry from Christianity and indeed it is. But we do not think that the Capitalist creed that the profit motive is the means to the ideal, free and equal society is anything like so bad. We have heard time and time again that in our present society all men are equal before the law, and that there is equal and free opportunity for those who know how to take it. Look at the number of poor boys, they say, who have become millionaires. On one occasion my headmaster at school told us that we could all become Prime Ministers if we really set our minds to it. To boys that sounds about as wonderful as it is untrue. And as for this foreign propaganda about class-war, they say, that is the invention of Karl Marx. And of course when the men and women of the better-paid classes and of the universities helped to keep the country going during the General Strike of 1926 in

England they were being patriotic. The strikers on the other side were indulging in dangerous class-war. But the defence of present conditions against the possibly violent opposition is just as much class-war as the violent opposition.

The point I am making is this that the classes in control at the moment of the social life of, for example, this country cannot admit that there is such a thing as class-war. But class-war is a fact. And Christians have to admit that, whether they like it or not, the whole economic and political life of the country shows it. The interests of the financiers, of the mill-owners, and of the merchants are always conflicting with one another. And of course the mill-owners and the workers, the zamindars and the peasants are constantly at war.

But this is not quite the same thing as saying that we must swallow all that Karl Marx said about the class-war. Karl Marx was a genius, and his theory of the class-war is an honest and penetrating theory of history. It has been productive of much good, as well as a good deal of evil, of some genuine and useful and accurate insights, and of some almost fatal mistakes. One of the good honest things it did was to destroy the theory, popularised by Rousseau that the people as a whole had a thing which was called the General Will, and that it was the job of their rulers to rule according to this General Will. This magnificent romancing bore the splendid name of the Sovereignty of the People. Another idol that was destroyed was the firm belief that if you let everybody buy in the cheapest market and sell in the dearest then everybody would gradually get prosperous, and society would progress to the Kingdom of Heaven on earth where Freedom, Equality and Fraternity were enjoyed by all. This is 'laissez-faire' and Adam Smith's theory of 'Economic Man;' the theory, that is, that men will attain their true nature of free beings by having freedom to work and buy and sell as they like. Unfortunately, most men were not in the least free to do this, and those who were acted with such avarice that ultimately they had to spend a great deal of their time trying to defend themselves and their works from the violence of their infuriated workers. But perhaps the greatest service to truth that Marx did was to lay bare the fact that Capitalism turns human communities into communities of things, and makes men into things to buy and sell and make money out of.

These are truths in the Marxian analysis of capitalism. First, that the idea of the General Will of the People is a bourgeois fiction. Secondly, that individualism in economic life will automatically lead to the free and equal society. Thirdly, that

Capitalism in spite of all its liberalism and fine ideals is thoroughly materialist in its very being.

And when we have assimilated those truths, there are certain no less important untruths about the class society which Marx propagated. The three I am concerned with are the assumptions behind the three quotations from the Manifesto that I began with. First, that society is more and more splitting up into two clearly marked classes of exploiters and exploited, and that the exploited are gradually getting poorer and more oppressed. Marx of course welcomed this because he was convinced that conditions for the workers would have to become much worse before the workers would turn round and snatch the power and freedom that was denied to them. This conviction of course is behind all the communist contempt for social reformers. Now this theory of the increasing definiteness of the two classes, the proletariat increasing and the controlling bourgeoisie becoming a very small minority, is simply not a fact now, and it wasn't then. Therefore we must not think of the class-war in that over-simplified manner.

"Between the overpaid chairman of a large company and the worst-paid ledger-clerk, from the chief designer to the semi-skilled foreman, there has come into existence a veritable army of dependent bourgeois classes . . . all have a vested interest in the maintenance of an unequal society."

P. F. Drucker, *End of Economic Man*, p. 25.

The second untruth is much more radical. Marx asserted that the more complex and powerful Capitalism became the more the proletariat would develop in numbers and strength. But this is not true. Furthermore, according to the quotation, Marx makes the development of the two classes entirely dependent on an economic process, the development of the capitalist system of production. For Marx there was no such thing as a 'society', but always two classes in conflict, with the smaller controlling class forming the State. So society was not only a fiction invented by the bourgeois controlling class, but that class was itself merely the product of a mechanical economic process. Again for Marx there were not any different classes of workers, but only one homogeneous class of proletarians whose interests and outlook were entirely governed by their class situation, and their class situation was entirely governed by the economic process of Capitalism. If a worker's outlook and interests are determined by an economic process, then the worker's personality is also the

product of this mechanical process. And that is an untruth which Christian political thought does not accept.

The third untruth concerns the nature of man from another aspect, that of his freedom. Marx, like the theorists of Capitalism, regards the establishment of freedom in society as the final aim of society. This is the meaning of the 'withering away of the State.' His guarantee to the workers that they would achieve this freedom was the theory that the class-war would inevitably destroy the bourgeoisie. This would be followed by the dictatorship of the proletariat, and the consequent abolition of all other classes. The class situation and the drive of the worsening economic circumstances would almost certainly bring this about. This is an almost automatic process; the guarantee of the class-less society being achieved was the dialectical development of the economic forces in society. In fact so much was this a matter of certainty that the development of control in the hands of a small bourgeois minority was to be welcomed, as bringing the inevitable victory of the proletariat nearer. That Marx never intended this thesis to be so rigidly interpreted is clear from his letters. But the interpretation has been rigid for the good reason that the thesis itself concedes far too much to a materialism that logically becomes automatic. And this logical automatism provides that element of the inevitable, which has given to the thesis its mysterious fascination for the numerous impatient idealists among our intellectuals. But if this rigid automatic development is stressed then men are deprived of all possibility of developing a free society, or of understanding freedom when they get it. In "The End of Economic Man," Drucker likens this thesis to the predestination doctrine of Calvin.

"It gave the creed its inevitability, its certainty of final success, and its entrancing intellectual finality."

There is an element of the miraculous in such a theory, for it promises freedom to men who have all along been mere atoms in a class that has been produced by an economic process, and is still largely controlled by it. Philosophically there would seem to be no essential difference in the theory of freedom of Marx and that of the Manchester School of Liberal Economists. Leave society free to work and sell and buy according to their own enlightened self-interest, and thereby prosperity will be achieved, and with prosperity freedom and fundamental equality. This is obviously nearly related to the process by which the relentless development of class-war will achieve the class-less society, a society ultimately so free that it will have no need of the machinery of the State.

There is here the same faith in the economic process; one making it work in one way, and one leaving it to work in another. But that is all the difference. Such faith was the typical product of the nineteenth-century economists with their ideal of material prosperity. This is the typical bourgeois spirit; the spirit that is 'an eternal principle in man' (Berdjaev):

"Marxism, and therefore Bolshevism, does but voice the secret and unavowed philosophy of the bourgeois society when it regards society and economics as the absolute. It is faithful likewise to its morality when it seeks to order this absolute, the economic society, in such a way that justice, equality and freedom, the original war-cries of the bourgeois advance may be the lot of all. The rise of the bourgeoisie and the evolution of the bourgeois society have made economics the centre of public life . . . Bolshevism is at once the product of bourgeois society and the judgment upon it. It reveals the goal to which the secret philosophy of that society leads, if accepted with unflinching logic."

Dr. Gurian, *Bolshevism: Theory and Practice*, p. 237.

The attitude of Christian political thinkers to this theory of social conflict is clearly a matter of central importance. On the whole they have accepted the class-war as an irrefutable fact, which is not at all the same as accepting the theory as irrefutable truth. Obviously the class-war has been a fact of long historical significance. The old wars between groups for power, and holding power in bygone days, were cruel processes. But they were undisguised. The warfare of modern society is altogether different, but it is more insidious and poisonous of social harmony. It is often worse in peace-time than in war-time. The warfare that goes on among the banks, stock-exchanges, parties and newspapers is vicious and unscrupulous. Behind party politics are hidden the conflicting interests of the financiers, industrialists, and merchants, of the small capitalists and the ordinary traders, of the peasants and industrial workers; and a party that is not conditioned by a social group at war is hard to find.

"Moreover, mentality and daily life are coloured according to the class concerned; there are radical differences of temperament and conditions of life between the aristocracy and the bourgeoisie, between the upper, middle, and lower middle-class, between

the professional classes and the intellectuals."

N. Berdjaev, *Christianity and Class-War*, p. 15.

Secondly, Christian political thinkers are insistent and radical in their denunciation of the evils of Capitalism. The pitiless selfishness of competition, the turning of men into things, and of their work into commercial communities to make money are incessantly attacked by many from the Pope to the poorest preacher in the pulpit. And with this condemnation there goes on at least a not insignificant amount of protection for the exploited and the 'failures', whether they are Christian or not. Among the political thinkers at least the whole idea of Capitalism, that economic success and wealth are signs of virtue, is treated with abhorrence.

Thirdly, Christian sociologists are concerned to restore to men the meaning of work. Capitalists and communists alike treat work as merely a means to the production of wealth. The Church's doctrine of work is largely unknown, and, when it is known, it is regarded as reactionary or utopian. Starting from the fact that Christ was a workman and his apostles largely workers also, the Church teaches that work is the sacred right and duty of all men. It is a necessary discipline, but a discipline that each man must be free to will for himself. Such is the nature of man that, if he is to live, as he is intended to live, he must have opportunity for the continual expression of his creativeness. To say that work is merely a means to wealth and leisure is to say that men must spend their lives doing things that they were never intended to do. This is perfectly true of our present systems of work, for most of them are only means of keeping away starvation or of attaining the leisure in which to do the things that there was never time to do before. But the Church teaches that work itself is intended to be creative. Our present systems of work need to be purged of all wage-slavery, trickery, drudgery, and the enormous waste of time that goes in making things that are useless, injurious and utterly devilish. The sheer materialism, the bourgeois attitude, the utter barrenness of the capitalist idea of work is shared by the communists and the trade unions. Trade unions the world over take great pains quite rightly to improve working conditions and wages, but, as Miss Dorothy Sayers points out in her "Creed or Chaos," they never seem to take any thought to ensure that the work that is done is worth doing and is done well. The Church with significant ineffectiveness preaches that what matters about work is what is put into it, not what is got out of it; that a man should be able to put in the divine creative gift within him, his need for worship, his own contribution to the beauty, truth and

goodness that God has put into his own creation. One of the best achievements of the early Church was to insert into the Graeco-Roman world, which despised work as the occupation of slaves, the idea that work was quite human, and indeed divine. Christian political thinkers trying to repeat this achievement in our present materialist world are finding that the task is probably harder than the task achieved by the early Church.

Fourthly, among Christian thinkers there is some sharp division of approach to the subject of property. On the one hand are those who maintain the tradition of the Church and stress the sacredness of private property. This tradition is based on conditions that existed in pre-industrial societies, on conditions when the greatest economic need was for more and more production, when not even the most powerful State was able to guarantee security to all its citizens. Then the Church rightly and realistically insisted that the individual must be responsible for his own security and that of his family. To enable the individual to fulfil this responsibility private property, especially in land, was the obvious guarantee. But things are very different now. And so there are a number of political thinkers who favour a considerable amount of collectivisation of property. Conditions and knowledge are such today that almost every State could guarantee security for everyone of its citizens. And as this is the first function of the State it is obviously right, they argue, to insist that the State take measures to make good this guarantee. To do this the State requires to have control of all essential property, and first of all of property in land. Furthermore, property today is something very different from what it was even a few centuries ago. Property today, when it means ownership of land, buildings and material means two different things whether it is much or little. No one today is as insecure as the small property-owner. The actual use of land, machinery, tools and material is not today the sole or the characteristic form of property. Property today is much more characteristically the ownership of shares in trade and industry. And again not even the ownership of these, but the control of them. There is certainly an increasing number of small shareholders, but they have almost as little control over their shares as they have over the businesses in which they have the shares. So that it is almost true to say that the only problem of property is the problem of the big shareholders, financial magnates, and directors of combines and trusts. It has recently been estimated that in England, for example, the control of the investments of the country, the control of the savings of the people, and of the real property is in the hands of less than one-fifty thousandth part of the population. When that has

happened, property, even land, has ceased to be a security for the mass of the people, and has become a menace and the chief cause of insecurity. Such property most Christian sociologists regard as an evil that cannot be regarded as sacred. But as far as my knowledge goes, no Christian thinker advocates the abolition of all private property. The teaching of the Church is best summarised in the following words:

"We find in the Christian fathers vigorous denunciation of all keeping private wealth, such as is not needed for the support of the possessor's own family. Such selfish keeping of wealth from the common fund they call . . . not lack of generosity only . . . but injustice or theft."

Charles Gore, *Christ and Society*, p. 84.

Finally, the very core of the Marxist doctrine of class-war points to the basic violence constantly used by groups that are driven by self-interest. Any major change in the economic situation, the controlling class will oppose with violence, if that is necessary. This violence, said the "Manifesto," will and must be met with violence, and just because the proletariat is bigger than the bourgeoisie the proletariat will win. The fact is true enough. Some Christian political thinkers recognise this, and also that some of the members of the Church will be on one side and some on the other. If the Church can decide which side is working for more justice the Church must declare the principles of its judgment for the guidance of its members. And then its attitude is that decision must be left to the discretion and consciences of its members whether they use force or not. For no one can decide for me in every situation whether it would be right for my neighbours and for myself to use force, or to submit. In such situations, and many more like them, the Church can only advise and caution, and then leave the individual to the arbitration of his conscience, and the mercy of God.

The Social Teaching of the Papal Encyclicals

Fifty years ago Pope Leo XIII published the first of the great social Encyclicals, "Rerum Novarum." Just as the "Communist Manifesto" was practically unknown for over fifty years to all except the initiated, so the Encyclicals have remained unknown to most people who are not members of the Roman Church. They ought to be well-known to all political thinkers. The following comments in no way do justice to the Encyclicals,

and of course the comments of one who is not a member of the Roman Church are not to be regarded as in any way authoritative.

These circular letters of the Popes regard the problems of the present economic order as primarily moral problems, which are to be dealt with by moral reform. This reform is based on two sets of law: one the divine law as revealed in Christ and appealing to all who believe in God; the other the Natural Law appealing to the reason of all men. The divine law rests upon the dogmas of the supernatural order, the supernatural society, and the supernatural End of History. (*Dawson, Religion and the Modern State*, p. 129). This seems to introduce a sharp contrast between this world and the world to come. But any such possible contrast is counter-balanced by the main thesis of the Natural Law, that the order of this world is in its true being the image of the divine order.

These principles, so strange to our modern ears, may seem to be little but the product of philosophical cobweb-spinning, but from these principles follow certain very important conclusions. For example, the conclusion that the order of society in this world is not an end in itself, and the conclusion that all mankind is in its true being one family. The present Pope in his "Summi Pontificatus," 1939, showed how these two truths were not only being ignored in the present world, but were even openly denied. From this teaching too there follows a very clear statement of the relation of Church and State.

"It is the State's job to arrange human affairs for the securing of happiness and prosperity in this world. It is the Church's job to bring men to heaven. But just as the actions of the individual may hinder his own personal attainment of salvation, so the actions of the State may "hinder the attainment of salvation by some or all of its members."

Fr. J. Sheed, *Communism and Man*, p. 219.

And it also follows on this line of reasoning that because man is intended for the bliss of heaven, he is also intended for happiness on earth. This was explicitly stated by Pope Pius XI in "Divini Redemptoris:"

"The Church does not separate a proper regard for temporal welfare from solicitude for the eternal. . . . The unquenchable aspiration to reach a suitable state of happiness even on earth is planted in the heart of man by the Creator of all things."

Further, the Encyclicals do not see the present problem as only a moral one. They also see it as a social one. That is to say they consider and urge the reform of institutions. Something of the teaching of the Popes on property, the wage-system, and on associations of employers and employed may serve to illustrate this point.

First of all, property. Leo XIII in 1892 set the ball rolling by a severe denunciation of the private fortunes made out of industries where the workers were living in abysmal poverty. Pope Pius XI in "Atheistic Communism" admitted that the communist demand was obviously and undoubtedly legitimate, and that charity could never be true charity unless it took justice into account. But consistently throughout the Encyclicals the Popes have insisted on man's natural right to private property. Leo XIII said the abolition of private property would injure the workers by preventing them from saving and investing, and would be contrary to the law of justice by robbing them of responsibility. Pius XI in "Quadragesimo Anno," 1931, added the further consideration that the abolition of private property would lead to social and economic disorder. This may sound odd in our present disorder, but it would be a mistake to think that the Popes are insisting upon the present distribution of property as sacred. Far from it. They admit that the State must strive for a just distribution of private property.

"When civil authority adjusts ownership to meet the needs of the public good, it acts not as an enemy but as the friend of private owners."
("Quadragesimo Anno.")

The Encyclicals insist on the natural right of private property, because they hold that without property a man is unable to possess and keep his social rights or to fulfil his proper social duties. His property gives him the essential element of independence necessary for his essential freedom, and it also gives him the duty of responsibility, and the urge to care for the material of God's creation. So in "Divini Redemptoris," 1937, Pius XI wrote:

"Is it not deplorable that the right of private property defended by the Church should so often have been abused to defraud the working man of his wages and of his social rights?"

The Encyclicals urge the reform of the distribution and control of private property, and to this end they have formulated certain principles. The following summary of these principles

is that given by Father Watt, S.J., of Campion Hall, Oxford, early in 1940:

1. The right of private property should be recognised and protected by the State. ("Rerum Novarum," 12,30)
2. Therefore the State must see that the system of private property must be such as to secure the general welfare. ("Quadragesimo Anno," 49)
3. Wide distribution of ownership should be encouraged. ("R. N.," 35 and "Q. A.," 62)
4. Property, private-ownership of which is dangerous, should be owned by the State, but collectivisation of all property should be opposed as an error.
5. The existing mal-distribution of wealth must be corrected:
 - (a) just distribution of property requires that no individual or class be excluded from a share in the growing wealth of the community.
 - (b) The State must take proper care of the poor.
 - (c) The State must secure necessities for those in need by seeing that the wealthy do not ignore their obligations to the community. ("Atheistic Communism," 75)
 - (d) Capital must no longer be allowed to take more than its due share, and enough to allow for saving must be allowed to the workers.

This last point leads naturally to a consideration of the Encyclicals on the reform of the wage-system. Even in a society where everyone had a just share of private property not all would be in possession of property that was productive. For them the natural means of gaining a livelihood would be to offer their labour to those who have productive property. Such collaboration alone gives the workers the right to a just share in the growing wealth of the community.

The wages of course must be just. But the problem is how this justice is to be determined and maintained. "Rerum Novarum" replied that it was discoverable by free negotiations between the workers and their employers, and further made it clear that Trade Unions were necessary and that workers had the right to strike. ("R. N.," 37, 42, 43 and "Q. A.") The Encyclical

insisted that something more than economics must be considered in the negotiations. This additional consideration was the moral law which requires that workers get sufficient rest, and a minimum wage sufficient for the normal family. The normal family would seem to be three children according to the Encyclicals. The interesting novelty also appeared in the statement that every adult man, whether married or not, should receive at least this minimum 'family' wage. ("Casti Conubii," 71.) "Quadragesimo Anno" stated that wages should be the first charge upon industry, and that, where industries had to close, full provision should be made for the workers rendered unemployed. The system of family allowances is also urged, and the Popes have taken up with cautious enthusiasm schemes of co-partnership, co-management, and profit-sharing, and urged with they call "The Corporative Order." In this connection it is interesting to find that the sort of arrangements that the firm of Cadbury's have made famous at Bournville, Birmingham have received the approval of the Roman Church. Clearly the Encyclicals do not support the system of free competition in economic arrangements. Indeed, "Quadragesimo Anno" called the results of economic 'laissez-faire' "that contaminated source of all the errors of free competition in economic affairs." The lay members of the Roman Church can be even more explicit.

"It should be noted that when the living wage is declared by the Church to be due in justice to every workman, the meaning is more frankly stateable than even Catholics always realise; to pay the workmen less than the living wage as it has been thus defined is stealing. But it is all too obvious that under the present system this kind of justice is being denied to large masses of the poor. Thus the Pope (Pius XI) stigmatises as "intolerable and at all costs to be abolished" the "abuse whereby mothers of families, because of the insufficiency of the fathers' salary, are forced to engage in gainful occupations."

F. J. Sheed, *Communism and Man*, p. 222.

Whatever faults of tone there may be in such a statement it at least makes perfectly clear that 'the present system' is condemned as theft.

The attitude of the Encyclicals to Trade Unions is of considerable importance. They acknowledge that the modern trade unions are the successors of the trade-guilds of the Middle Ages. Leo XIII writing in 1891 was condemned as a socialist because he

stated that trade unions must not be suppressed. The Popes seem almost wholly concerned with the trade unions of France, perhaps because the unions of Italy, Germany and Spain have more or less been swallowed by the State. The French unions were almost all either communist or anarchist, and so the Popes have urged the formation of Christian trade unions, and they have also had some success in getting them formed. Before the coming of Fascism and Nazism the Christian trade unions of Europe numbered over four million members. The Popes have also urged the formation of joint-committees of workers and employers both for negotiations and for co-operation. And "Quadragesimo Anno" urged the formation of unions of peasants, students and doctors, at a time when there was much talk in Italy of the unions necessary for the Fascist Corporate State. But it must not thereby be assumed that the Popes have been enthusiastic over that Fascist experiment in Italy. Pius XI, following Leo XIII's statement in support of the right to strike, strongly criticised the Fascist government of Italy for suppressing the right to strike, without any corresponding effort being made to see justice done between employers and their workmen.

The Encyclicals' attitude to Capitalism certainly does not suffer from over-simplification. We have already seen that they denounce much of it as theft, but the Popes see nothing wrong in the division of society into those who buy and those who sell their labour. This apparently they think is as harmless and as natural as shopping. All that is wrong is that the system is abused by the powerful. "Quadragesimo Anno" realised that the era of free competition was over, and also that the State had been captured by big business. The remedy suggested is for the State to re-assert its position of impartial, class-less ruler, though here again the Popes are anxious that the State should not eliminate every element of competition. The competition should be controlled competition. This may be giving the impression that the Popes have been very reserved in their criticism of Italian Fascism. But they have not. They have condemned it, at times with vigour. And their condemnation of Capitalism has therefore also been strong. The keen Roman Catholic certainly has no love for capitalism.

"Capitalism makes self-interest the supreme law in economics, the will of the majority the sovereign power in the State, and private opinion the only arbiter in religious matters This is the capitalism that we have all known and hated; the system which finds a fitting expression in the nineteenth century manufacturing town with its dark factories, its squalid

bye-elections in England, may seem as little more than empirical common-sense compared with the tight and resounding dogmas of the Vatican, they are not as empirical as they at first appear. There is Christian doctrine behind them, and the same Christian doctrine that is behind the dogmas of the Encyclicals. But the doctrine is filtered through a variety of intellectual meshes, and thereby given a wider range of interpretations. The following sketch of the recent Christian political thinking of England is largely devoted to detailed plans, but the principles behind the plans are not disregarded. They will be found to be mainly the principles of the social tradition of the Church, which was mainly the subject of the introduction of this article.

A Detailed Christian Plan for England

In the beginning of the war, a liberal M. P., Sir Richard Acland, began to publish a series of books laying down the principles and some of the details of a Christian plan for England. All the books advocated common ownership and were inspired by a lively Christian idealism. Acland spoke at the Malvern Conference of the Church of England in January 1941, and there made some of his principles very clear.

He declared that it was not enough for the Church to make pronouncements about individual items of policy.

"For it is not individual items of our policy which are contrary to Christianity. The whole structure of our society is in flagrant disobedience to the Word of God."

And then he stated the central principle of his whole plan.

"It is the private ownability of the paper shares and documents of title in our great resources which compels us to retain a self-regardant, materialistic, and therefore non-Christian way of life. The ending of this private ownability will not guarantee our salvation. But it must none the less be ended in order that there may be opened to us a further advance a little nearer towards the Kingdom of Heaven on earth."

In any question of common ownership the primary problem is what to do with the owners who will be displaced. This plan rejects all confiscation without compensation. It also rejects the Labour Party's plan of giving the owners paper bonds according to the value of their property, and paying them dividends on the

bonds. This plan would compensate the owners by paying them salaries based proportionately on their present income. The sliding scale of such salaries would be guided by the principle that no one in the land should receive a total income from all sources which was more than ten times the lowest income in the country.

A second feature of the plan is the provision that it makes for the small owner and small business man. The continuance of a certain number of small, privately-owned businesses is economically essential to fill the gaps left by the large industries and distributing agencies under common ownership. The plan allows for two or three hundred thousand small businesses. Those that are unsuccessful will be absorbed into the larger, and those that are making profits will not be allowed to receive incomes larger than the men doing similar work under common-ownership. The principle laid down is that a business ceases to be a permissible small business when the owner is unable personally to supervise the work done. Employment under these small owners will be open to all, and there can be free interchange between workers in the State industries and those in private businesses. The plan does not intend to interfere with the man who owns his own house, or even a number of houses as long as the income from such property is small.

A third feature is the plan for running the State-owned industries. Obviously, industries cannot be run by civil servants and people in uniform. The plan is to determine the total production of the industry by a National Council, which will also have regional branches. The regional boards will determine the quota that the industries in the regions can produce, and they will also allot the quotas to each factory. At that point the boards' interference will stop. Each factory will then know how much is required of it, and it will be the work of an organisation of the men in the factory to decide how best to produce the quota.

The plan has many other features, but there is not the space to go into more detail. Acland deals with the charge that, without the profit motive, no one will bother about efficiency. He argues that eventually a spirit of service to the community will develop under common-ownership, but that, even if this is lacking, there will remain the desire to do a good job for its own sake, the desire to be given more responsibility, and the natural desire to be known as an important and efficient man. He points out too that, even under the present system, it is not the men who share the profits who are responsible for the efficiency of industry, and that the shareholders who do receive the profits are certainly not responsible.

Furthermore under common ownership the managers and technicians

"will be employed by the representatives of the community whose policy will be expansion for use, and not by the representatives of individual interests whose policy is too often the restriction for profits."

Two questions naturally arise when any plan of this sort is under discussion. First, what allowance is made for criticism and even for opposition in such an order, and secondly, how does the plan secure the freedom of the press. The plan requires organised opposition. The plan argues that there must be parties, and that the opposition must be such that it can challenge the Government, and be ready to form an alternative government. Naturally, at first there must be a Government that has been elected with Common-Ownership as its main policy. For some time, until the plan had proved its worth, the opposition would be opposed to Common-ownership. But because this plan would quickly prove its worth, Common-Ownership would not be an issue for many years. After that opposition would revolve round different aspects of the plan, rather than against the plan itself. The possibility of fascistic methods being resorted to to prevent the plan ever being introduced is also reckoned with. Acland is quite sure that the people would defeat such methods without resort to violent revolution. If not, there would have to be revolution, but he thinks this is, in England, the remotest possibility.

The plan for the Press is that no paper should be in private hands or under the control of a powerful business group. There should be a Publication Council of editors, printers, writers, and some from right outside the industry. Decisions on what should be published would not be decided by the majority. But any paper receiving say 5 votes out of 25 on the Council should be proceeded with although all the other members were opposed to it. Whether the paper was really wanted by the public would of course soon become apparent. This principle is of course of fundamental importance for the democratic process, and Acland applies it to more arrangements than those for the Press.

This plan of course has many features that are little more than socialist plans. But central in the plan is the total rejection of the economic motive. This distinguishes the plan very sharply from the schemes of socialism and communism. The wage-system for example, is not based on what a man can produce, nor even on what he needs, but on what he has a right to as a member of the community.

"A man's reward will not in the least depend on his own power to extract an income for himself out of the community. A man's reward will depend on his rights as a member of the community, and these rights will be judged and determined by his fellows on the basis of his needs, and of his ability to serve the community."

This principle is again applied in shifting the basis of compensation from a man's property to his rights of freedom from want, anxiety, and robbery. The plan states that it is not in accord with Christian principles to force a man to live on a standard of life greatly lower than that to which he has been accustomed. This of course is the very opposite of the communist class-war strategy. Speaking of the very wealthy, Acland says:

"It may be said that if they have not caused suffering to others, their kind and the system under which they have gained their privileges have caused great suffering. All this may be true. But it is not our business to visit the sins of the fathers on the third and fourth generations, and if we attempt to do so, we must cause bitterness."

The second basic principle of the plan is that the Church must concern itself with more than the motives and quality of the individual. This is a fundamental doctrine of Christian social thought. There are questions that are anterior to motives. And because the Church is the servant of a just God it is concerned to see that the conditions of society and the machinery of the State are such that the maximum justice possible is accorded to every member of the State.

"There are many sincere people who tell us that if only we were all good it would not matter what the structure of our society might be, since any structure could then be operated successfully. This is not true, for some of the features of our present society, while they can never prevent individual men and women from living Christian lives, are contrary to divine justice, and act as stumbling blocks making it harder to live those Christian lives."

And again:

"Indeed we face a double problem. We must become different individuals in order that we may have the

chance of operating some system of society with success; and at the same time we must change the structure of our society in order that we may have a chance of becoming different individuals."

For example,

"It is impossible for the ninety per cent of us who are 'in the middle' or 'at the bottom' to live for a predominantly service motive, if the great majority of the five per cent at the top have been living their lives for predominantly self-regarding motives."

Acland's* plan is just an example of Christian principles applied to our modern problems. It is weak in its solution of problems of distribution and price-fixing, and its interpretation of Christianity neglects the central other-worldliness. But it is an important attempt to show in what way the Church should apply its doctrine to the necessity of preventing the inevitable collectivism from developing into the impending totalitarianism.

Conclusion

The Findings of the Malvern Conference, which had twenty-three bishops among its members, were largely a plea for more collectivism. They included the condemnation of the profit-making motive in industry and of private ownership of the principal industrial resources; a demand for equality of opportunity, work and leisure for all, and education until the age of 18; and the principles that the family is a divine institution in need of conservation, and that property is necessary for a full life, but only when property is not in conflict with the requirements of social justice. The Conference, in spite of all this, was almost as much aware of the dangers of collectivism as are the groups of Christian sociologists, who hope to preserve society from the evils of collectivism by the curious devices of the social dividend and the restoration of the medieval guilds.

The problems that face Christian sociologists are as old as they are numerous. They have to determine how much of the old is to be preserved and how much altered or destroyed; how much is possible as well as how much is desirable; how to secure freedom as well as order, and how to apply their principles to

* See also "Vested Interests or Common Pool?" by N.E.H. Davenport. Aug. 1942 (Gollancy) Contains the financial proposals of the new plan, and a radical criticism of the present system in Great Britain.

those who do not share their Faith as well as to those who do.

The Church has always encouraged conservatives and produced rebels. These react on each other, so that the more other-worldly the former become the more the latter become impatiently secular. Acland and most English 'progressive' Christians are certainly among the latter. Of course these two reacting tendencies are not confined to the Church, for they represent the universal conflict between the possible and the desirable, between the fact and the ideal.

The value of the Christian conception of the Natural Law is that it places every human activity within a pattern and order of a complete philosophy of life; a philosophy that gives to life a reasonable and eternal meaning both for societies and for individuals. For these reasons the doctrine of the Natural Law gives importance to what is necessary and essential, as well as to what is desirable, ideal and ultimately perfect and absolute. The necessity for such a social philosophy needs particular emphasis in this age when we have lost the sense of coherence in society, and have developed fatal conflicts between producers and consumers, science and art, employers and employed, capital and labour, and the rulers and the ruled. We are painfully aware of the contradictions in human life because the harmonies have been obscured. The Archbishop of Canterbury makes a correct analysis in saying,

"Order is to be valued as the basis of freedom; only in a well ordered society are the members of society really free. If the roads are beset with highwaymen we are not free to travel. Freedom is a finer thing than order, but order is more indispensable than freedom. If freedom is so developed as to turn into anarchy and chaos, men will always accept the alternative of tyranny in hope that order may be restored."

W. Temple, *Christianity and Social Order*, p. 60.

Such tyranny is a real threat to every society in our broken world. In Germany where this tyranny has been most blatantly obvious, the Church has had to surrender all her attempts to speak decisively about politics, economics, science and ethics. But the German Church has not surrendered her claim to preach the Gospel, to teach her theology, or to practise her own life of prayer and worship. This is of great significance. For it shows where the real source of the Church's power lies, and where it does not lie. It does not lie in usurping the functions of the State or in proclaiming social ideals or in promoting social reforms. It lies

in its Faith, just as the hollowness of the power of the world lies in its lack of faith. Such a discrimination about the function and power of the Christian Church is a necessary caution against the over-optimism of the religious idealists, and the debilitating power of the cynic. In his "Religion and the Modern State," 1935, Mr. Christopher Dawson is much concerned with this discrimination, and he writes:

"to quote Karl Barth once more, 'Theology and the Church are the natural frontiers of everything, even of the Totalitarian State.' Only it is necessary that Christians should themselves recognise this frontier; that they should remember that it is not the business of the Church to do the same thing as the State, to build a Kingdom like the other kingdoms of men only better; nor to create a reign of earthly peace and justice. The Church exists to be the light of the world, and if it fulfils its function, the world is transformed in spite of all the obstacles that human powers place in the way," p. 128.

When this cautious discrimination has been made, then it is not only permissible but necessary to emphasise the central thesis of this article; that Church and State are partners in the creation of that society wherein the natural end of man is accomplished.

"The Church of a Christian Society should have some relation to the three elements in a Christian society that I have named. It must have a hierarchical organisation in direct and official relation to the State; in which relation it is always in danger of sinking into a mere department of State. It must have an organisation in direct contact with the smallest units of the community and their individual members. And finally it must have, in the persons of its more intellectual, scholarly and devout officers, its masters of ascetic theology and its men of wider interests, a relation to the Community of Christians. In matters of dogma, matters of faith and morals, it will speak as the final authority within the nation; in more mixed questions it will speak through individuals. At times it can, and should be in conflict with the State, in rebuking derelictions in policy, or in defending itself against encroachments of the temporal power, or in shielding the community against tyranny and asserting its neglected rights, or in contesting heretical

opinion or immoral legislation and administration. At times the hierarchy of the Church may be under attack from the Community of Christians, or from groups within it; for any organisation is always in danger of corruption and in need of reform from within. . . . We must abandon the notion that the Christian should be content with freedom of worship, and with suffering no worldly disabilities on account of his faith. However bigoted the announcement may sound, the Christian can be satisfied with nothing less than a Christian organisation of society, which is not the same thing as a society consisting exclusively of devout Christians. It would be a society in which the natural end of man . . . virtue and well-being in community . . . is acknowledged for all, and the supernatural end . . . beatitude . . . for those who have eyes to see it."

T. S. Eliot, *The Idea of a Christian Society*, 1939, pp. 47, 33.

CONTEMPORARY HISTORY AND THE SCIENCE OF GEOPOLITICS

BY

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Every builder of a new world order attempts to create a new social science by basing it upon a fresh reading and interpretation of human history and the factors which go to mould it. In his understanding of the complexities of human life and in his approach to its past course he selects some one factor as the dominant and exclusive or primary factor and either eliminates and subordinates all others in its interpretation. He then finds it easy to build upon its basis and influence certain modes of reasoning and certain lines or laws of human progress or tendencies in historical evolution as inevitable, necessary and desirable or even infallible. This monistic and dogmatic approach to history, and this desire to build a new world order have been very disturbing factors both in properly valuing history and its development and in smoothly allowing humanity to take a more noble course of co-operation and peace than of intolerance and war (Kamp and Kreig).

Karl Haushofer's 'geopolitics' is such a new social science and such a philosophy of history. It is similar to Aristotle's Ethopolitics, where State is justified only for good life, to St. Augustine's Theopolitics where State is merely an instrument of God's will, to Rousseau's Demopolitics where State represents the vague general will of the people, to Hegel's Metapolitics where State embodies the mystic spirit of right or real reason, to Marx's 'Ecopolitics' where State is considered as merely a result of economic productive phenomena, to Trietschke's *Macht politics* where State represents only power and its unity and strength and is founded on war and conquest, to Nietzsche's *Hero-politics* where State is the will-to-power of the hero or the superman and nothing else, and to Great Britain's *Albinopolitics* and *Ethnopolitics* where the best State idea and organisation is based on the racial qualities of the Anglo-Saxon White race and is born in Great Britain. All these brands of politics and political thinking are based on the value attached to one dominant factor in the course, development and organisation of social and political life of humanity. They

all reject other factors. They subordinate the common man and the larger humanity to the control of either God or Virtue or right reason or economic phenomena, or State's will-to-power, or Superman's will-to-power, or to some myth of racial mission or superiority. In all these the many are sacrificed to the few, or all to some one philosophical or moral or material idea. It is easy to build up sciences and philosophies on unitary interpretation of the course of human life, for they give some unchangeable laws which make it possible to raise definite strictures of society and polity and attract the dissatisfied and discontented to their new message and struggle in life.

Geopolitics also builds up a theory of living space and expansion as the foundation on which progress and happiness of a virile people could be permanently built. It claims to be a new study of the influence of geography on history, trying to find out their interrelations and political possibilities. Karl Haushofer who developed this science is a Bavarian. He was born at Munich in 1869. By 1908 he rose to be a captain in the German Army General Staff. In that year he was appointed as a military attaché to a German military mission to Japan. He served there for three years in the Japanese army as an artillery officer from 1908 to 1911. This new position and work proved an important event in his life. It gave him a new outlook on international politics and strategy. In Japan he quickly grasped the presence of two new factors rising in the Far East. He himself was a great student of geography and military history, and easily understood the importance of those two factors. One was the racial factor—the rising power of Japan after the defeat of China and Russia. The other was the geographical factor, the growing influence of the Pacific lands. These were the two powerful elements in the growth of a new world power and a new world politics. He felt that Japan was by her racial strength, political outlook and by her strategic geographical situation, and by her military ability was easily going to be one of the great powers in that strategically and economically important area. His stay amongst the Japanese biassed him in favour of the strong Japan and against the weak China. He realised that this Indo-Pacific power-sphere with a well-knit and integrated nucleus of powerful Japan and its surrounding favourable geographical environment was slowly awakening and rising for the first time as a great disturbing and moulding factor of the 20th century world politics. It was growing into a consciousness of being one of the largest land and ocean-spaces of the world. He stated "A giant space is expanding before our eyes with forces pouring into it which in cool matter of factness

await the dawn of the Pacific Age, the successor of the aging Atlantic, the over-age Mediterranean and the European era." Japan thus appeared to him the nucleus of a world revolution in the Far East and the Indo-Pacific Sphere.

In 1911 he composed a doctoral thesis, and in it he dealt with the geopolitical basis and aspects of Japan's military power and political future. In 1913 he published his work on Japan and put forward in it his reflections on Japan's military power and her strategic position in the world and predicted her political potentialities and future. Subsequently also he wrote a number of articles and books on Japan.

Thus his connection with Japan proved to be a decisive date in the formation of his outlook on world politics and strategy. He then began to formulate a new Far Eastern German policy. It was to be based on co-operation and alliance with Japan. This was to be the foundation and means of German political strength in its aim of becoming a world power. To him coming of a world power was an inevitability. Politics of the future was going to be the world politics of Continental dimensions. Who was to take the leadership in it? Haushofer wanted his own nation to take that lead, to gain that mastery.

But the terms of peace of the First Great World War were very unfavourable to the development of Germany towards that end. It was crippled by the victors territorially, economically and politically from outside. It was split, weakened and demoralised by the rise of a number of parties, liberal, clerical and socialist from within.

In the First World War he had led his division. It was unbeaten in battle. But after the defeat he had to retire. He felt greatly humiliated and offended at the turn of events and the imposed crippling peace. His intense national pride increased his hatred against the powers which had been responsible for the humiliation of his proud and brave fatherland. It therefore made him to rejoice at the rise of non-white peoples like Japan who would one day humiliate and destroy the pride and power of Germany's Western conquerors. He felt no hope of recovery or reconciliation coming from them. His state of mind and lines of political thinking can be understood from his following utterance "By a dreadful decision, with consequences of utmost gravity for those who made it, the ocean-embracing cultural and economic powers of our own race have expelled us from their midst. They have left us in no doubt about the fact that only their destruction and decomposition will create another life for us who are now mutilated and enslaved. Thus they have forced us to search for

comrades of destiny who are in a similar situation. We see such companions of disaster in the 900 millions South-East Asiatics. They struggle as we do, for the right of self-determination, against the same oppressors as ourselves, but they fight to some extent with more efficient weapons created by the living conditions of the Indian and Pacific oceans, the arsenal of a Pacific Geopolitics. We see that in these spaces the results of a punishing justice are partly in preparation and partly already consummated, to be felt by our merciless economic and political enemies and oppressors." This extract from Professor Haushofer's "Geopolitics of the Pacific Ocean" gives us the whole of his Geopolitic philosophy, its origin and nature and aims.

In 1919 he left the army in which he was Major-General, and accepted the post of a Professor of Geography and Military Science at the University of Munich in his own province of Bavaria. Here he felt himself called upon to search for the causes of his country's failure in the Great War and to find out the ways to retrieve the disaster, and to restore his people and country to her former glory and world position. He soon realised that unless the Sea-power and naval superiority could be wrested from western powers by direct naval conflict and warfare or superseded and overcome in some other way it was not possible to achieve his aim. Success in direct naval warfare seemed and proved to be difficult. Therefore another way must be found out to overcome the Sea-powers. This he found suggested in the writings of Sir Halford Mackinder, a British Geographer who suggested the strategical and political importance of the great continental area of Eurasia in the world politics of the future.

The writers who may be counted as his immediate predecessors and from whom he borrowed some of his ideas may be classified into three classes,—(1) racialists, (2) geographers, and (3) historians, politicians and militarists. H. S. Chamberlain and Hans Gunther developed the German race theory, and ideas of its purity and mission. Friedrich Ratzel and Sir Halford Mackinder stressed the importance of large-space conceptions and continental politics. Moeller Van Den Bruck and Dietrich Eckart advocated the ethnocentric brand of German political chauvinism. Alfred Rosenberg created a racial philosophy of history and a world ambition for the Germans. Treitschke and Bernhardi preached power politics and German superiority.

But the writers who influenced him most were Geographers. Friedrich Ratzel who had been a professor of Geography at Munich University had investigated the laws of the growth of States and nations and had proclaimed on the basis of his studies

that every people must be led from smaller to larger space conceptions and that the decay of every state had been the result of a declining space conception. People flourished only so long as they constantly thought in terms of large spaces. They should not think in terms of circumscribed boundaries of States. It was he who first created and preached the gospel of "lebensraum" (living space) and justified it to the Germans. Pan-Germans transformed Ratzel's conception of Lebensraum into a powerful political slogan as well as a strategic device and a rationalisation of political conquest and warfare in their Drang nach Osten policy.

The importance of geography in the world balance of power was first largely stressed by Captain Alfred Thayer Mahan. He as a professor at the Naval College in Newport published in 1890 "The Influence of Sea-power upon History 1660—1783." In this book he emphasized mainly the idea that since earliest times those who controlled the seas controlled the world. He again illustrated this observation in his new book "The Influence of Sea-power upon the French Revolution and Empire" in 1892. This idea of Mahan impressed Sir Halford Mackinder, the Director of London School of Economics. He was a geographer. He studied Mahan's ideas in relation to geographical maps and arrived at a new and revolutionary historical conclusions. These were that the most important wars in history were the outcome of the pressure of the land-locked peoples of Eastern Europe and Central Asia on those with access to the oceans, and that at the root of most struggles for command of the seas was the constant desire of emigrants from the land-locked regions to win Sea-power from those who had already had it. These observations he published in his brief treatise "The Geographic Pivot of History" in 1904. In his "Democratic Ideals and Reality" (1919) he stated that Europe, Asia and Africa constitute the world Island, within it there was the Heartland of Central Eurasia. This must be controlled politically for the sake of world-power. He who commanded Eastern Europe would command the Heartland. He who command the Heartland would command the world-Island, and he who commanded the world-Island would command the world. To him this was the reading and the message of geography. His heartland extended from the Volga river in Russia to the Kolyma in Eastern Siberia and from the Himalayas, the Upper Yangtze and the Amur rivers to the Arctic ocean. This territory was invulnerable to any sea-power attacking from surrounding oceans.

His most important observation was however that the ultimate threat to British Sea-power would come not from another sea-

power, but from the great land-locked regions of Eastern Europe and Central Asia, which he considered to be the heartland and pivot area of the geographical and political world. He believed that it was possible for a power in possession of that area to conquer the rest of the world-Island of Europe, Asia and Africa, and then to proceed to acquire the command of the sea and the rest of the world. According to him sea-power alone was powerless to prevent this development, and therefore in the interests of his own country England he felt afraid of a German-Russian alliance.

Friedrich Naumann who had accepted Ratzel's ideas of Lebensraum published a book called "Mitteleuropa" in 1915. It was a grave political treatise in which he discussed the future of Europe. He argued therein that the grand lesson of the war was that the day of small and even moderate sized states was over and that only large units could survive. A naval blockade could only be withstood by a large productive area, such as the British or Russian Empire. It was necessary to think in Continents. Germany was too small a unit. A Middle Europe was a necessity, for it alone could ensure the security and the survival of the German nation. The future lay with world-States and his book embodied Germany's will-to-live, and will-to-power.

These ideas were further developed by Professor Rudolf Kjellen of the Gothenburg University of Sweden. He connected Ratzel's *Lebensraum* to Mackinder's *Heartland theory* and also to his land-power versus sea-power theory, and thus indicated the road to German world domination. His lebensraum for Germany included a larger area, namely, Scandinavia and most of the Near and Middle East as well as Central and Eastern Europe. It was Professor Kjellen who coined the word 'Geopolitics.' He argued that without the destruction of the British Empire and the conquest of Russia Germany's world destiny could not be achieved. He believed that Germany's strategic position in the European peninsula gave her a favourable chance of domination of the 'heartland' of Mackinder.

Haushofer imbibed greedily these ideas and interpretations of his predecessors, studied them with the help of maps and developed them into realities of a new Science, called Geopolitics. With his predecessors they were merely vague generalisations and were meant to be simple warnings and exhortations to the German people. He made them into an applied and precise science. He worked out all possible details and implications of its principles. He took fully into account the changeableness of the world as a political phenomenon. He showed a great flexibility in trying to

understand its complex dynamic realities. In this way he built up this science and an enormous following of young historians, politicians, economists and students who made geopolitics their life study. It is stated that he has associated with him one thousand scientists and technicians who helped him in collecting information and making observations and thus in developing the nature, scope and technique of his geopolitical science and philosophy of applied politics. He has brought a new outlook and light to bear on and to illumine the nature of contemporary and coming world politics and has created a new technique to direct its course and to achieve its objectives. His mastery over his subject is stupendous. His information and study are beyond comparison. His suggestions and directions are revolutionary. He possesses an extraordinary creative, fresh and original mind. Though he had borrowed some political ideals and geographical ideas and attitudes from his predecessors, geopolitics as a new subject of study is his own creation. It attempts a new solution of world politics. His approach is typically objective and scientific. He does not address himself to race-fanatics or indulge in nordic and Aryan race myths or invite missionaries of any religion or civilisation or Kultur to start a new *Kampf* or *Haas* to attain his objectives. To him geographical facts are of primary importance in the study and direction of world politics. Possibilities of Continental areas and groups are the foundations and keys of his sciences.

The great geographical fact of the post-war period is that the sea-power has lost its pre-eminent position as the determining factor in world politics. The development of the motor vehicle, the tank and the airplanes have revolutionised the means of communication and the strategic lines of sea-power. Sea-communications which are easier and more plentiful than rail-communications have lost their importance in favour of land-communications by airplanes within vast land continents. The strategical balance is now developing in favour of them. Therefore land and air powers are getting equal to sea-powers. This revolution is due to the development of gasoline engines and their use in land transport and aviation. Due to the speed and character of aviation territorial boundaries of nations and continental geographical obstacles of mountains and deserts have lost their barrier and security value.

The other great fact of revolutionary importance is the development of chemical synthetics during the last 30 years. Several processes for making gasoline from coal have been invented. This has helped in making up the deficiencies of small

oil reserves of Europe. Other commodities that are greatly necessary in war and which are not available at home are also produced by synthetic chemical processes. Consequently the naval blockade of sea-powers which control the seaways, and the oil, rubber, tin and other essential and useful colonial resources can be withstood more successfully. For Germany chemical synthetics are very essential since she lost her colonies and because the area which it contains and controls lies to the west of the Heartland of Eurasia proper and is much poorer in these resources than the Heartland itself.

The third fact of important consideration is that small states cannot take advantage of modern technology as they cannot themselves provide the mental and material resources which are necessary for its adoption. Technology can work well only in large and resourceful countries possessing a drive, power and technique to utilise it. Consequently small states are unable to guard their own independence in face of superior powers which are more mechanically and scientifically equipped and advanced, and they cannot make use of the new technological developments for their own welfare. Their continued existence as separate sovereignties in modern times is quite unjustified from the point of view of an inherent lack of power for maintaining independence and promoting material progress of their own peoples. Therefore their forcible elimination or voluntary withering away is necessary, desirable and also inevitable in the interests of world unity, peace and progress, and hence justifiable. The existence of small states is an anachronism and an obstacle, and becomes a centre of mischief and disturbance in the hands of the present rival and self-interested powers who are only concerned in the interests of balance of power in maintaining the existence of small or weak states in the world.

The fourth but more important and reassuring fact to the Germans is that the British Empire which is based on sea-power and which has long sea-lines of communication and great colonial resources and commitments to guard contains the seeds of its own destruction. Three powerful factors are contributing to that fact. The rise of great rival powers like Japan and Germany, the growth of national independence movements in the Colonial and coloured world, and the rapid improvement in overland means of communication have made the ocean links and naval bases of that empire comparatively weaker and its hold on the resources of the colonies less secure. It would require larger land, naval and air force at Key-points and strategic bases, and also in Great Britain itself which was not now militarily invulnerable or navally

unapproachable or economically undestructible with the help of new air and submarine power. This would therefore divert and divide its military, naval and aerial fighting strength and thus increase the possibility of the piecemeal destruction of her sea-power and colonial strength in human and material resources by a large-scale war of attrition at sea by means of submarines and airplanes, and by an alliance with the great naval and military power of Japan.

Haushofer had already imbibed from Mackinder the idea that Japan and Germany were two stations—one in the East and the other in the West—on the 'inner line' of the Heartland of Eurasia. In the new age of motor vehicles and airplanes the geographical position of these continental powers gave them decisive advantage over the aging sea-powers. Between these two powers was the Russia and China bloc—the geographical pivot of history and the heartland of the world island. Therefore Japan and Germany must reconcile themselves to this bloc or they must subjugate it. Haushofer believed that if Japan and Russia were united in East Asia they would be invincible. This would give Japan complete security from the continental side and leave her free for action in the Indo-Pacific area. Similarly if Germany were to reconcile herself to Russia, then they would be invincible in East Europe and the Near and Middle East, and leave Germany free for action against Africa. Thus Japan, Russia and Germany in alliance would create an Eurasian continental organisation stretching from the Rhine to the Amur and the Yangtze. This, he proposed, should be the grand strategy of the future. The 'innerline' therefore of Japan and Germany must be held in peaceful collaboration with the powers of the "Geographical pivot of history." That is, Japan and Germany must aim at peace and friendship with Russia. It was necessary for them to come to terms with it. Consequently Japan should solve her problem of over-population and economic wants by political expansion into the rich territories and islands of the Indo-Pacific area.

He visualises the new world-struggle not as between the nomads of deserts and Steppes and the settled population of agricultural areas, but as primarily a clash between the pirates of the Steppes and the pirates of the sea, both of whom want to subdue the cultivators of the fertile soils and possessors of fertile resources. Other peoples and countries are merely powers and possessions in this game of world politics. Therefore he is very much interested in building up a solid bloc of three powers stretching from the Atlantic to the Pacific and in linking up the great spaces and resources of Eurasia and the Indo-Pacific area to

the small spaces of Germany and Japan and to make them eventually the dominant powers in the coming world order.

He has constantly praised the Japanese for their military virtues and large space consciousness. He saw that the Japanese will-to-expand and will-to-conquer was bound to lead her to attack the white empires of Eastern Asia in order to create her own empire in the Far East. Japan which occupies a strategic position in the economy of the Pacific area is connected more or less directly with all the states bordering on the Pacific waters. As seas do not divide but unite countries in modern times, the new Pan-Pacific outlook in the economic and political consciousness is a new phase of world politics.

Though he thus recognises the geopolitical importance of Japan he does not lose sight of the possibility of Japan's tragic failure in and against China and Russia if she were to enter on a campaign of their conquest. Similarly in the case of Germany attacking Russia he sees a like possibility. Therefore he has advised both to live in peace with or come to terms with Russia. He has advocated a Eurasian alliance of Germany, Russia, China and Japan.

In 1924 Haushofer established an Institute for Geopolitik at Munich and collected a large number of ardent scientists, technicians and investigators to help him. The Institute publishes a big monthly journal called *Zeitschrift für Geopolitik*. Its contents give an insight into the nature of the work done in connection with its facts gathering and facts-studying activities. Moreover it maintained an extraordinarily complete string of correspondents in strategic places and areas throughout the world before the out-break of the present World War. Professor Haushofer delivers lectures at the Institute and they are largely attended, and his ideas and information are greedily imbibed there especially by military officers, soldiers and students. He does not believe in any dogmas. He steadily keeps in view the constant changes which are taking place in the political world and which affect his own tentative schemes. He does not propose to give any permanent or final solutions of the problems he studies. If conditions and forces change he revises them. His fixed aim however is Germany's success. He has only developed a set of guiding principle and shown a group of geographical facts and forces which should control action in a given situation. He has indicated the weapons for immediate objectives in order to attain later on the general objective. He has written very voluminously on international relations and power politics and it is stated has made few errors of judgment. This Munich Institute and Geopolitical

School are unrivalled in the high quality of their international studies, surveys and maps, and are the most efficient fact-digging and information gathering machine ever devised. The Geopolitical literature he has created in the monthly surveys of his magazine is large. Each number contains from 1500 to 4500 words on the topic. Each issue contains an editorial by him on the Indo-Pacific sphere. His studies primarily deal with the relationship between geography and history, by studying every field of human activity—economics, politics, foreign-policies, naval, military and air warfare, forces and developments, war industries, systems of communications, means of transportation, population, languages, laws, customs, newspapers, radio-broadcasts, colonies, raw materials, oceans and terrains, everything that men do and which influences their actions largely are all considered as parts of history and as deeply affected by geographic factors. On these subjects the Institute has carefully collected enormous data. They relate to every phase of human society and activity.

His early works deal with "Indo-Pacific Sphere." In them he approves of the Japanese programme of "Greater East Asia," which is as it were the prototype of the "Greater Western Eurasia" of Germany. In 1924 he published his famous book "Geopolitik Des Pazifischen Ozeans" (Geopolitics of the Pacific Ocean). It is considered to be the Bible of German Geopolitics. His greatest and most important treatise however is *Macht und Erde* (Power and Earth) published in three volumes in 1927. It was followed by *Wehr-geopolitik* (war geopolitics) in 1932, a booklet of 138 pages addressed to soldiers containing a summary of his views on Geopolitics. Then came his most popular book "Welt-politik von heute" (World politics of today). He has also published 30 special studies on the Indo-Pacific spaces besides his regular monthly reviews on the subject in his Journal. All these books and studies analyse very carefully and expound lucidly the ideas of German Geopolitics in general and of the Pacific Geopolitics in special.

The argument of this master Geopolitician and his scientists runs as follows. The whole world is today the battle-ground of forces contending for the mastery and political unity of the world. In a period of world war the entire earth becomes a theatre of war. Therefore all the details of its geographic configuration, namely, continents, islands, peninsulas, oceans, bays and gulfs, seaways, waterways and airways, landmasses, deserts, forests, mountains and valleys, climate and temperatures, winds and seasons, etc., have to be carefully studied and used in the strategy of world war and power. This combination of geography and

strategy on a world scale is indispensable to rival powers which seek to win or keep a world position. To this end also the foreign policy of nations has to be directed and developed. They must acquire geographical means for winning victories. Therefore accurate and intelligent surveys and maps of all the lands and peoples and of their geographical realities and geo-political importance have to be made and utilised, and their political relations and possibilities have to be well understood and stated. These studies would give them practical knowledge of the foundations and weapons of power and of the laws and forces that govern the rise and fall of states. This is the scope of the new science of geopolitics which is meant to be a powerful weapon in the grand strategy of the new world struggle. The real essence of geopolitics therefore lies in a thorough study of geographical facts and their importance as decisive data for the diplomacy and strategy of power politics. It does not view geography in terms of scenery, or of its influence on human types, or of topography and resources as bases of livelihood, or of boundaries and areas of national jurisdictions, racial habitations, or religious homelands. Geopolitics views geographical facts, namely, landmasses and sea channels, mountains and valleys, material resources and ways of communication, continents and oceans, even territorial beliefs and customs exclusively from the point of view of world power and world war, and estimates their likely effects on them. It also deals with the "living space" theory and Heartland and world-Island theory from that point of view.

Every powerful nation will have its geopolitics or world politics. There is no such thing as a general science of geopolitics because it is based on national aims which differ and change. Therefore it does not and cannot have one definite and dogmatic form. It depends upon the world outlook, the world position and the world strength of the aspiring nation at a particular time and situation. There can be as many types of geopolitics as there are conflicting states, struggling under geographical conditions which differ in the case of sea-powers and land powers. The German geopolitics of Haushofer has evolved its own values and ways of seeing, thinking and acting on a global scale. It has a typical German Weltanschauung with its own principles, practices and interpretations.

Thus we see that geopolitics is something more than political geography. Political Geography is merely concerned with the description of the state space as it is, that is, its location and extent. It investigates mainly the actual physical conditions which prove important in the relationship of state and its economic life and

political security. It is a static study of what it is. It never asks and inquires into dynamic questions, the political possibilities and economic potentialities of adjacent geographical areas. Political geography is a limited study. Geopolitics is a study of the whole world geography and its global importance in relation to the dynamics of world power politics. It investigates the life circumstances within a state and between states in their relationships of space and power. "The difference between geopolitics and political geography lies in the fact that while political geography is only the investigation of conditions, geopolitics asks an outspoken dynamic question," that is, about expansion and power. There is no element of any strict geographical determinism in it. It uses geographical facts for power politics. Thus geopolitics may be considered the geographical foundation of the art of political action in the struggle of states for existence and 'lebensraum.' It deals with large space economics and continental politics, with the control and possession of means of communication, colonies and resources and markets as sure means towards national existence and security, power and living space.

Geopolitics is thus primarily a dynamic science of war geography. It wants to out-flank the oceans and defeat the sea-powers by the control of continental spaces and their coastlines and ports. According to Haushofer "Geopolitics is aimed not only to get everything ready for as wide as possible a realisation of power in the realm of space for the art of politics, it has also to present its findings ready for immediate political use. This explains why geopolitics has to work on a much broader basis than that of mere political geography. State theory, economics, sociology, the political science of the United States, the lessons of history, of the law of nations, the public law, and the field of law in general, all have to contribute to the structure which is erected not only to shelter the past, but also to carry the fundamentals of the future. The scientific basis of Geopolitics must be constructed for the requirements of the future, and with the courage to predict the future." Thus his main aim is to make this science a precise instrument of world conquest. His task is however very specific. He lays down the lines of actual politics for Germany from this viewpoint. He not only attempts to secure her national interests in the midst of an inevitable conflict of great powers but also to advance them from the point of view of gaining world power. The strategy of war is one of the most important branches of the science of geopolitics. War is its experimental workshop. It wants to find out how warfare is vitally influenced by the earth's surface. Its ideas of blitzkrieg or the swiftest possible destruc-

tion of its enemy's armies, of encirclement of the enemy etc., are a part of this science. No doubt Haushofer's school takes great interest in the problems of the earth from a definite weltanschauung of its own. But it sees all its problems from the dark background of the Versailles Peace and post-war Germany, and the treatment it experienced at the hands of her victors.

Geopolitics does not admit the right of small nations to self-determination. According to it "every people must be educated up from smaller to larger space conceptions." Haushofer is fully convinced of Ratzel's idea that a declining space conception brings decay to the State. He is of opinion that Germans must learn again to think and feel and act in large-space terms and not merely in terms of their restricted homelands. He advises them to play their part in the tragic but inevitable course of world-history in which the people of the largest continent will remain independent of the control exercised by the sea-powers over their economic and social life and political expansion. Europe as a whole has been paralysed by small space conditions and conceptions of small tribal nations and cultural groups. English politicians have steadily encouraged this reckless growth of small independent nationalities in Europe and America in the 19th century, and have set them against one another as neighbours. Haushofer traces the lines of same policy being followed and encouraged in Asia in the 20th century. A host of small territorial groups are being carved and created as independent units out of old larger historical units in Western, Southern and Eastern Asia in the name of religion, race, history and minorities. This is the true nature of British imperialism and world politics based on the conception of balance of power but camouflaged in the name of self-determination and rights of minorities. It has weakened and split up historically united people and set up conditions of Civil wars in them. Thus she has gained her own dominance and maintained it with the command of seaways and colonial resources, finances and markets. Therefore Haushofer believes that Indo-Pacific countries, fearing the same fate of being splitted up into small conflicting territorial units, look out with increasing confidence to some great power like Russia, Germany and Japan for help. He thinks that the struggle of the Turks, Arabs, Indians, and Chinese is going on to prevent this political fatality and to liberate themselves from foreign rule, domination and exploitation. This is the immediate objective of their geopolitics. Therefore the geopolitics of Russia, Germany and Japan lies in helping and associating with them. This instinct against partition of great historical units into smaller artificial units and against domination

and exploitation by foreigners has become a living force in Asia, and the clever tactics employed in raising the cry of artificially fostered minorities and small nationalities has to be exposed. These tactics have awakened the self-consciousness of large historical entities and natural geographical units like China, India and Arabia to their historical heritage and geographical destiny. These great cultural units are bound together by the traditions of their people and by the influences of their soil.

Along with German historians Haushofer believes that the cultural centre and dynamic sphere of Central Europe, that is, Germany, has been tormented and prevented from uniting and expanding for long by France and Britain. She has now become conscious of a world-embracing destiny and order. In this new world outlook (*Weltan-schaung*) which she has developed she feels that she will be liberated from artificial isolation of narrow statal and national boundaries, and that she will thus enter into the new community of large spaces of the earth, namely, the Indo-Pacific monsoon lands containing 900 millions of peoples who are struggling for political self-determination of their large-space historical homelands and holylands.

We must here understand that Haushofer does not seek to create a white bloc of white races and impose their rule on the non-whites. He says that the white bloc conception was smashed by those who used non-white troops and peoples in the last war to keep down Germany—a white race. Therefore Germany is justified in joining and sharing in the geopolitics of the Eurasia and Indo-Pacific sphere not only on political but also on ethical grounds. He also thinks that France and England are not really white powers. Their empire is over the coloured. They rule and employ uncultured coloured races to oppress and oppose white races of Europe. Therefore Germany must help in liberating cultured coloured races who are struggling and rising against their white oppressors and thus create and hold the strategic lines of a future geopolitics of the Pacific. This policy alone will give Germany a chance to share actively in the world resources and in the world politics of large spaces from which she has been wrongfully displaced in the last war.

Behind the geopolitics of Haushofer stand Germany, Russia and Japan, the three associated powers as partners in an axis in a world undertaking. In this way he attempts to link up the great spaces of Eurasia and the Indo-Pacific sphere to the small spaces but powerful peoples of Germany and give her a new world outlook and a new world politics—which is, in short, the substance and aim of his geopolitical thought.

His geopolitics is not a trivial something to be lightly dismissed. It is a powerful conception and instrument in the hands of Germany. It is essentially an attempt to overcome Anglo-American sea-power and their world expansion and control by the new technique and strategy of the land and air power of Eurasia. From this area—the heartland of the world Island—she can build without interruption a large land and air-force strong enough to control or conquer the world-Island of Europe, Asia and Africa. Then she will easily destroy the strength of sea-powers by depriving them of their naval bases, coastline control and large resources and supplies of war materials, and then she will be able to create her powerful fleet to crush finally the resistance of the enemy sea-powers.

Haushofer was greatly attracted towards Japan from the date of his first stay in 1908. Then after the loss of German claims and territories in the Far East after the First Great War and of German foothold in the Pacific he was led still closer to Japan, as then German and Japanese vital claims and political interests did no longer overlap or cross each other anywhere. He could therefore advise Germany not to oppose the Japanese cry of "Asia for the Asiatics." He on the contrary advocated a policy of close co-operation with Japan on the basis of a "symbiosis of cultural politics." This meant that a permanent union should be established between them, each depending for its existence, security and expansion on the other.

He regarded Great Britain after the Great War as Germany's greatest enemy politically, economically and culturally. His Anglo-Phobia made him advocate an alliance with Japan, and rapprochement with Russia. Both of these countries were obstructed in the fulfilment of their political ambitions and ideologies by the geographically adjacent but antagonistic imperialism and capitalism of Great Britain.

He has done a lot of propaganda to spread his new ideas. He has attempted to educate the German peoples through his books and writings to take a global view of politics as he understood it. In 1936 he was preaching "do not be small minded, but think in broad terms of large spaces, of continents and oceans." Much earlier in 1923 he had come in contact with some members of the new Nazi party. Rudolf Hess who was his aid-de-camp during the first world war had escaped arrest during the Beer Hall Putsch through the agency of Professor Haushofer. He hid Hess with some of the Nazi archives on his own estate. After his escape Hess used to attend Haushofer's classes and became one of his disciples at the Institute. He eagerly imbibed his geopolitical

ideas. He also met Hitler in jail through Hess. His ideas influenced Hitler and became a part of his *Mein Kampf*.

It is said that German-Japanese Anti-Comintern Pact of 1936 and the Russo-German Pact of 1939 were Haushofer's greatest successes. He in his joy proclaimed "never again shall Germany and Russia endanger by ideological conflicts, the geo-political foundations of their adjustable spaces."

Are there any limitations on or flaws in the geo-political interpretation of history and politics? Besides the influence of geographical factors of technical and scientific developments, of military and aerial power there are other imponderable forces which may turn the course of events into a different path. Certain spiritual, moral or economic values of life, certain social ideals, and certain historical outlooks and associations may prevent alliances and create clashes and conflicts between adjacent nations and continental areas which are geopolitically natural allies, or if they succeed as allies in any great war they may wrangle and fight over the distribution of the gains—territorial, economic and strategic—made during their temporary alliance.

Therefore the question naturally arises, is Geography the sole or primary determinant of the course of history as the geopoliticians believe? It no doubt is a great factor but not necessarily the sole determining factor. The relegation of man and his social ideals and spiritual beliefs to a secondary and subordinate place is not tenable. There are equally weighty factors—economic, social, political and historical, which influence and mould the course of human events or history. There are violent and aspiring nationalisms, bigoted and inspiring spiritualisms, fanatic racialisms and alluring socialisms which cross the course of history and potentialities of geography, create visions and lay down paths of larger world orders or pan-territorial, racial or religious blocs on a continental scale, and thus turn the current of geography and history.

Moreover one single people or nation, however greatly endowed, scientifically equipped and technically organised, and aspiring for such a world dominion, cannot prove equal to the task, because of its own mental, moral and material limitations in face of the power and resources of its temporarily allied and united opponents. If it allies itself with others for such a task, then that fact itself is a limitation upon its power. Besides there is always suspicion, hatred and opposition inherent in the temporary alliance itself. Mere success in the war alone will not solve the problems of peace, namely, political authority, economic distribution, cultural freedom, social and political relations.

Economic or geographical factors alone do not explain or create historical changes or social revolutions. Land does play an important part in making history, but we cannot neglect purely human factors, man's nature, ideals, creeds and objectives, his social and economic conditions and historical developments. Territory cannot completely subordinate man and make him a tool. The unknown possibilities of geographical factors are not one but many. It is man alone who can make any one or other of them real to suit his ideals, ambitions or objectives. We must, therefore, give full and equal consideration to the higher forces of human life and to the value of man's individual freedom and the spirit of his social outlook and not ignore them to suit the inexorable demands of any pseudo-scientific and purely materialist thinking. Men would not give up every human ideal or value of life to bow down before the power-aims and war strategy of geo-politicians. Nations do not become merely slaves or objects of dominant geographical factors. They find ways of escape out of the forces of geographical determinism.

To me Geopolitics seems to be primarily a science of war strategy and foreign policy meant to achieve world domination, being based on certain major facts of world geography and their clever utilisation. It is a science of organisation of means and not of organisation of ends. It generates a geographical materialism and determinism to suit the philosophy of racial destiny and domination and neglects higher ends and values of human life. It only creates an extreme longing and fond hope for larger living spaces and for political expansion without any scheme for the ordering and organising of higher human life as a whole on the basis of justice, freedom and happiness equal to all. In practice it becomes the mission and mysticism of the blood or race, a mission and mysticism of the soil or geography. Both play the rôle of myth in History.

Geopoliticians are primarily expansionists and militarists. Their patriotism is bellicose and war-mongering. Their humanity and world-outlook are jingoistic and absorptive. They pander to the intensely chauvinistic spirit of the nation.

THE SOCIAL CONTRACT AND THE FOUNDATIONS OF THE ISLAMIC STATE*

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We have now seen the State of Nature as it prevailed before the advent of Prophet Muhammad (Peace be on him!) and we have already briefly touched upon the excellence of the Laws of Peace that transformed that country of war, anarchy and moral degradation into one of unity, harmony and moral excellence. Now we will try to see *how that Contract was made* which brought about the Civil Society in which the laws of the sword were replaced by the Articles of Peace. We will, therefore, begin with a brief sketch of the life of the Prophet for he was the moving spirit which restored the Laws of Reason from oblivion and brought light in a country of darkness and sin.

The Birth and Early Life of the Prophet

The Prophet was born at Mecca as a posthumous child in 570 A.D. and was bred and brought up by his grandfather who entrusted him to the care of Halima, a nurse of the clan of Bani Saad. From his fourth year, he began to accompany the sons of Halima when they went out to graze their cattle. When he was only six years old, his mother died and he was left an orphan. Two years after his grandfather also died and he was thus left without any protection. His uncle Abu Talib then became his guardian. In his thirteenth year he went to Syria for trade (with his uncle) and in his 20th year occurred the notorious Sacrilegious War (Harabi-Fujjar), so-called because it was waged during the sacred month of Dzulkaad. It was fought out between the Quraish (the Prophet also belonged to this clan) and Bani Kanana on one side, and Bani Qais bin Ghilan on the other.¹ In this war, the Prophet

* The first instalment of this article was published in *Indian Journal of Political Science*, Vol. IV, No. 2, pp. 232—269.

¹ Ibn-i-Hashim, *Seerat* (Urdu Translation); *Rafah Aam*. Steam Press, Lahore 1915, p. 56. Also *Tarikh-i-Abul Fida* (Urdu Translation), p. 270. Mathae-Uloom Madrasa, Delhi (1847). The Cause of this war, as usual in the Arabia of those days, was murder. *Tabqat-i-Ibn-Saad*, quoted in original Arabic by Khan Bahadur Syed Aulad Haider in his *Uswatul Rasool*, Vol. II, p. 69.

did not take any part save that of gathering up of the arrows discharged by the enemy and handing them over to his uncles.²

Halful Fuzul and the beginning of a period of Contracts

After four years of fighting, peace was restored and as there was no government worth the name at Mecca, the descendants of Hashim and the families of Zohra and Taim agreed to an 'Oath' known as 'Halful Fuzul' by which they agreed to stand by the oppressed and get them justice done. Ibn-i-Saad thus notes the character of this contract: "*This contract was better and superior to all such previous pledges.*"³ It was initiated by Zubair bin Abdul Muttalib and he called upon others to pledge. Bani Hashim, Bani Zohra and Bani Taim gathered in the house of Abdullah-ibn-i-Jadaan for purposes of agreement. They first met on a common dinner and then they organized the meeting. In the presence of God, they made a Contract among themselves that they would fight on behalf of the oppressed against the aggressors up to the time the latter agrees to pay the compensation to the former. Ibn-i-Hisham puts this affair in this way "*All unanimously agreed on oath in the city of Mecca whether the oppressed be a traveller or he be one of the residents, they would force the oppressor to pay compensation.*"⁴ The Prophet was also present at the time of this Contract and he said that if further such Contracts be made for the cause of the oppressed and 'I be called, I would certainly respond.'⁵ But other clans did not join this Contract and they remained in the state of hostility in which they were passing their life.

The Prophet As 'Amin' and his Part in the Fixing up of the Black Stone

However, the Prophet's gentle sweet disposition, his austerity of conduct, the severe purity of his life, his scrupulous refinement, his ever-ready helpfulness towards the poor and the weak, his

² Ibn-i-Hisham, p. 56, *Usudul Ghaba* adds that the Prophet was also guarding or looking after their goods.

³ *Ibn-i-Saad-Tabqat* reproduced in *Uswatul Rasool*, pp. 71-72. As regards 'previous pledges', Margoliouth says, "It seems there was an arrangement between the tribes whereby warfare should cease for four months in each year in order to permit of safe pilgrimage to the sanctuary." *Mohammedanism*, p. 43.

⁴ Ibn-i-Hisham, p. 41.

⁵ *Tabqat-i-Ibn-i-Saad* reproduced in *Uswatul Rasool*, F. 8

noble sense of honour, his unflinching fidelity, his stern sense of duty had won him among his compatriots the high and enviable designation of Al-Amin, the trusty.⁶

In his twenty-fifth year he married Ummul Mominin Hazrat Khadija who was much influenced by his honesty, virtue and the nobility of the soul. In his thirty-fifth year, the Quraish decided to build the Kaaba which was now in a shattered condition, but they began to quarrel on the fixing of the 'Black Stone.' The Prophet at once took a sheet of cloth and asked four men of the four divisions of the Quraish to hold each corner and the Black Stone was placed in the middle of the cloth. When it had been raised to the proper height, it was affixed by the Prophet himself.⁷ Thus was settled a quarrel which might have again brought in a state of war as Hobbes pictured it. Says Tibri: "When the time came of affixing the Black Stone, every one desired to place it at the *Spot*. On this basis, all of them began to get out of the limits of patience and, on oath, became ready for war and bloodshed. Bani Abdul Dar went to this extent—according to the Arab custom of swearing on such hard occasions—that they filled a cup with pure fresh blood and following the practice of the Arabia of ignorance they dipped their hands and of those of the clans of Bani Adi bin Kaab into this cup of blood thus signifying with steadfastness their readiness for bloodshed and war."⁸

The Prophet receives the Light and followers increase

Because of his God-fearing nature, the Prophet used to retire to the Cave of Hira and there offered prayers to the Almighty—the only 'Light of Nature'. It was here in his fortieth year, and the mantle of Prophethood fell upon him and he received the, "Light". His wife—Hazrat Khadija—at once accepted the *Light of Islam* and she was followed by Abu Bakr, Ali, Zaid and a number of other followers such as Usman bin Affan so that the number of his followers in no time reached forty.⁹ This began to perturb the heathen Quraish and there was no meeting in which the growing power of Islam was not discussed.¹⁰ The Muslims dared not offer prayers *openly* for fear of growing opposition. However, for three years the Prophet preached *his religion of peace* secretly

⁶ Amir Ali, *The Spirit of Islam*, p. 13. The same sketch of character occurs in Ibn-i-Saad, Ibn-i-Hisham and Tibri.

⁷ *Tarikh-i-Abul Fida*, p. 272.

⁸ *Tarikh-i-Tibri*, Vol. I, Part III, translated in Urdu by S. Ibrahim Sahib, M.A., Hyderabad, p. 52.

⁹ Ibn-i-Hisham gives the full list, pp. 83—85.

¹⁰ Ibn-i-Khuldun, p. 24.

but when he began to do it publicly, the Quraish at once felt infuriated and they approached his uncle Abu Talib to refrain the Prophet from reviling their gods and condemning idolatry. When Abu Talib advised the Prophet to refrain from such activities, he received the prompt reply that *if these people would place the sun on my right hand and the moon on the left, even then I would not give up my work until God fulfils it or I die in its pursuit*.¹¹

The First Hijrat in Islam to Abyssinia

When, however, the Quraish found that the activities of the Muslims could not be abated, they decided on their heartless persecution,¹² and the Prophet was forced to advise them to leave for Abyssinia. *Eighty-one Muslims* thus said good-bye to their hearth and home simply because they had got the 'Light' which they could not forsake for an exchange of worldly life.

Conversions Go On and Prayers Offered Publicly

However, in spite of growing opposition, Islam went on gaining converts after converts and even Hamza and Umar became Muslims. 'These conversions,' writes Muir, 'were a real triumph of Mahomet. Hamza and Umar both possessed, with great bodily strength, an indomitable courage which added to social position, secured an important influence at Mecca.' Muslims now began to offer public prayers at Kaaba.¹³

The Covenant of Tyranny

This open challenge alarmed the Quraish beyond imagination and *all of them* gathered together and *all of them unanimously* made a written Contract under which they decided for a social boycott of the Hashimites agreeing that *they would not marry their women nor give their own in marriage to them, nor buy aught from them; and that dealings with them of every kind should cease*.¹⁴ This written document was then hung in the Kaaba duly sealed. This Contract or Agreement has been called the 'Covenant

¹¹ Ibn-i-Hisham, p. 86.

¹² See *Usdul Ghabah* for details of horrible persecution under Khabbab, Bilal, Khalid bin Saeed and Naufal. Also Ibn-i-Hisham, p. 88.

¹³ Nicholson, *A Literary History of Arabia*, p. 157. Ibn-i-Hisham, p. 115.

¹⁴ Muir, p. 99; Ibn-i-Khuldun, p. 32; Ibn-i-Hisham, p. 49; Abu Fida, p. 282; Rauzat-us-Safa (Oriental Translation Fund), Part II, Vol I, p. 185.

of Tyranny' as distinguished from the earlier *Contract of Halful Fuzul*. The former was a Contract *for the oppressed* and the latter was made *to oppress*: the one was an instrument of human sympathy, the other an instrument of intolerance and cruelty.

The Covenant of Tyranny Annulled

For three years the Hashimites were put to the greatest trouble because of this boycott, but when, on the suggestion of the Prophet, that document of tyranny was examined, it was found out that it had been devoured by the insects (only 'In the name, O Allah! remained').¹⁵ Thus the whole opposition was set at nought and the obligation of boycott was lost. *The Covenant of Tyranny was annulled.*

Attempt of a Contract Between the Quraish and the Prophet

Soon after, however, the Prophet not only lost his wife—Ummul Mominin Hazrat Khadija—but also his uncle Abu Talib who had suffered so much because of his affection for his nephew (the Prophet).

Immediately before his death, another attempt was made by the Quraish to come to some agreement with the Prophet. Some of the well-known leaders went to Abu Talib and said that after his death 'quarrels and contentions' would arise between the Quraish and Muhammad (Peace be upon him!) and therefore it was desirable that *the Prophet should enter into a Contract* (a treaty of Peace) with them for '*ceasing injuring their religion*' and on their part they would also '*let alone his*'. Abu Talib at once sent for the Prophet and when he came he said, 'My son, the nobles and chiefs of the Quraish have gathered here *to make a Contract (Muahida)* with you and they agree to promote thy interests, and act according to thy behests, if thou wilt comply therewith.' The Prophet at once said, 'My uncle! it is excellent. I request them to utter only one expression and the result of pronouncing this will be that they will reign over the whole of Arabia and the whole of Persia will accept their religion.' That expression is 'There is no god but God and Muhammad in his Prophet.' On hearing this, they clapped their hands and said, 'O! Muhammad wishest thou to reduce our gods *from one thousand to one*? After this they arose and dispersed.'¹⁶ The passing away of Abu Talib emboldened the Quraish for further persecution, and they even

¹⁵ Rauzatus-Safa, p. 190.

¹⁶ Rauzatus-Safa, pp. 196-97; also Ibn-i-Hisham, p. 146.

threw dust and dirt and even the intestines of goats and camels¹⁷ when the Prophet was busy in prayers, but he bore all this patiently. He then went to preach to the people of Taif but was not only hooted and treated in an unbecoming manner, he was also pelted with stones and pursued by a relentless rabble.¹⁸ In this way he was forced to go back to Mecca.

The Prophet Preaches to the People of the Suburbs

Then the Prophet adopted the practice of preaching to the peoples of the suburbs of Mecca when they gathered for the performance of the Hajj but here too he was relentlessly opposed by the Quraish and made the target of calumny and ridicule. But the Prophet undaunted by adversity carried on his mission, and it is to this sublime attitude that Muir refers in these words:

'Mahomet thus holding his people at bay, waiting in the still expectation of victory; to outward appearance defenceless, and with his little band as it were in the lion's mouth; yet trusting in His Almighty power whose Messenger he believed himself to be, resolute and unmoved; presents a spectacle of sublimity paralleled only by such scenes in the sacred records as that of the Prophet of Israel when he complained to his Master, 'I, even I only am left.'¹⁹

The Scene of Civil Society was to Shift to Medina First

However, it now became quite clear that the blind Arabs of the Age of Ignorance were not prepared to accept *the Light of Allah* and they were determined to live a life of darkness and error. They were wedded to their ancient customs and traditions and did not want to follow the Laws of Nature as they were disclosed by the Religion of Peace—Islam. Hence the first institution of Civil Society was not to be on the land of Mecca: it was to be in a far distant city—the City of Medina.

The First Pledge or Contract of Akaba

This practice of preaching to the people of the suburbs who came for the Hajj, after all, was crowned with success. The Prophet met six people of Bani Khazraj from Yethrib (Medina) and they accepted Islam (that is, *made a Contract with God*²⁰) and

¹⁷ Ibn-i-Hisham, pp. 145-146.

¹⁸ Ibn-i-Khuldun, p. 35.

¹⁹ Muir, p. 122 (1894 edition).

²⁰ Hobbes thus expresses himself on making a Covenant with God: "To make covenant with God, is impossible but by media-

unanimously agreed to forsake the ways of their tribe; and when they went back, 'there remained hardly a family in Medina in which mention was not made of the Prophet,'²¹ for they had already declared that on their return they would call their people to the principles of Islam. Next year, during the same pilgrimage, twelve people came from Medina (of these seven were new-comers and five from those who had accepted Islam last year). They belonged to the two tribes that inhabited Medina—ten belonged to Bani Khazraj and two to Bani Aus. They met the Prophet near 'Akaba' and those who had not yet accepted Islam now accepted it and all of them pledged their faith to the Prophet in these words: *'We will not worship any but God, we will not steal, neither will we commit adultery, nor kill our children; we will not slander in any wise, nor will we disobey the Prophet in anything that is right.'*²²

The Prophet then said, 'If you keep this Covenant, paradise will be your lot. But if you commit any sins excepting idolatry and infidelity your pardon or chastisement will depend on the will of God. This *First Contract or Pledge* is known as the *'Pledge of Women'* 'as not embracing any stipulation to defend the Prophet, it was the only oath required of women.' However, the twelve men went back to Medina as missionaries of Islam and with them the Prophet sent Musab to teach the Quran, that is, to call them to the Religion of Peace—Islam, and to the Divine Laws of Nature.

Spread of Islam was Destined to be in Medina

Thus it is clear that the spread of Islam or of the Religion of Peace was now to occur in a far distant city of Medina. It would, therefore, be advisable to know the condition of Medina before Islam, for though we have already read of the State of Nature as it prevailed in the whole of Arabia, we have not yet specifically stated *the condition of Medina* before the Light of Allah dispelled the all-pervading darkness.

The State of Nature in Medina

From the First Pledge of Akaba and its provisions it is evident that the worship of idols, stealing, adultery, infanticide

tion of such as God speaketh to, either by Revelation supernatural or by his Lieutenants that govern under Him and His name: for otherwise we know not whether our Covenants be accepted or not." —Leviathan, (E.L.), p. 71.

²¹ Ibn-i-Hisham, p. 150; Abul Fida, p. 237; Tibri (Hyderabad Edition), p. 113.

²² Ibn-i-Hisham, p. 151; Abul Fida, p. 289.

and slandering were prevalent in the people of Yathrib (Medina) also and hence they made a Covenant with the Prophet of God that henceforward they would abstain from those practices. Thus socially and morally, this part of Arabia was as low in the scale of civilisation as any other part of that country.

The Political Condition

Politically, however, besides the Arab tribes, the Jews had settlements round about Medina, and the Bani Nadhir, Bani Qureitza and Bani Qainuqa were their chief tribal settlements. They had even taken possession of the old city of Yathrib (Medina) and 'had built for themselves strong castellated houses' capable of resisting armed attack.

In the 4th century, several Arab tribes had migrated from Yeman²³ towards the north, and they had gained a footing in Medina, thus supplanting the Jewish control in that city. They were divided into two clans—the Aus and Khazraj, and both of them had developed strong enmity against the Jews. But, according to the general condition of Arabia, they themselves *could not live at peace* and were in the beginning of the 6th century in a state of 'Chronic'²⁴ enmity, if not actual warfare with one another. Only four or five years earlier, 'hostilities had reached a crisis between them. Each was reinforced by allies from other Arab tribes; the Jews were divided, the Qureitza and Nadhir siding with the Bani Aus, the Qainuqa with the Bani Khazraj.

In the year 616 A.D. there was fought the great battle of Boath. This battle, like the so-called hundred years' war of Europe was a culmination of hostilities which had been going on for the past *hundred and twenty years*. At first the Aus were worsted, but later on 'they dispersed the Khazraj with great slaughter. The Bani Khazraj were humbled but not reconciled. No open engagement after this took place, but numerous assassinations gave token from time to time of hardly suppressed ill-blood.' 'No one yet appeared bold enough to seize the reins of government; the Citizens, both Arab and Jewish, lived in *uncertainty and suspense*.'

The State of Nature in Medina Compared with that of Locke especially

Thus in Medina also there had been prevailing the State of Nature as Hobbes pictured it, and in the words of Wellhausen it

²³ Abul Fida, p. 187.

²⁴ Muir, *Life of Mahomet*, p. III (1894 Edition.)

²⁵ Muir, pp. 112-13.

was a state of "hideous anarchy, conjured up by blood feuds, which prevailed in Medina before the coming of Mohammed. . . . Life was then indeed impossible." But *at the time of the First Pledge of Akaba* as has just been said there was, what Muir terms, grave 'uncertainty and suspense.' This means that there was a sort of armed peace and 'enjoyment of life or property' was 'very uncertain and constantly exposed to the invasion of others.' Thus everything was 'very unsafe, very insecure.' Apparently, therefore, it seemed that there was *peace, goodwill; mutual assistance and preservation* because it was a state of equality—and of liberty of each individual; in fact, however, men had become tired of that suspense and uncertainty and they were ready to quit that condition, 'which, however free, was full of fears and continual dangers.' This meant that *self-love* and passion and *heat of controversy* easily turned that life of apparent peace into one of *enmity, malice, violence* and *mutual destruction* and revenge carried everybody too far. Thus confusion or disorder was the rule, and men living together in this State of Nature lacked:

1. A settled known Law;
2. A known and indifferent judge with authority to determine all differences according to established Laws; and
3. The supreme power to maintain order²⁶ for in the words of Wellhausen 'There are neither officers nor officials, neither jailors nor executioners. There is no magisterial authority, no sovereign power with a revenue of its own drawn from taxation and an independent administration by official organisation.'²⁷

The Acceptance of Islam or of the Laws of Nature in Medina

Hence the necessity of an orderly government was keenly felt by the individuals of Medina. But how could unity be brought about for they could not accept the sovereignty of any *individual* from either tribe—the Aus or the Khazraj? Nor had they accepted the Jewish faith, though they had heard from them

²⁶ This picture of Medina which I have presented in Locke's Language, is a more faithful picture of the State of Nature of Locke for it saves him from the inconsistencies and contradictions that he has made in his account. See Locke, Civil Government (E.I.), Ch. III, pp. 126-27, Ch. III, pp. 126-27.

²⁷ Historians' *History of the World*, p. 286.

that a Prophet was soon to arise to establish the Kingdom of God again "to make a permanent peace."²⁸ Thus, when six of them went to the Annual Pilgrimage to Mecca, they met the much heard of Prophet himself and accepted Islam, that is, they made a *Contract* with him in the acceptance of the formula that '*there is no god but God and Muhammad is his Prophet.*' These people, as we have already seen, then went back to Medina and next year *twelve* people made a similar Contract with God and his Prophet of accepting Islam—the religion of peace. Thus on their return Islam began to be accepted by the different *individuals* of the State of Nature in Medina. This means that they also said goodbye to the law of the sword that had always existed in that City and they at once accepted the Divine Laws of Nature as they were given out by Prophet Muhammad (Peace be on him!).

Comparison of Locke's Laws of Nature in the State of Nature and of Islam in Medina

Thus the State of Nature in Medina had no Natural Laws in Locke's sense which were understood and apprehended by every one's reason, though there were *news* that such laws were going to be promulgated soon by a New Prophet. From this comparison of Locke's State of Nature and of the condition of pre-Islamite Medina, it is evident that by recognising the Laws of Nature in the State of Nature, Locke had given a moral tone, and therefore he had no justification left for the people to quit the State of Nature (as it was one of peace) and create a Civil Society which was in no sense an improvement upon it. *It was without doubt a fall*, in the words of Vaughan "Neither materially, nor mortally is there any marked barrier between his natural and his civil state. Neither materially nor morally, therefore, is there any sufficient motive for the individual to go to the cost and trouble of removing such slight fences as divide them. He already possesses, already owns allegiance to the 'Law of Nature': a Law which, on Locke's showing is at least a very tolerable substitute not only for the Law of the Land, but even for the Gospel."²⁹

However, about the coming of the Prophet, the individuals of Medina had already heard and hence when he came, *they individually* agreed (contract of acceptance of Islam is always made *by every individual*) to accept the Divine Laws of Nature and quit that condition of insecurity and uncertainty.

²⁸ Margoliouth, *Mohammadenism*, p. 54.

²⁹ Vaughan, Vol. I, p. 136, F. 9

The Social Contract in Medina of Locke's Type

In Locke, when the people decide to quit the State of Nature *each individual* from amongst them unites with others for the *preservation of life, liberty and property*, and thus by this Social Contract they create a Community for peace, safety and public good of one and all. Similarly, after the First Contract of Akaba with God and His Prophet, Musab had been sent to teach the Quran, and as we shall see now, the majority of the various tribesmen had already accepted Islam. Thus, out of the scattered individuals of *two* hostile tribes of Aus and Khazraj, they were now becoming *Compacted* as *individuals* of one *community of Muslims*. But still they were *individuals* as they had also remained in Locke even after the Contract, for in spite of their Common Islam they could not yet tolerate the idea that they should be led in prayers by either an Ausite or a Khazrajite. Hence Musab not only taught them the Quran: he led the prayers and thus kept in abeyance the rivalry of the State of Ignorance.³⁰

Spread and Dominance of Islam in Medina

We have already said that after the First Contract at Akaba, the twelve Muslims with Musab went back to Medina as missionaries of Islam and when they began calling people to the Religion of Peace, so zealous was their propagation that 'the new faith spread rapidly from house to house and from tribe to tribe.'³¹ 'In spite of the jealousy of the tribe of Aus towards Khazraj, by the energy of the learned Musab, whom Mohammad sent to Medina as his forerunner and as reader of the Holy Quran, Islam soon obtained a firm foothold in the City, so that two years later his adherents could venture to invite the Prophet to visit them.'³² Thus says Muir, 'the Jews looked on in amazement. The people whom for generations they had vainly endeavoured to convince of the errors of heathenism were now of their own accord casting their idols to the moles and to the bats, and professing belief in the one true God,'³³—the only Light of the Heavens and the Earth, or of all creation.

³⁰ Ibn-i-Hisham, pp. 151-52; also Muir, p. 116.

³¹ Ibn-i-Khuldun, p. 43; Muir, p. 115; Rauzatus-Safa, p. 225.

³² Historians' *History of the World*, p. 47. For Musab's detailed activities, Rauzatus-Safa, pp. 223-25; Abul Fida, p. 289; Ibn-i-Khuldun, p. 41-42; Ibn-i-Hisham, pp. 152-53.

³³ Muir, p. 115.

Second Contract at Akaba

However, in the month of Hajj next year, Musab along with certain Muslims and the unbelievers of Medina again went to Mecca. Among the Muslims³⁴ there were 73 men and two women (62 of the Bani Khazraj, 11 of the Bani Aus). The meeting with the Prophet was again arranged secretly³⁵ at Akaba and there he reached at the appointed time with his uncle Abbas (who had not accepted Islam by that time). When all were seated, Abbas thus began addressing them, 'You men of Bani Khazraj! You know it full well that Mohammad lives amongst us in honour and safety, and we are his protectors against his opponents. But he prefers to leave this City and seek protection with you. So if you see the consequences of what you are going to do and feel that you will be able to defend him against his enemies, *then give the pledge*; but if you doubt your ability, you must at once give up the idea, for up to this time Mohammad is under our protection and in that case, I fear, You may hand him over to his enemies.' On this Bara, one of their leaders replied 'We have listened to your words. Our resolution is unshaken: Our lives are at the Prophet's service. It is now for him to speak, and take whatever promise he takes from us.' The Prophet then began by reciting the Holy Quran and inviting all present to the service of God said, 'I want to take such a *pledge* from you that you protect me in the way you protect your wives and children.' On this Bara got up and *taking the Prophet by the hand pledged to defend him* in the way they defended their wives and children, *and then followed the noise from those present* for individual 'baiat' (Pledge) *even at the cost of life and property*.³⁶ Thus was the *Second Contract*³⁷ made at Akaba (the women pledging only in the words used in the First Contract and the men in addition pledging for defence and protection of the Prophet) and 'their treaty (Contract) was *ratified* by the people (of Medina), who unanimously embraced the pro-

³⁴ Abul Fida, p. 291. According to Tibri there were only 70 men including 2 women (p. 115) but according to Ibn-i-Khuldun there were 72 men and 2 women (p. 44). We have adopted the version of Ibn-i-Hisham, p. 154; Abul Fida. See also Muir, p. 125.

³⁵ The details of this secrecy have been well given by Tibri.

³⁶ Muir gives the whole of these proceedings on pp. 125-26 (1894 Edition). Also Ibn-i-Hisham, p. 155. Abul Fida, p. 292, Ibn-i-Khuldun, p. 43.

³⁷ With this object seventy-three believers journeyed to Mecca, and in an assembly held at night on the same hill of homage they made a covenant with Mohammed.—Historians' *History of the World*, p. 117.

a triumphant prince rather than a poor fugitive.⁴² Muir also thus draws the picture of the Prophet's reception.

"The tribes and families of Medina came streaming forth, and vied with one another in showing honour to their noble visitor. It was indeed a triumphal procession. Around the camels of Mahomet and his immediate followers, rode the chief men of the city clad in their best raiment in glittering armour. The cavalcade pursued its way through the gardens and palm groves of the southern suburbs; and as it now threaded the streets of the City, the heart of Mahomet was gladdened by the incessant call from one and another as they flocked around: 'Alight here, O Prophet! We have abundance with us, means of defence and weapons and room. Abide with us.' So urgent was the appeal that sometimes they seized hold of Al Caswa's halter. Mahomet answered them courteously and kindly: 'The decision,' he said, 'rests with the Camel; make way for her; let her go free.' It was a master stroke of policy. His residence would be hallowed in the eyes of the people as selected supernaturally, while the jealousy which otherwise might arise from the quarter of one tribe being preferred to that of another would thus receive decisive check."⁴³ However, the camel halted at an open yard and the Prophet stayed with Abu Ayyub whose house was the nearest. There he stayed in the lower story for the convenience of those who used to visit him, and 'dishes of choice viands, bread and meat, butter and milk, presently arrived from various houses and this hospitality was kept up daily so long as the Prophet resided in the house.'⁴⁴

Conquest of Medina by Al Quran

Thus was Medina conquered by the Prophet. As he himself said in a tradition '*All cities or districts were conquered by force, but Al Medina was conquered by the Quran.*'⁴⁵ And certainly it was the Quran that conquered it. It was a conquest of heart rather than of territory, and the means was the willing consent of the people rather than the sword of the conqueror. And the Contract, which gave this consent, had taken three steps in its fulfilment.

⁴² Historians' *History of the World*, p. 118.

⁴³ Muir, p.164 (1894 edition). For further interesting details, Ibn-i-Hisham, pp. 175-76; Ibn-i-Khuldun, p. 52; Abul Fida, p. 300; Rauzatus-Safa, pp. 250-51.

⁴⁴ Muir, p. 165; Rauzatus-Safa, p. 251. The Prophet lived in this house for seven months.

⁴⁵ Al-Baladhouri, *Futuhul Baldan* (Hittis' Translation), p. 21.

In the first, the laws of Islam which were the Divine Laws of Nature were explained and promulgated; in the second the representatives of the two chief tribes entered into a definite covenant of protecting the Prophet; and in the third, each citizen, nay every child, of Medina welcomed the Prophet as their saviour.

Religiously considered, therefore, the Kingdom of God was thus established in a land of darkness and error, and heathenism or idolatry vanished with the onslaught of the Light of Islam.

Socially and politically considered, the State of Nature with its state of war or, at least, of uncertainty and inconvenience was done away with by the acceptance of the Laws of Nature, and the Contract with the Prophet at once transformed that state into one of Civil Society.

"In the State of Nature," says Gibbon, "every man has a right to defend, by force of arms, his person and his possession; to repel, or even to prevent, the violence of his enemies, and to extend his hostilities to a reasonable measure of satisfaction and retaliation. In the free society of the Arabs, the duties of subject and citizen imposed a feeble restraint; and Mahomet, in the exercise of a peaceful and benevolent mission had been despoiled and banished by the injustice of his countrymen. The choice of an independent people had exalted the fugitive of Mecca to the rank of a sovereign; and he was invested with the just prerogative of forming alliances and of waging offensive or defensive war."⁴⁶

The City State of Medina

Thus if the City State of Medina was the Kingdom of God in one sense and the Prophet was the Vicegerent of God in that Divine Kingdom, it was also in another sense a true state of the people created by the people themselves, and the Prophet was an elected sovereign of a sovereign people.

To summarize the whole of our survey, we may now say that:

1. The state of Nature in Medina also was a state of War but immediately at the time of the First Contract, there was apparent peace, and therefore, it most truly resembled Locke's picture of the State of Nature.
2. The laws of Nature—of Islam—brought the individuals together into a Contract (with God); that is, they accepted Islam and hence a Community of Muslims was created, though that community was not yet organic in nature.

⁴⁶ Gibbon, pp. 358-59.

3. The absence of a well-known authority or Judge was then provided for by the Second Contract with the Prophet, and this Contract was then ratified by the whole community. This was a Governmental Contract. The Prophet thus became an elected chief of a people and he appointed their own leaders to look after them.

How the Second Contract resembles the Contract of Hobbes

After this, we may now compare the character of this Second Contract from the point of view of Political Philosophy. From what we see of the addresses of Abbas, Baraa and the Prophet, it becomes quite clear, that while Baraa pledged to protect the Prophet with life and property, *the Prophet himself (in the worldly sense) promised nothing*. That is, *the Prophet in the literal sense of the Contract of give-and-take, was not a party to the Contract and the Contract was only one-sided*. This means that after the Contract, and after its ratification by the people of Medina they got pledged to protect their elected 'Sovereign' and they had agreed to obey him in everything. From this point of view, it becomes clear that this Second Contract resembled the Contract of Hobbes in which the Sovereign had promised nothing and yet he was to be obeyed absolutely. There was to be no rebellion because it would again result in the State of Nature from which they had run out for the law and the religion of peace.

Would it then be too fantastic on my part, I again ask, if Hobbes (as well as other Social-Contract writers) had this condition of Arabia in view, and that they were only interpreting things and events which were already past history?

Another Interpretation in Locke's Sense

Besides this interpretation, there can be another interpretation of this Second Contract in the sense of Locke, if we take into account another 'report' regarding the proceedings of that contract. When that contract was going to be made Abul Hashim (one of those present) said to the Prophet, "O Apostle of Allah, between us and the Jews there are treaties and alliances, but if we break them, and Allah the Most High grants thee victory, thou wilt possibly rejoin thy tribe, and abandon us to our foes." His Lordship smiled and said, "Blood is blood, and destruction is destruction. You are mine and I am yours. I shall fight those who fight

you, and make peace with those with whom you make peace."⁴⁷

Thus it is clear, that if after the First Contract at Akaba, the Muslim Community was created in Medina (this resembles the Social Contract of Locke), by the Second Contract a *governmental Contract* was made by which the Prophet became the chief authority of the City-State of Medina. In one point more, the resemblance of the events in the Second Pledge can be made with those on which Locke's Contract was based. It is argued that Locke wanted to justify the Glorious Revolution in England in which William and Mary had been called from Holland by seven notables of London). The Prophet was also a party man in Medina and he was called by 73 men to their aid and then their contract or pledge was kept up by the people.

Second Contract in Locke

This Governmental Contract in Medina resembles, no doubt, the Second (Governmental Contract) in Locke, but critics do not agree as to the making of a Second Contract in that way. Vaughan emphatically asserts (and I think he is right) that there is only *one* contract in Locke—the *Social Contract* which creates the community. He observes 'it has often been said that Locke represents the relation between the community and the Executive as one of Contract,' the 'original contract between King and people' of the famous convention resolution of 1689. This may not be very far removed from the spirit of his doctrine, but it is doubly wrong as to the letter. For, on the one hand, the appointment of the Executive is apparently conceived by him as belonging normally not to the community, but to the Legislature. And, on the other hand, what is far more important, he never once uses the term *Contract* to describe the instrument from which the Executive derives its authority. It is always a trust, or a *fiduciary trust*.⁴⁸

⁴⁷ Rauzatus-Safa, pp. 229-30. Also Tibri (Hyderabad), p. 117.

⁴⁸ Vaughan, p. 145. Also see Lord, pp. 53-54: 'He appears to think, though he does not say so quite explicitly, that it rests upon two contracts. The first puts end to State of Nature and erects a Civil Society in its place: by the second that society delegates its sovereignty to certain persons, namely, the King, the House of Lords, and the House of Commons in order that they may carry into effect the provisions of the Original Contract. Locke thus revives, in all essential respects, the doctrine of Althusius and Milton. The first Contract founds a Society and the Second

Hence, if according to this argument there is only one contract in Locke, the two contracts in Medina bear resemblance to the two Contracts in Milton and Althusius and other anti-monarchist writers though the purpose of their contracts was not the same. But the Social Contract of Medina does not fully accord with the First or Social Contract of Althusius or Milton for in them even the king was a party to the original Contract (which is of course not true of Medina, for the Prophet was still in Mecca when the Social Contract was made in Medina). Hence the two Contracts of Medina wholly and fully accord with the framework (and not the spirit or purpose) of the contract theory as it was stated in *Vindicia Contra Tyrannos* which was formerly ascribed to Brutus or to Langnet, but is now understood to be the work of Mornay (1579). Mornay in this book has two contracts:

1. The First Contract is between *God on the one side and people and their ruler on the other side for maintenance of true religion*. It was upheld by the state in return for the protection and favour of Almighty God.

2. The Second Contract is between ruler and subjects to preserve and protect the natural rights of subjects in return for their loyal support of the Prince.

How the Contracts in Medina Resemble the Contracts in *Vindicia Contra Tyrannos*

The first of these contracts is true of the Social Contract of Medina also for the people whose representatives had already accepted Islam at the hands of the Prophet himself had now accepted Islam at the hands of Musab who was the representative of the Prophet at Medina. This was certainly a Contract of the ruler and the people with God to maintain the right religion what was Islam. The Second Contract was made by the Prophet with the people's representatives and when he reached Medina the whole Muslim Community ratified the 'bait' (pledge or contract) that had already been made and the Prophet declared, as has been already noted above, that he was heart and soul with the people of Medina for they had declared to support him in thick and thin and he was also prepared to fight with their enemies as his own enemy.

Social Contract A Historical Reality

Thus from the above account of the Contracts at Medina it is

 institutes a government. The first is the Social Contract, the second is the fundamental Law of the State." See also Willoughby, *The Ethical Basis of Authority*.

clear that *the Social Contract theory is not a mere fiction: it is a historical reality* and Ancient Arabia was the scene of such contracts even in the making and the construction of the state itself. *The contracts in Medina do explain not only the origin of Civil Society in Contract but also of its government. Contract in Islam, therefore, is a reality and not a mere fiction or only a mere idea of reason.*

accepted by the Governor; and the Governor will have the ordinary constitutional right of dismissing a Minister whose policy he believes to be seriously at fault or out of accord with the views of the Legislative Council." The Committee further desired that the Ministers should act in concert together. The Reforms of 1919 embodied in the Government of India Act, 1919, gave effect to the major recommendations of the Joint Committee. In Madras the principle of joint responsibility of the Ministers to the legislature was adhered to. In the United Provinces, one Minister was actually forced to resign when the Legislative Council censured him even though he enjoyed the confidence of the Governor. There is, therefore, no denying the fact that the 1919 Reforms had as one of their bases the responsibility of the Ministers to the Legislature.

The Statutory Commission recommended the abolition of dyarchy in the Provinces and its introduction at the Centre. The whole scheme of government contained in the Provincial part of the Government of India Act, 1935, rested on the principle of Provincial Autonomy, i.e., complete independence to the Provinces of the control of the Government of India in all provincial matters, save the Governor's responsibility to the Governor-General in matters wherein the former acted in his own discretion or individual judgement. This also involved the collective responsibility of the Provincial Ministers and their dependence on the will of the Provincial legislature. We revert to this subject later.

Meaning of Responsible Cabinet Government in the United Kingdom

As is well known to all students of constitutional law, the Cabinet system of government originated in the United Kingdom, but not at one particular time or through any particular parliamentary statute. It is the result of a slow evolutionary growth extending over centuries, and is largely based upon conventions of the constitution. The King still retains the legal right to appoint and dismiss his Ministers, but it will be highly unconstitutional if not illegal of a King to dismiss his Prime Minister who enjoys the confidence of the House of Commons. We may here rely upon what great constitutional authorities on the subject hold.

Speaking of the dismissal of Fox by George III in 1784 and the dismissal of North by William IV, Dicey says that the former was an appeal from "the sovereignty of Parliament . . . to the sovereignty of the people" and the latter amounted to the King trying to know if the House of Commons reflected the will of the electorate. In none of these cases did the King enforce his own

will and pleasure in dismissing his Prime Minister. On both occasions the pleasure of the newly elected House of Commons prevailed, and this conclusively proved that the Cabinet held its office during the pleasure of Parliament, i.e., of the House of Commons which in its turn depended on the will of the electorate. Dr. Herman Finer thus speaks of the relations between the Crown and the Cabinet: "Ministers are Ministers of the Crown, that is, they are formally appointed and dismissable by the Crown. But this action is hardly more than formal and symbolic. . . . The Crown appoints, but it does not choose; it dismisses, but it does not control; nor does it determine the occasion for dismissal. . . . It is the authority of the people to which government has been made responsible. The people exhaust their authority in the choice of Parliament, and this body, to which a large sphere of sovereignty is still ascribed by constitutional lawyers, applies the test of responsibility to Ministers."¹ Prof. Laski, speaking of the right of the Crown to dismiss his ministers, says, "It is impossible to suggest that the right is obsolete even though, as Prof. Keith puts it, the 'power exists only for wise employment in grave circumstances.' But the problem here is that both 'gravity' and 'wisdom' are matters that the King must decide. . . . To do so is at once to link his fortunes with those of the party he summons to office. . . . And dismissal is the more dangerous adventure because it is likely to operate against a Government of the left than of the Right—to transform the latter, as it were, into a party of the King's friends. The defeat of that party would inevitably be the defeat of the Crown itself; and the consequences of such a defeat would be necessarily momentous."² And referring to the crisis of 1936, Prof. Laski says that if the King had dismissed Baldwin and appointed Mr. Attlee as his Prime Minister, it would have followed that whenever the King did not approve of his ministers' advice, he would have been entitled again to dismiss them and this would have meant a perpetual sword of Damocles over the ministers' heads. So while Laski does not deny the legal right of the Crown to dismiss his ministers, he definitely considers the exercise of this power in practice as highly undesirable and even unconstitutional. Prof. Keith, an undisputed authority on the subject says, "The Crown, it is now clear, must in political matters normally act on the advice of his ministers responsible to, and commanding a majority in, Parliament. The King has not since 1784 attempted to dismiss a

¹ *Theory & Practice of Modern Government*, pp. 953-54.

² *Parliamentary Government in England*, pp. 413-14.

ministry, for the alleged dismissal of Lord Melbourne in 1834, has been shown by the actual correspondence to have been merely the acceptance by the King of a suggestion of resignation. The legal power is unquestioned, but its use would be as revolutionary as the refusal of assent to legislation which has been in abeyance since 1707. If ministers possessed a majority in the Commons when dismissed, a dissolution would be necessary if the new ministry were to be able to carry on, and the general election would become a contest between the Crown and the people, with results disastrous to the State and the monarchy alike. If ministers are in a minority in the Commons, the Crown can leave it to the House to force their resignation of office, and the reduction of the duration of Parliament to five years assures the electorate control over their representatives. On one condition only could the power to dismiss properly be exercised, namely, that a ministry, with a majority in the Commons, but unpopular in the constituencies, insisted on legislation to extend the life of Parliament, thus over-ride the electorate."³

It was in December 1834 that the King dismissed the Melbourne Ministry. Peel was at that time in Italy and on his return he accepted the invitation of the King to form his ministry, and in doing so he assumed responsibility for the action of the Sovereign. In defence of his assumption of office, Peel thus expressed his views in the House of Commons on 24th February, 1835: "I stand here as the Minister of the Crown—placed in this situation by no act of my own—in consequence of no dexterous combination with those to whose principles I have been uniformly opposed, . . . I stand here in fulfilment of a public duty, shrinking from no responsibility, with no arrogant pretensions of defying or disregarding the opinions of the majority of this House, yet still resolved to persevere to the last, so far as is consistent with the honour of a public man, in maintaining the prerogative of the Crown, and in fulfilling those duties which I owe to my King and to my country."⁴ Peel took upon himself the fullest responsibility of the dismissal by the King of the previous ministry when he said, "I am, by my acceptance of office responsible for the removal of the late Government." He explained this point in these words: "But, although I have not taken any part in procuring the dismissal of the late Government, although I could not, from circumstances which are notorious to the world, hold communication

³ *The Constitution, Administration and Laws of the Empire*, p. 155.

⁴ *Selected Speeches on the Constitution*, Vol. I (edited by C. S. Emden), p. 16.

with any of those with whom I have now the honour to act, much less with the highest authority in the State, as to the propriety or policy of that dismissal, still I do conceive that by the assumption of office, the responsibility of the change which has taken place is transferred from the Crown to its advisers . . ."⁵ It must, however, be remembered in this connection that it was to a Parliament, which came into existence after a Dissolution resulting from the dismissal of the Melbourne Ministry, that Peel was speaking. Hence the circumstances of the case conclusively establish that the dismissal followed by a Dissolution of Parliament indicated that the King really appealed from the House of Commons to the electorate to find a reasonable ground for his action. The King did not substitute his own pleasure for the pleasure of the House of Commons or ultimately of the electorate in relation to the formation or continuance in office of a ministry.

It is thus clear that in England the Cabinet remains in office during the pleasure of the House of Commons and not during the pleasure of the King. The whole responsibility has in fact been shifted from the King to the elected representatives of the people who are the political sovereign. A dismissal of a Ministry by the King on the ground that the Prime Minister does not enjoy the confidence of the King would amount to a clear violation of the constitution.

The Relation between the Governor-General and his Prime Minister in a Self-Governing Dominion

The constitutional practice obtaining in the Self-Governing Dominions in respect of the relations between the Governor-General or Governor as representing the King, and his Ministers is but a replica of the British practice. Section 9 of the British North America Act, 1867, stated that "The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen," and Section 11 of the Act established a Privy Council styled "~~the~~ Queen's Privy Council for Canada" to aid and advise in the government of Canada. During the 75 years that have elapsed since the passing of this Act, the Governor-General has been acting as constitutional head of the Dominion allowing his Ministers to exercise the same authority in and over Canada as the British Cabinet exercises in and over the United Kingdom. Similarly in the case of the Commonwealth of Australia, Section 61 of the Commonwealth of Australia Constitution Act vests the executive power in the Queen and this power is

⁵ *Ibid.*, p. 17.

exercisable by the Governor-General as the Queen's representative. Section 62 of the Act says: "There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure." In the Australian States, the heads of Government are Governors who represent the King, and are advised by an Executive Council whose members are appointed by the Governor and hold office during his pleasure. According to Section 8 of the Union of South Africa Act, "The Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a Governor-General as his representative." And Section 12 of the same Act states: "There shall be an Executive Council to advise the Governor-General in the government of the Union, and the members of the council shall be chosen and summoned by the Governor-General and sworn as executive councillors, and shall hold office during his pleasure."

We thus see that the legal phraseology used in the constitutions of the different Self-Governing Dominions is the same and the Executive Councillors hold office during the pleasure of the Governor-General or the Governor as the case may be. In all of them the executive government is conducted according to the principles of responsible government. Sir Samuel Griffith expresses his notion of responsible government in these words: "The system called Responsible Government is based on the notion that the head of the State can himself do no wrong, that he does not do any act of State of his own motion, but follows the advice of his ministers, on whom the responsibility for acts done, in order to give effect to their volition, naturally falls. They are therefore called Responsible Ministers. If they do wrong, they can be punished or dismissed from office without effecting any change in the Headship of the State The effect is that the actual government of the State is conducted by officers who enjoy the confidence of the people."⁶ Messrs Quick and Garran, commenting on Section 62 of the Commonwealth of Australia Act, say, "Whilst the Constitution, in Sec. 61, recognises the ancient principle of the Government of England that the Executive power is vested in the Crown, it adds as a graft to that principle the modern political institution, known as responsible government, which shortly expressed means that the discretionary powers of the Crown are exercised by the wearer of the Crown or by its Representative

according to the advice of ministers, having the confidence of that branch of the legislature which immediately represents the people. The practical result is that the Executive power is placed in the hands of a Parliamentary Committee, called the Cabinet, and the real head of the Executive is not the Queen but the Chairman of the Cabinet, or in other words the Prime Minister. There is therefore a great and fundamental difference between the traditional ideal of the British Constitution, as embodied in Sec. 61, giving full expression to the picture of Royal authority painted by Blackstone (Comm. I. p. 249) and by Hearn (Govt. of Eng. p. 17) and the modern practice of the Constitution as crystallized in the polite language of Sec. 62, "there shall be a Federal Executive Council to advise the Governor-General in the Government of the Commonwealth."⁷

It is in this very sense of responsibility that constitutional law has developed in the Self-Governing Dominions. An example or two will make this abundantly clear. It was in November 1916 that Mr. Holman, leader of the Labour Party in New South Wales, wanted an affirmative vote for a proposal of conscription for war overseas, a measure for which had been introduced into Federal Parliament by Mr. Hughes, the Labour Prime Minister of the Commonwealth, and was subsequently referred to a popular vote. Mr. Holman was opposed by a majority of his party in the State legislature but with the support of Mr. Wade, the Opposition Leader, and the Opposition Mr. Holman got his view endorsed by the legislature. Sir Gerald Strickland, the Governor of New South Wales, refused to communicate with Mr. Holman on the ground that the latter was commissioned to form a Ministry because of his leadership of the Labour Party and as he no longer enjoyed its confidence his commission came to an end, and he must return his commission. Mr. Holman refused to comply and appealed to the Colonial Office against the Governor's action. As a result the Governor was recalled. Although at that time Prof. Keith took up cudgels on behalf of Sir Gerald Strickland, he pointed out that the Governor could ask the Ministers to resign if in his opinion they did not represent the popular will. Thus it was affirmed that a Governor could not substitute his own personal will for that of the legislature or of the electorate.

Nearly sixteen years later, another Governor of New South Wales, Sir Philip Game, dismissed Mr. Lang the Premier and his colleagues from office, on May 13, 1932. Mr. Lang, the leader

⁶ Notes on *Australian Federation*, 1896, pp. 17-18.

⁷ Annotated *Constitution of the Australian Commonwealth*, p. 703.

of the Labour Party in the State legislature, opposed the measure of the Commonwealth Government under Mr. Scullin the Labour Prime Minister, to pay interest to British bondholders until Britain had dealt with the Australian overseas debt in the same manner as she settled her own foreign debt with America. Upon this the Commonwealth Government issued Proclamation No. 42 of 1932 directing officers of the State receiving revenues of a certain character to deal with the moneys in the manner directed by the Federal Chancellor. Mr. Lang, thereupon, on April 12, issued a circular to all State Departments to carry on financial transactions in a prescribed manner, the effect of which was to prevent the Federal Government from seizing upon the State revenues and thus to avoid payment of the debt interest. This brought Mr. Lang into direct conflict with the Governor who insisted on the Premier carrying out the instructions of the Commonwealth Government in regard to payment of the interest. The Governor, after interviewing the Premier, wrote to him: "The position as I see it is that Ministers are committing a breach of law. . . . If Ministers are not prepared to abide by the law, then I must state without any hesitation that it is their bounden duty under the law and practice of the Constitution to tender their resignations."⁸ To this the Premier replied, "If your letter of today's date means that you are requesting the resignation of Ministers, you are hereby informed that your request is refused."⁹ Upon this the Governor wrote to the Premier asking him either to withdraw the circular or to resign, saying, "I feel it my bounden duty to inform you that I cannot retain my present Ministers in office, and that I am seeking other advisers. I must ask you to regard this as final."¹⁰ In this way the Lang administration was dismissed. The Governor sent for Stevens and asked him to form his Ministry. Mr. Stevens did so, but as his supporters numbered only 20 in a house of 90 against Mr. Lang's 55 supporters, he requested the Governor to dissolve the house and order fresh elections. In the new elections, Mr. Stevens obtained a majority.

This constitutional event evoked considerable interest. While Sir W. Harrison Moore endorsed the action of Sir Philip Game, Prof. Keith said, "I regret that Sir Harrison Moore should have lent his authority to a suggestion that it would be constitutional, and indeed proper, for the Governor of New South Wales to exercise the Royal prerogative and dismiss the Lang Ministry

⁸ Evatt, *The King and His Dominion Governors*, p. 164.

⁹ *Ibid.*, p. 164.

¹⁰ *Ibid.*, p. 165.

. . . . Prof. Keith stated clearly that the dismissal of a Premier by a Governor "would be justifiable only if the Governor had a full assurance that the Premier had ceased to represent the people's wishes, and that the Governor's action would be endorsed by the election which would follow. If this was not the case the Governor's position would be impossible."¹¹ Mr. Evatt also clearly states that "It can hardly be accepted as correct that the Sovereign or his representative may at any time dismiss a Ministry possessing the confidence of Parliament and force a dissolution. . . ."¹² In all similar cases it has been established beyond all doubt that responsibility of the Ministers is to the legislature or in the final analysis to the electorate and that the King's representative can exercise, if and when he so exercises, the reserve power of dismissal when he follows up this dismissal by an appeal to the electorate.

The Purpose and Spirit of Provincial Autonomy under Government of India Act 1935

To come back to our main theme, the Government of India Act, 1935, made a great change in the constitutional status of the Governors' Provinces *vis-à-vis* the Central Government of India. It gave to the Provinces a status of full independence of outside control in all provincial matters excepting those in which the Governors were given special responsibilities, in which case they are to act in accordance with the directions of the Viceroy and Governor-General. Section 49(1) of the Act lays down: "The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him. . . ." And Section 51(1) says: "The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure."

The language of these sections is practically the same as that of corresponding sections of the Dominion constitutions of Canada, Australia or the Union of South Africa, and of the constitutions of the Australian States. But what about the interpretation and spirit of the same? Here is the answer to the question in the words of Mr. L. S. Amery, the Secretary of State for India. He said: "India was by the Act of 1935, given a Federal Constitution, under which the eleven provinces enjoyed complete democratic government over all subjects Four of these provinces

¹¹ *Ibid.*, p. 169.

¹² *Ibid.*, p. 165.

are living under that democratic system today." This was said after the Congress Ministries had relinquished office in 1939. Again, in an interview with Mr. E. D. Morrow, an American publicist, Mr. Amery recently said, "Five years ago 11 provinces of British India were indeed given all the powers of self-government, which are enjoyed by your state governments."¹³ These statements of the Secretary of State for India imply two things, *viz.*, the provinces under the present system enjoy full democratic government in which the will of the representatives of the people prevails (for how else can a system be called completely democratic unless the people directly or through their representatives control the executive?), and that the autonomy enjoyed by the provinces is complete and the provinces are as independent—at least in regard to the whole provincial administration—as the States in the U.S.A. The latter interpretation then necessarily implies that the Viceroy and Governor-General cannot force his will on the provincial executive. According to Section 49 of the Government of India Act, 1935, the Governor exercises his executive power in a Province as a representative of His Majesty, and must, therefore, do so in the manner in which His Majesty's representative does it in any Dominion or part state of a Federal Dominion. Unless the Governor acts as merely a constitutional head of the provincial administration, the definition of responsible government as given by all distinguished authorities including Sir Samuel Griffith cannot be understood to apply to the Indian Provinces. The Act of 1933 being a sequel to the system introduced by the Reforms of 1919, the responsibility of the Ministers is to the elected legislature and not to the Governor as representing His Majesty. In actual practice it is the pleasure of the legislature, and ultimately of the electorate during which the ministers are to hold office, and not during the pleasure of the Governor, for if the latter were to substitute his own pleasure for that of the legislature he would be involving His Majesty whom he represents in political parties and political conflicts. Again, the Governor represents His Majesty directly in the province and is not to be forced in the exercise of his normal powers by any order of the Central Government. The Provincial Ministers are His Majesty's Ministers to aid and advise His Majesty's representative in the exercise of executive power in the Province. This is the only interpretation of Section 51 of the Act, consistent with the intention of Parliament and the various pronouncements of British Prime Ministers, other statesmen and the King's proclamations.

¹³ *The Indian Information*, Vol. II, No. 105, p. 371.

It is in this light then that we have to examine the constitutionality of the dismissal of Mr. Allah Bux from the Premiership of Sind by His Excellency Sir Hugh Dow, the Governor of Sind. And why this dismissal? Mr. Allah Bux did not see eye to eye with those responsible for the present policy of the Government of India in relation to the constitutional deadlock and the general repression in the name of law and order. No doubt, every political party in India and practically every thinking Indian has demanded an early solution of the deadlock, but under one pretext or another the British Government has deferred it in fact. Mr. Allah Bux wrote to the Viceroy expressing his feelings in the matter and in protest against the policy renouncing his titles. He also published this letter to the Viceroy without waiting for His Excellency's permission for it. On October 10, 1942, His Excellency the Governor of Sind granted an interview to Mr. Allah Bux and handed him a message from His Excellency the Viceroy in which the latter stated: "I have received your letter regarding the honours that had been conferred on you and I observe with regret the precipitate and discourteous way in which you have released it to the press. I cannot accept the suggestions you make in that letter, which you must well know are without foundation. His Excellency the Governor will communicate to you regarding the effect on your position of the decision taken." The Governor communicated the *effect* and it was that as Mr. Allah Bux no longer enjoyed the Governor's confidence and was, consequently, dismissed from Premiership. Here is the Government communique issued from the Government House, Karachi, at 2-30 p.m. the same day: "His Excellency the Governor of Sind has discussed with Mr. Allah Bux his recent renunciation of honours and the reasons for the renunciation in his published letter. In the light of that discussion he has had no option but to inform Mr. Allah Bux that he no longer possesses the Governor's confidence and that he cannot in consequence continue to hold office." Asked by the pressmen, Mr. Allah Bux said, "My dismissal had no connection whatever with any constitutional issue." In this connection it must be remembered that as Premier of Sind, Mr. Allah Bux, unlike Sir Sikandar Hayat Khan, continued to serve on the National Defence Council, and also continued the presidentship of the Sind National War Front. He also did not refuse to give effect to Government of India's instructions in the matter of war or maintenance of peace. All this goes to show that political considerations, and not constitutional or legal issues, weighed with

¹⁴ *Constitution, Administration and Laws of the Empire*, p. 15.

the Governor of Sind in dismissing the Premier. Sir Ghulam Husain Hidayatulla, whom Sir Hugh Dow invited to succeed Mr. Allah Bux, did not seek dissolution of the legislature, as Lord Peel did while succeeding Melbourne in England, and thus the Governor clearly substituted his own will and pleasure for that of the legislature or the electorate in determining whether Mr. Allah Bux should continue in office. Moreover the dismissal was the effect to which His Excellency the Viceroy referred in his letter to Mr. Allah Bux, and the Governor of Sind, in thus giving effect to that effect, subordinated the provincial government to the will of the Viceroy, which is undoubtedly against the pronouncements of the Secretary of State regarding the constitutional position of the Indian provinces which he likened to the States in U.S.A. or as units enjoying complete democratic government. Legally no doubt Section 51 of the Government of India Act, 1935, empowers the Governor to appoint persons as ministers to hold office during his pleasure, but the legal right thus belonging to the Governor has definitely to be understood in the light of the constitutional practice operating in the Dominions and in England. Speaking of the position of the ministers even under the Reforms of 1919, Prof. Keith observed: "In India, despite the transitional period, the rule is already clear that ministers are responsible solely to their legislatures. . . ." How much more ought these ministers to be solely responsible to their legislature when Section 49 of the Act vests the Executive Government in the Governor as representing His Majesty the King.

The Sind Governor's action finds a parallel in the history of New South Wales. He acted almost as Sir Gerald Strickland, but in that case Premier Holland appealed to the Colonial office and Sir Gerald was recalled. In the ordinary course the action of Sir Hugh Dow is not materially different from that of Sir Gerald, but in India the attitude of the British Government has been one of promising the same treatment as is offered to the Dominions but in practice not applying the constitutional practices of the Dominions, which make the constitution in practice different from the strict letter of the law.

In conclusion, then, it may be said that Sections 49 and 51 of the Government of India Act, 1935, read in the light of the constitutional practices and conventions existing in the Dominions and England, make the Governor of an Indian Province, representing as he does His Majesty the King, only a constitutional head of the government to exercise his power in the way His Majesty does in England or in any Dominion. The words "who shall hold office during his pleasure" occurring in Section 51 of the Act mean

nothing more or less than what they signify in a Dominion. The Governor of an Indian Province has only the legal right to appoint or dismiss a Premier but he has not the constitutional power to substitute his own personal pleasure for the pleasure of the legislature or the pleasure of the electorate who are, in the last resort, the political sovereign, and hence the action of the Sind Governor, however much it may appear to be in conformity with the law and the letter of the constitution, was nevertheless against the established conventions and interpretation of responsible government and therefore unconstitutional. Section 51 read with Section 49 give to a Provincial Governor the same right over and relationship with the Ministers as any Dominion Governor possesses or as the King possesses.

REVIEWS

INDIA & FREEDOM,* by L. S. Amery.

This collection of the selected speeches of the Secretary of State for India claims to be 'an exposition of a political philosophy, as well as a vindication of the British policy in India.' 'We are charged,' says the Secretary of State in his own Foreward to the book, 'with professing to fight for freedom and democracy in Europe, while denying both to India.' 'There is another charge . . . It is that we may be willing to-day to give freedom to India . . . But this is only the result of a belated recognition of past error.' Therefore, 'the underlying purpose of the speeches included in this little volume was to answer to these charges.' A less assuming politician than the Secretary of State for India would not have probably worried very much about the second charge. England cannot be doing both at the same time, denying India freedom and conceding it as well, whatever the reason. If it could be demonstrated that England is conceding freedom to India to-day, no one here would bother very much whether she was doing it as a natural outcome of her policy in India or as a recognition of her failure in the past in dealing with the Indian problem. As it is, Mr. Amery has blundered hopelessly in his attempt at proving that, in principle at least, we have from the very first encouraged India to look for self-government as her proper and rightful destiny within the British family.' Whatever else one may succeed in proving in one's study of the British rule in India, it would be impossible to prove that when Clive and his immediate successors were making money out of promoting revolutions in Bengal, they were encouraging Indians to look for self-government. In 1909 even a radical Morley had to assure the Lords that the reforms for which he was trying to obtain their consent were not intended to lead to self-government. Recently Professor Coupland in his apologia for the Cripps Mission had to concede that Sir Stafford Cripps by his explanation of the British intentions towards India to-day 'signed away the title-deeds of the old British raj.' Mr. Amery would have been, therefore, well advised if he had said nothing concerning the British policy in India in the past rather than fly in the face of accepted facts.

A former British Prime Minister is reported to have said, 'The recipe for an Englishman is to avoid logic and grow the hide of a *rhinoceros*.' It is probably this admixture which prevents Mr. Amery and his like from realizing that the more they try to prove that England has *always* been preparing India for freedom and democracy the more they succeed in becoming suspect in the eyes of Indians in regard to their present intentions.

* Oxford University Press, pp. 128, Rs. 3.

The Cripps Declaration realized the fact when it took notice of the 'anxiety' felt in England and India, 'as to the fulfilment of the promise made in regard to the future of India.' Sir Stafford Cripps had, at least, the courage to advise all to forget the past. Not so Mr. Amery. It is true that the British *avoidance* of logic has always compelled successful political revolutionaries in England 'to prove the pedigree of their liberties' and to present them 'as an entailed inheritance derive from their forefathers.' Mr. Amery subscribes to this fictitious view of English constitutional development in his speech on the Magna Charta and elsewhere. This is excusable in a politician's trying to reassure Conservative audiences in England. But before these speeches were published in India, their effect on less illogical and thinner skinned readers in India should have been calculated. As it is to Indian readers the repeated emphasis on British achievements in India seems to be irrelevant to the matter at issue.

Mr. Amery's explanation of the British policy during his tenure of Office has by now lost all interest in India. Many things which Mr. Amery told his English audiences in 1940, 1941 or even in 1942 could not be done in India for one reason or another. Sir Stafford Cripps quietly promised to do long before this book was published. Questions which Mr. Amery insisted should be left to England to solve, Sir Stafford Cripps made subjects of a treaty between England and a Constituent Assembly in India. The laboured performance of Mr. Amery on behalf of certain 'interests' reads farcical now in the light of the Cripps Declaration. The comprehensive definition of British obligations in India and the contention that their continual discouragement by the British Government in India would constitute no diminution of the Dominion Status seem to be yet another illustration of the British avoidance of logic. Mr. Amery has indulged in a good deal of kite flying by exhorting Indians to throw overboard whatever they have learnt of parliamentary government under British tutelage and try other forms of democratic order. If it is all because Mr. Amery has made the astounding discovery that 'franchise' itself is not freedom, nor is mere majority rule true democracy, we would only suggest to him to start setting up his 'true democracy' in England first. A good deal of mud flinging on the Congress ministries in various provinces may prove pleasant reading to a very limited section of Indian readers, but Mr. Amery forgets the inconvenient truth that if the record of Congress ministries be held responsible for Muslim fears to-day, the British *Governors* of the Congress provinces—and therefore the Secretary of State—cannot be exonerated for their failure to protect the Muslim minorities. It is often forgotten that party propaganda need not always be taken seriously. The Muslim League condemnation of the Congress rule is by no means either more comprehensive or devastating than Mr. Gladstone's condemnation of Disraeli's policy in the seventies of the last century. Muslim suspicions and fears of the Congress do not much exceed—if they do at all—the Unionist fears of the Liberals bent upon granting Home Rule to Ireland in the first quarter of the

nineteenth century. All through Mr. Amery's account of India's War effort he fails to realise what a study of the Mesopotamia Commission Report—official document and not a Congress publication—would have easily told him that a Government of India out of touch with the aspirations of the vast majority of its subjects can never do as much for winning the war as it is potentially capable of doing. Mr. Amery might ridicule the suggestion 'that millions of armed and trained warriors could be stamped out of the ground overnight by some political declaration,' yet history knows no stouter defender of a country than those having a faith to fight for. The story of the Russian resistance to German aggression to-day should act as an eye-opener to Mr. Amery. We need not quarrel with Mr. Amery in his praise of either the rôle of the National Defence Council or the expanded Executive Council, of the Viceroy. Both have as yet to prove that they play any important part even in organizing war efforts in India. It needed a Grady Mission from that U.S.A. to suggest that overhauling of Indian industrial organization which should have been attempted long ago with popular support but which should have been initiated at least when the Executive Council expanded the Defence Council was set up—if either of them was worth anything. Mr. Amery has also forgotten to take notice of the fact that the 'patriotic Indians' drawn from various political parties to the Executive Council have been disowned by their parties in the Legislative Assembly and have not yet been able to agree even on their proper place in the government of their country.

If British policy needed a champion in India to-day, clearly the Secretary of State for India was not the man for the task. This collection of his speeches meant primarily for English audiences would serve no useful purpose in India except that of an inconvenient record.

SRI RAM SILARMA.

OXFORD PAMPHLETS ON INDIAN AFFAIRS.

The Oxford Pamphlets on World Affairs provided an excellent series for enlightenment on problems of world interest; but this new venture to provide a background of reliable information, based on facts and the considered opinion of specialists on various subjects connected with Indian Affairs will be even more welcome at this time.

The first number in the series is, appropriately enough, on the Cultural Background. It is a symposium of five contributions representing the five major religious communities in India. The immediate solution to the religious tangle in India seems to lie (says Sir Abdul Qadir) "in a frank recognition of existing differences, and a serious effort to minimise them, and to accelerate the process of fusion of cultures," though each religion may contribute to some valuable aspect. Eventually however Sir S. Radhakrishnan and Mr. R. P. Masani see hope for the future in a world religion—the religion of Humanity.

The Economic Background is next considered by economists of the rank of Dr. K. T. Shah, Dr. P. J. Thomas, Mr. J. C. Kumarappa, Sir Datar Singh and Sir Jehangir Coyajee. The findings of all these experts indicate the increasing poverty of the country and a sinking standard of living which hits the poverty-stricken masses hardest. Each of the writers suggests one or more methods of relieving the distress and putting India on her feet economically,—ranging from Industrialisation, reform in the financial and Currency policy, improvement in agriculture, dairy farming and marketing, and the revival of cottage industries,—which might be fused into a future many-sided Plan.

Sardar K. M. Pannikar has put out in pamphlet 4 an exceedingly well-considered exposition of the problems which face the Indian States on the one hand, and British India with regard to the States on the other. He is to be congratulated on his broad and sympathetic treatment of a subject on which few people can claim such intimate knowledge tempered by such balance of outlook.

Mr. A. Appadorai tackles the problem of adapting Democracy to the range of needs in India. He traces the steps already taken along the democratic path, and outlines a tentative plan for establishing and preserving what might be called a representative government in a country where the difficulties of representation are colossal.

Pamphlet 6.—Ceylon, by H. A. J. Hulugalle provides a sane and balanced account of Ceylon and her relations with the mainland. Mr. Hulugalle gives full consideration to the history of his country and the nature of his people, and analyses the causes of the recent unrest and unpleasantness in Indo-Ceylon relations. He concludes that the cultural, economic and political future of Ceylon is bound up with that of the Mainland.

In this age of transition when the rigid framework of caste and joint family are bending and breaking under the stress of new economic influences, the need for thought on a new Society for India is essential. Mr. S. Natarajan shows the gigantic possibilities that lie before a Central Government that is willing and eager to undertake Social legislation, to meet the requirements of today, in his Social Problems, which is number 7 in this Series.

E. ASIRVATHAM.



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 reputation as one of the leading quarters 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.

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